

## GC2: GENERAL CONDITIONS FOR PURCHASE OF WORKS CONTRACT

### 1. DEFINITIONS AND INTERPRETATION

1.1. In the Contract, the following words and expressions shall have the following meanings:

**Advance Payment:** means the advance payment amount set out in Schedule 3 (*Price and Payment*).

**Advance Payment Bond:** means the advance payment bond for the amount set out in Schedule 3 (*Price and Payment*).

**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.

**Approved Design Works:** shall have the meaning given to the term at clause 3.6.4.

**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 Works 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.

**CDM Regulations:** means the Construction (Design & Management Regulations) 2015 and the related Approved Code of Practice (associated with the CDM Regulations and as amended from time to time) together with any guidance requirements issued from time to time by the Health and Safety Executive, or any remaking thereof or any amendments to a regulation therein.

**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 of commencement of the Works as set out in the Contract Agreement.

**Completion:** means the full and satisfactory performance of all Works in accordance with the Contract, including any criteria for testing or inspection having been met, and **Complete** and **Completed** shall be interpreted accordingly.

**Conditions:** means these GC2: General Conditions for the purchase of Works.

**Confidential Information:** has the mean given in clause 15.1.

**Contract:** means the contract between Sembcorp and the Supplier for the Works made pursuant to the Contract Agreement, incorporating these Conditions and any Special Conditions.

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

**Design Works:** means the completion or detailing of any design, drawing or specification.

**Delay Liquidated Damages:** mean the sums (if any) payable by the Supplier to Sembcorp upon the occurrence of the event specified at clause 12.8 as delay liquidated damages, such sum being more particularly set out in the Contract Agreement.

**Force Majeure:** means any exceptional and unforeseeable circumstance beyond the reasonable control of the parties which prevents or impedes the due performance of the Contract by either party, including the following:

- (a) government action or trade embargo; or

- (b) war, hostilities or acts of terrorism; or
- (c) riot or civil commotion; or
- (d) epidemic; or
- (e) earthquake, flood, fire or natural physical disaster; or
- (f) exceptionally severe weather conditions or the consequences thereof; or
- (g) denial of the use of any railway, port, airport, shipping service or other means of public transport; or
- (h) industrial disputes, other than any solely confined to the Supplier or his Subcontractors or their personnel,

provided that: (i) any breach of contract, fault, delay or other act or omission of the Supplier or its subcontractors (including any outages of the Supplier's facilities and/or its plant and equipment caused by normal wear and tear or by failure to properly maintain); and (ii) prevention of or impediment to a party's performance of the Contract arising as a result of the 'Coronavirus' pandemic (and the disease known as COVID-19), shall not be considered Force Majeure, and the mere shortage of labour, materials, or utilities shall not constitute Force Majeure unless caused by circumstances which are themselves Force Majeure.

**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.

**KPIs:** means the key performance indicators (if any) set out in Schedule 4 (*Key Performance Indicators*) against which the Supplier's performance of the Works shall be measured.

**New Supplier:** another supplier chosen by Sembcorp to take over the provision of all or part of the Works.

**Necessary Consents:** means any permissions, authorisations and/or consents obtained by and/or on behalf of Sembcorp in respect of the Site or the location at which the Works are to be performed.

**NIS Regulations:** means the Networks 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.

**Performance Liquidated Damages:** means the sums (if any) payable by the Supplier to Sembcorp pursuant to clause 12.9 as liquidated damages, such sum being more particularly set out in the Contract Agreement.

**Price:** means the consideration payable to the Supplier for the Works as set out in the Contract Agreement.

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

**Sembcorp Equipment:** means any plant, machinery and equipment (including tools, systems, cabling or facilities) provided to the Supplier by Sembcorp, its agents, subcontractors or consultants which is used directly or indirectly in the supply of the Works.

**Sembcorp's Representative:** means the person named as such in the Contract Agreement subject to clause 9.4.

**Site:** means any location within Sembcorp's or its Affiliates' premises where the Works are to be substantially performed as specified in the Contract Agreement, or otherwise notified to the Supplier by Sembcorp's Representative.

**Site Rules:** means the policies, procedures and guidance for working at the Site, including as set out in the 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/>.

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

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

**Supplier's Representative:** means the person named as such in the Contract Agreement.

**TUPE:** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended from time to time).

**UK GDPR:** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the DPA 2018.

**VAT:** means value added tax chargeable under the Value Added Tax Act 1994.

**Warranty Period:** means a period of twenty-four (24) months commencing on the date of Completion.

**Waste Material:** means:-

- (a) any substance, material or object that may pose a threat of pollution to the environment if not properly disposed of or which otherwise possess hazardous properties i.e. carcinogenicity, flammability, toxicity and/or corrosivity (such term including but not being limited to substances such as toxic waste, asbestos, as well as to fluorescent tubes);
- (b) any other substance material or object regulated as waste under Applicable Law, including but not limited to Directive 2008/98/EC, the Environmental Protection Act 1990, the Hazardous Waste (England and Wales) Regulations 2005 and the List of Wastes (England) Regulations 2005; and
- (c) any other substance (whether solid, semi-solid or liquid), material or object which Sembcorp wishes the

Supplier to dispose of.

**Works:** means all goods to be supplied and services to be performed and all other work to be done by the Supplier under the Contract as more particularly described Schedule 1 (*Scope of Works*).

**Works Deliverables:** mean any output of the Works and any other documents, products and materials provided by the Supplier to Sembcorp pursuant to the Contract.

**Works Programme:** means the programme of work applicable to the Works as specified in Schedule 2 (*Works Programme*) or otherwise determined in accordance with clause 6.2.

- 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 **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 THE CONTRACT**

- 2.1. The Contract shall be deemed to be formed and shall be binding on the parties where these Conditions and any Special Conditions 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 all goods delivered and services provided in connection with the Works, 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.

## **3. PERFORMANCE OF THE WORKS AND WARRANTIES**

- 3.1. The Supplier shall carry out and Complete the Works and deliver the Works Deliverables in accordance with the terms of the Contract.
- 3.2. The Supplier warrants, represents and undertakes that:
  - 3.2.1. the Works will be carried out with sound workmanship and materials, safely and in accordance with good engineering practice and the Works shall be to the reasonable satisfaction of Sembcorp's Representative;
  - 3.2.2. the Works will be carried out with the highest level of care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
  - 3.2.3. at all times the Works and the Works Deliverables (and all goods, materials, standards and techniques used in providing the same) shall be of the best quality and free from defects in workmanship, installation and design;
  - 3.2.4. where the Supplier in connection with the provision of the Works supplies any goods (including the Works Deliverables) supplied by a third party, the Supplier shall assign to Sembcorp the benefit of any warranty, guarantee or indemnity given by the third party supplier to the Supplier;
  - 3.2.5. where the Works Deliverables are manufactured products, they shall be free from defects in design, materials and workmanship and remain so for a period of twenty-four (24) months from delivery;
  - 3.2.6. the Works Deliverables shall be error-free, accurate, up to date and as at the date of Completion shall be fit for the ordinary purposes for which they are used;
  - 3.2.7. the Works shall be capable of the required standard of performance, including any KPIs, as may be set out in the Contract Agreement;
  - 3.2.8. Sembcorp shall acquire good and clear title to the Works and the Works Deliverables, free and clear of all liens, claims, encumbrances and other restrictions whatsoever; and
  - 3.2.9. Sembcorp shall have quiet possession of the Works and the Works Deliverables.
- 3.3. The Supplier and its subcontractors shall comply with all Applicable Laws and all Necessary Consents, and the Supplier shall hold harmless and indemnify Sembcorp against any claims or proceedings arising out of any breach of the same by the Supplier or its subcontractors.
- 3.4. The Works as Completed by the Supplier shall comply with the Contract and shall be in every respect fit for the purpose for which they are 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.
- 3.5. The Supplier shall:
  - 3.5.1. comply with all Site Rules and any other policies, standards, rules and/or procedures which are applicable to the Works and shall ensure that its subcontractors observe these likewise;

- 3.5.2. promptly comply with instructions, authorisations and notices given by Sembcorp's Representative in accordance with the Contract;
  - 3.5.3. co-operate in good faith with the Sembcorp's Representative in all matters under or in connection with the Works; and
  - 3.5.4. provide Sembcorp's Representative with access to all Works Deliverables and any other facilities, plant, machinery and materials to be delivered under or used in connection with the Works for the purposes of enabling the Sembcorp's Representative to discharge his duties under the Contract and to ensure that the Supplier is complying with its responsibilities under the Contract.
- 3.6. Where the Supplier is required to provide Design Works:
- 3.6.1. the Supplier shall submit to Sembcorp for approval such number of copies of the Design Works as Sembcorp's Representative may request. Sembcorp's Representative shall within fourteen (14) days (or such other period as Sembcorp's Representative and the Supplier may agree) notify the Supplier in writing whether, in Sembcorp's Representative's absolute discretion, the Design Works are approved;
  - 3.6.2. if the Design Works are rejected by Sembcorp's Representative, the Supplier shall at its own cost and expense amend the Design Works and re-submit them to Sembcorp's Representative for approval within fourteen (14) days of receipt of the notification of rejection;
  - 3.6.3. any exercise by Sembcorp's Representative of its right to reject any Design Works shall not relieve the Supplier of its obligations to Complete the Works and to deliver the Works Deliverables in accordance with the agreed Works Programme and by any agreed dates for Completion;
  - 3.6.4. upon approval of the Design Works by Sembcorp's Representative, such Design Works shall be deemed "**Approved Design Works**" for the purposes of the Contract and shall not be amended otherwise than in accordance with the terms of the Contract. For the avoidance of doubt, any approval by Sembcorp's Representative of the Approved Design Works shall not, nor shall it be deemed to, relieve the Supplier of its obligations for ensuring that such Approved Design Works comply with the terms of the Contract and with all Applicable Laws;
  - 3.6.5. on Completion, the Supplier shall provide Sembcorp's Representative with one complete set (in the form required by Sembcorp's Representative) of Approved Design Works; and
  - 3.6.6. without prejudice to any other rights or remedies to which Sembcorp may be entitled, if any Approved Design Works (or any part of them) are defective, inadequate or otherwise not in accordance with the Contract or with all Applicable Laws at any time prior to Completion or expiry of the Warranty Period, then:
    - (a) the Supplier shall promptly take such steps as are necessary to rectify the Approved Design Works to the satisfaction of Sembcorp's Representative at its own costs and expense; or
    - (b) Sembcorp may instruct a third party to rectify the Approved Design Works and all additional expenditure incurred by Sembcorp in remedying the design of the Works shall be payable by the Supplier to Sembcorp upon demand.
- 3.7. The Supplier undertakes and warrants to Sembcorp that it has not and will not specify any products or materials for use in the Works which at the time of use are generally known to be deleterious to the health and safety of any person, or posing a threat to the structural stability, performance or physical integrity of the Works, or not being in accordance with any British Standards or codes of practice.
- 3.8. The Supplier shall ensure that there is no trespass by the Supplier or its employees, agents or subcontractors (including the oversailing of a tower crane jib or erection of scaffolding or hoarding) on or over any adjoining or neighbouring property arising out of the Works and shall take all reasonable safety and other measures to prevent damage or injury to any persons including the occupiers of such property and members of the public.
- 3.9. The Supplier shall, at all times, prevent any nuisance or interference with the rights of any adjoining landowner, tenant or occupier or any statutory undertaker of which the Supplier is or ought to reasonably have been aware, arising out of the performance of the Works. The Supplier shall assist Sembcorp in defending any action or proceedings in relation to any such nuisance or interference and shall indemnify Sembcorp from and against any and all expenses, liabilities, losses, claims and proceedings resulting from any failure or default in performing its obligations under this clause 3.9.
- 3.10. The Supplier shall, except as otherwise stated in the Contract, be responsible for all power, water and other services it may require in performance of the Works. The Supplier shall at its risk and cost provide any apparatus necessary for use of such services.
- 3.11. The Supplier shall in performing its obligations under the Contract, use all reasonable endeavours to implement a suitable energy management procedure which minimises the energy consumption of any items used in connection with the Works.

#### **4. SEMBCORP EQUIPMENT**

- 4.1. Where Sembcorp provides any Sembcorp Equipment, the Supplier shall not be entitled to make any claim against Sembcorp because of the unsuitability or condition of the Sembcorp Equipment and the Supplier hereby expressly acknowledges and agrees that Sembcorp makes no warranties, representations, statements or otherwise as to the quality, suitability or fitness for purpose of the Sembcorp Equipment and Sembcorp hereby excludes to the maximum extent permitted by law any liability for any costs, charges, damages, expenses or other liabilities in respect of the same. If such Sembcorp Equipment breaks down or becomes unusable, the Supplier shall at its own cost and expense repair or replace it.
- 4.2. The Supplier shall take proper care of and at his own cost and expense maintain in good condition and working order all Sembcorp Equipment and shall use such Sembcorp Equipment at all times in accordance with Sembcorp's and/or manufacturer's instructions and solely in connection with the provision of the Works.
- 4.3. The Supplier shall not permit Sembcorp Equipment to be removed from the Site without the prior written consent of Sembcorp's Representative. Where Sembcorp Equipment is removed from the Site by the Supplier or delivered by the Supplier off-site or is being stored, repaired or is otherwise located at any time at the Supplier's premises or any of its

subcontractor's premises, the Supplier shall and shall procure that its subcontractors:

- 4.3.1. store such items securely in a separate designated areas and post suitable notices in such areas clearly indicating that the items are the exclusive property of Sembcorp;
- 4.3.2. grant an irrevocable license to Sembcorp to enter any premises at which the items are being stored for the purpose of regaining possession of such items; and
- 4.3.3. store the items in safe custody, at its own risk from and shall insure such items against loss or damage accordingly, which, without limitation to the above, shall include insuring against any loss or damage incurred at the premises or due to a third party (including its subcontractors).

## **5. SUPPLIER'S PERSONNEL**

- 5.1. The Supplier shall at all times have and maintain adequate resources available for the proper and timely carrying out of the Works, including financial resources, and competent, appropriately qualified, trained and experienced personnel.
- 5.2. The Supplier and its subcontractors shall have due regard to industrial relations practices and procedures at the Site and shall act always so as to foster and maintain orderly and productive relations with their employees and the employees of Sembcorp, its Affiliates and Sembcorp's other contractors (if any) working at the Site. The Supplier and its subcontractors shall observe the hours and conditions of working embodied in, and pay their employees in accordance with, any national or local industrial or trades agreement that apply to the performance of the Works, whether at the Site or elsewhere.
- 5.3. The parties do not consider that TUPE shall operate to transfer the employment of any employee of the Supplier or any of its subcontractors as a consequence of the termination or expiry of the Contract (whether in whole or in part).
- 5.4. If the expiry or termination of the Contract (whether in whole or in part) operates so as to transfer the contracts of employment or engagement of any employees of the Supplier or its subcontractors under TUPE to Sembcorp or to any New Supplier (as appropriate), the Supplier shall indemnify and keep indemnified Sembcorp from, and hold Sembcorp (or any New Supplier, as appropriate) harmless from and against any loss incurred or suffered by Sembcorp (or any New Supplier, as appropriate) arising under TUPE or arising out of or in connection with the employment or engagement of such employees or subcontractors (including without limitation, any claims for redundancy, personal injury, discrimination, unfair dismissal and/or wrongful dismissal).
- 5.5. The Supplier shall appoint a Supplier's Representative to be responsible for overseeing and managing the execution of the Works on behalf of the Supplier (and who shall have authority to bind the Supplier in respect of all matters relating to the Works) and shall notify Sembcorp's Representative of his appointment (or of the appointment of any other persons to succeed him).
- 5.6. Sembcorp's Representative shall be entitled to object to the appointment of a particular person as the Supplier's Representative or to require at any time the person appointed as the Supplier's Representative to be replaced by another person satisfactory to Sembcorp's Representative.
- 5.7. The Supplier acknowledges that Sembcorp and/or its other contractors may be carrying out other works and/or may be continuing to operate other plant, equipment or systems in the vicinity of the Works, and shall: (i) ensure that its personnel are aware of any hazardous or other (live) plant, equipment or systems when performing the Works; and (ii) provide all such co-operation with Sembcorp in relation to any such other works as the Sembcorp's Representative may reasonably require (including attending co-ordination meetings) and shall be prepared to make such amendments or adjustments to the Works Programme as Sembcorp may reasonably require in order to accommodate any such other works.

## **6. WORKS PROGRAMME**

- 6.1. The Supplier shall commence the Works on the Commencement Date or, if no Commencement Date is specified, as soon as reasonably practicable (but in any event not later than fourteen (14) days) following receipt of an instruction to commence the Works from Sembcorp's Representative.
- 6.2. Where no Works Programme is specified in the Contract, the Supplier shall prepare and submit to Sembcorp's Representative for his approval a programme of work setting out the sequence in which and dates by which the Supplier proposes to perform its obligations under the Contract and the date(s) by which the Supplier reasonably requires that Sembcorp should provide any further documentation, drawings, technical software, images, designs, manuals or records or information or Sembcorp Equipment or take any other action to permit the Supplier to perform its obligations. The programme shall take account of all matters which may affect the completion of the Works. If the programme submitted by the Supplier is consistent with any dates and periods specified in the Contract and is otherwise reasonable, Sembcorp's Representative shall approve it and it shall be the Works Programme.
- 6.3. The Supplier shall:
  - 6.3.1. proceed diligently with the Works in accordance with the Works Programme;
  - 6.3.2. Complete the Works or any specified section on or before the date, or within the period, for Completion specified in the Works Programme;
  - 6.3.3. provide such updates and progress reports regarding the Works as Sembcorp's Representative may require from time to time; and
  - 6.3.4. if it becomes aware of any delay or the likelihood of any delay to the Works Programme, immediately notify Sembcorp's Representative of the circumstances and the actual or estimated duration of the delay and the action it has taken, or proposes to take, to avoid or minimise the delay.

## **7. COMPLETION OF THE WORKS**

- 7.1. The Supplier shall notify Sembcorp's Representative when it considers that the Works are substantially Complete and ready for any inspection and/or testing specified in the Contract.

- 7.2 When any inspection and/or tests have been carried out to Sembcorp's satisfaction, Sembcorp's Representative shall within seven (7) days certify to the Supplier that he considers the Works to be Completed in accordance with the Contract. No Works shall be covered up or put out of view without the approval of Sembcorp's Representative and the Supplier shall afford full opportunity for Sembcorp's Representative to examine and measure any Works which are about to be covered up or put out of view. The Supplier shall give due notice to Sembcorp's Representative whenever any such Works are ready or about to be ready for examination and Sembcorp's Representative shall attend for the purpose of examining and measuring such Works unless he considers it unnecessary and advises the Supplier accordingly.
- 7.3 Upon receipt of the certification from Sembcorp's Representative pursuant to clause 0, the Supplier shall promptly upon request, clear away and remove from the Site all of its plant and equipment and any unused materials, rubbish and temporary works used in connection with the Works and leave the whole of the Site and the Works clean and in a condition satisfactory to Sembcorp's Representative.
- 7.4 Any scrap material and/or redundant equipment that Sembcorp's Representative instructs shall remain the property of Sembcorp. The Supplier shall stack any such material/equipment safely and securely in a location directed by Sembcorp's Representative.

## **8. SEMBCORP'S RESPONSIBILITIES**

- 8.1 Sembcorp shall give the Supplier access to the Site or parts of the Site, as necessary for the purposes of carrying out the Works in accordance with the Works Programme.
- 8.2 If the Contract provides that Sembcorp is to carry out any work or provide any Sembcorp Equipment which are necessary to permit the carrying out and completion of the Works by the Supplier then such work shall be carried out and Sembcorp Equipment provided at the times specified in the Works Programme, or if no such times are specified, at reasonable times having regard to any date for Completion of the Work, the Works Programme, the actual progress of the Works and any other relevant circumstances, and at no cost to the Supplier.
- 8.3 Sembcorp shall ensure that the Supplier is provided with all documentation, drawings, technical software, images, designs, manuals or records or information listed in the Contract and any such further information, instructions and decisions to be provided by Sembcorp, or that the Supplier may reasonably require, so as not to prejudice the Supplier's ability to perform and Complete the Works in accordance with the Contract.

## **9. SEMBCORP'S REPRESENTATIVE**

- 9.1 Where no Sembcorp's Representative is specified in the Contract Agreement, Sembcorp may at any time in writing appoint a person to be Sembcorp's Representative for all matters arising in connection with the Works.
- 9.2 Sembcorp's Representative shall have full authority to act on behalf of Sembcorp in connection with the Contract (save that he shall have no authority to relieve the Supplier of any of its obligations under the Contract) and:
- 9.2.1 Sembcorp shall cause Sembcorp's Representative to perform reasonably and in a timely manner every act required under the Contract to be performed by Sembcorp's Representative;
- 9.2.2 any obligation stated under the Contract to be an obligation of Sembcorp's Representative shall be deemed to be an obligation of Sembcorp;
- 9.2.3 Sembcorp shall be responsible for any act, neglect or omission of Sembcorp's Representative as if it were an act, neglect or omission of Sembcorp; and
- 9.2.4 in all matters where Sembcorp's Representative is required or authorised under the Contract to exercise his discretion or make a judgment or form an opinion he shall do so impartially and with the skill and judgment of an appropriately qualified professional.
- 9.3 Sembcorp's Representative's approvals, authorisations, notices, decisions or instructions shall be in writing. No oral approval, authorisation, notice, decision or instruction given by Sembcorp's Representative shall be valid unless confirmed in writing by Sembcorp's Representative within five (5) working days.
- 9.4 Sembcorp may from time to time appoint some other individual as Sembcorp's Representative in place of the individual previously so named or appointed and such appointment shall have effect from the date when the Supplier receives notice of the appointment.

## **10. REVIEW MEETINGS AND KPIS**

- 10.1 The Supplier shall comply with the KPIS (if any) as specified in the Contract.
- 10.2 The parties shall meet on a monthly basis, or at such other intervals as Sembcorp's Representative shall require, to review the progress of the Works and the Supplier's performance under the Contract, including measuring performance against any relevant KPIS.
- 10.3 Where applicable, the KPIS, the method by which performance against the KPIS are to be measured, and the consequences of the Supplier failing to meet the KPIS (or any of them) shall be set out in Schedule 4 (*Key Performance Indicators*).

## **11. REPRESENTATIONS AND UNDERTAKINGS**

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

- 11.1 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;
- 11.2 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
- 11.3 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.

## **12. SEMBCORP REMEDIES**

If the Supplier fails to carry out the Works by the date for Completion specified in the Contract, or if damaged or sub-standard Works are performed, then Sembcorp shall (without limiting or affecting its other rights or remedies), have the right (at its absolute discretion, regardless of whether or not it has accepted the Works) to any one or more of the following remedies:

- 12.1. to terminate or cancel the Contract either in whole or in part in accordance with clause 21;
- 12.2. to reject the Works (in whole or in part);
- 12.3. to require the Supplier to repair or replace the rejected Works or to provide a full refund of the Price of the rejected Works (if paid);
- 12.4. to refuse to accept any subsequent performance of the Works which the Supplier attempts to make;
- 12.5. to order the Supplier to leave the Site, allowing only such reasonable time as necessary for the Supplier to demobilise and remove any equipment brought onto the Site;
- 12.6. to recover from the Supplier any costs incurred by Sembcorp in obtaining substitute Works from a third party;
- 12.7. to require a refund from the Supplier of any Advance Payment made in respect of any Works;
- 12.8. in the case of late performance of the Works, to claim or deduct from payments due to the Supplier any amount specified in the Contract Agreement as Delay Liquidated Damages, and the parties agree that such sums represent a genuine pre-estimate of the loss Sembcorp is likely to suffer as a result of such late performance;
- 12.9. in the case of a failure to meet any KPIs, to claim or deduct from payments due to the Supplier any amount specified in the Contract Agreement as Performance Liquidated Damages, and the parties agree that such sums represent a genuine pre-estimate of the loss Sembcorp is likely to suffer as a result of such late performance; and/or
- 12.10. 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 Works in accordance with the Contract.

## **13. PRICE**

- 13.1. Sembcorp shall pay the Supplier the Price as stated in the Contract Agreement and in accordance with this clause 13.
- 13.2. The Price excludes VAT, local or sales taxes and to the extent that these taxes are properly chargeable, Sembcorp shall pay such taxes in addition to payments otherwise due to the Supplier.
- 13.3. The interim and final valuations of the Works shall be calculated by application of Schedule 3 (*Price and Payment*).
- 13.4. The parties agree that the payment mechanism as set out in clause 14 is an adequate mechanism for payment and that the periods for payment are fair and reasonable having regard to the nature of the Works.

## **14. PAYMENT**

- 14.1. Sembcorp shall pay the Supplier the Price in instalments as provided in Schedule 3 (*Price and Payment*).
- 14.2. If any instalment is to be paid upon the completion of a specified task or milestone, the Supplier shall only be entitled to apply for payment for that instalment when he can provide evidence of completion of the task or milestone as stated in Schedule 3 (*Price and Payment*).
- 14.3. The Supplier shall submit a request for payment to Sembcorp's Representative on the final Friday of each calendar month showing:
  - 14.3.1. the Supplier's assessment of the amount to be paid for Works 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*
  - 14.3.2. the amounts to which the Supplier considers himself entitled in connection with all other matters for which provision is made under the Contract;  
*less*
  - 14.3.3. the total of all sums previously certified by Sembcorp's Representative for payment;  
*less*
  - 14.3.4. any relevant repayment of the Advance Payment made pursuant to clause 14.12.

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.

- 14.4. 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.

- 14.5. Any sum certified and notified as due in accordance with clause 14.4 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 14.3. 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 14.3.
- 14.6. If for any reason Sembcorp, or Sembcorp's Representative on his behalf, fails to notify in writing the sum due in accordance with clause 14.4 by the payment due date determined in accordance with clause 14.5 the sum notified by the Supplier in his request for payment in accordance with clause 14.3 shall be due for payment by the Final Date for Payment.
- 14.7. If Sembcorp intends to pay less than the sum due in accordance with clause 14.4 or 14.6 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).
- 14.8. If Sembcorp does not make payment in full by the Final Date for Payment of the amount of an instalment:
- 14.8.1. certified and notified in accordance with clause 14.4; or
- 14.8.2. where applicable in accordance with a notice issued under clause 14.7; or
- 14.8.3. where applicable in accordance with clause 14.6;
- 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 interest 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.
- 14.9. If Sembcorp does not make payment in full by the Final Date for Payment of the amount of an instalment:
- 14.9.1. certified and notified in accordance with clause 14.4; or
- 14.9.2. where applicable in accordance with a notice issued under clause 14.7; or
- 14.9.3. where applicable in accordance with clause 14.6;
- 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 Works 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.
- 14.10. If the suspension of performance of any, but not all, of the Supplier's obligations in accordance with clause 14.9 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 14.9 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 22.2.
- 14.11. If the amount of a payment which is:
- 14.11.1. notified in accordance with clause 14.4 (and no notice is given by Sembcorp under clause 14.7 in respect of such payment); or
- 14.11.2. stated in a notice given by Sembcorp under clause 14.7 is referred to an adjudicator appointed in accordance with Clause 266 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 14.11.1 or this clause 14.11.2 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.
- 14.12. Where so required under Schedule 3 (*Price and Payment*) and subject to the Supplier (at its own cost) providing to Sembcorp an Advance Payment Bond in an amount equal to the Advance Payment in such form as approved by Sembcorp, Sembcorp will make an Advance Payment towards the Price.
- 14.13. The Supplier shall ensure the Advance Payment Bond is valid and enforceable until the Advance Payment has been repaid. The Advance Payment shall be repaid to Sembcorp by way of a percentage deduction from each interim payment until such time as the Advance Payment is repaid. If any part of the Advance Payment has not been repaid by the date for application of the final payment certificate, the amount of the Advance Payment not yet paid shall become immediately payable by the Supplier to Sembcorp.

## 15. CONFIDENTIALITY



- 15.1. Subject to clause 15.2, 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**”)
- 15.2. A party may disclose the other party’s Confidential Information:
  - 15.2.1. 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, provided that the disclosing party shall be liable for any breach of confidentiality by the recipient of such Confidential Information pursuant to this clause 15; and
  - 15.2.2. as may be required by Applicable Law or by any court or governmental, regulatory or supervisory authority of competent jurisdiction.
- 15.3. 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.
- 15.4. Confidential Information shall continue to be the property of the party disclosing it.
- 15.5. Clauses 15.1 to 15.4 (inclusive) shall continue to bind the parties for a period of five (5) years following termination or expiry of the Contract.

**16. INTELLECTUAL PROPERTY RIGHTS**

- 16.1. All Intellectual Property Rights in any specifications, documents, ideas, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:
  - 16.1.1. provided to the Supplier by Sembcorp shall remain as Sembcorp’s property; or
  - 16.1.2. prepared by or for the Supplier pursuant to or in relation to the performance of the Contract,
 shall belong to Sembcorp.
- 16.2. The Supplier shall obtain necessary approval 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 Works and/or Works Deliverables to Sembcorp.
- 16.3. All Background Intellectual Property shall remain the exclusive property of the party owning it and the 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 the Contract except the rights explicitly granted in the Contract.
- 16.4. 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 Works and/or Works Deliverables.
- 16.5. 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 Works and/or Works Deliverables to Sembcorp. Any derivations or modifications of Sembcorp’s Background Intellectual Property howsoever created will be the property of Sembcorp.
- 16.6. Where the Supplier creates or generates any Works 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 Works and/or arising out of or resulting from the performance of the Contract then Sembcorp will own the entire right, title and interest in and to all Intellectual Property Rights in the newly created Works 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 Works 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.
- 16.7. The Supplier shall treat all Works Deliverables as Confidential Information of Sembcorp, and shall impose the requirements of clause 15 on each of its personnel and/or permitted sub-contractors.
- 16.8. 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 Works Deliverables (material or otherwise) which Sembcorp in its sole discretion considers necessary or desirable, including amendments to ensure that the Works Deliverables conform to Sembcorp’s requirements and is updated and accurate.
- 16.9. The Supplier shall notify Sembcorp as soon as practicable if the Supplier becomes aware:
  - 16.9.1. of any infringement or suspected infringement of the Intellectual Property Rights or moral rights of any third party arising from the Works and/or Works Deliverables or the publication, distribution and making available of the Works and/or Works Deliverables by Sembcorp; or
  - 16.9.2. of any infringement or suspected infringement by any third party of the Intellectual Property Rights in the Works and/or

#### Works Deliverables.

- 16.10. 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 25.1.

#### 17. INDEMNITY, INSURANCE AND LIABILITY

- 17.1. 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:
- 17.1.1. 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 design, manufacture, supply or use of the Works or the use of any design, drawings, plant and equipment, materials or other items provided by, or on behalf of, the Supplier in connection with the execution of the Works;
  - 17.1.2. the death of, or injury to, any person or out of or in connection with the damage to any property, including without limitation property of Sembcorp, to the extent that such death, injury or damage is caused by breach of the terms and conditions of the Contract, any negligent performance, delay and or failure to perform any of its obligations under the Contract by the Supplier, its employees, agents or subcontractors; and
  - 17.1.3. 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, its employees, agents or subcontractors.
- 17.2. The Supplier shall 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:
- 17.2.1. *employer's liability insurance*: not less than ten million pounds (£10,000,000) for each and every claim;
  - 17.2.2. *public/product liability insurance* (including damage to Sembcorp's or any of its Affiliates' property): not less than five million pounds (£5,000,000) for each and every claim;
  - 17.2.3. *professional indemnity insurance* to be provided (where the Works to be performed comprise or contain Design Works or professional or specialist advisory services: 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 Works;
  - 17.2.4. *insurance of the equipment and other property of the Supplier*; and
  - 17.2.5. *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.
- 17.3. The Supplier shall ensure that Sembcorp's interest in the insurance policies effected pursuant to clause 17.2 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 17 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 17.
- 17.4. 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.
- 17.5. Subject to clause 17.6, 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.
- 17.6. Nothing in the Contract excludes or limits either 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.

#### 18. HEALTH, SAFETY AND ENVIRONMENT

- 18.1. Sembcorp and the Supplier shall comply with all health, safety and environmental legislation.
- 18.2. If and to the extent that the Works involve the collection, storage, handling, transportation and/or disposal of any Waste Material by the Supplier, the Supplier shall at all times comply with the provisions of Schedule 5 (*Waste Material Requirements*). Any breach by the Supplier of its obligations under this clause 18.2 shall for the purposes of clause 21.2.1 constitute a default which is not capable of remedy and shall entitle Sembcorp to terminate the Contract immediately.
- 18.3. The Supplier shall be responsible for safety of its own operations and those of any subcontractors and shall ensure that:
- 18.3.1. a safe working environment is maintained at all times;
  - 18.3.2. all persons on the Site, whether or not employed by the Supplier or any subcontractor, are properly protected from risk of injury and danger to health arising out of or in connection with the carrying out of the Works;
  - 18.3.3. all property under its control is properly protected from damage or loss;
  - 18.3.4. all construction activities are subject to appropriate risk assessment and that relevant construction method statements are issued;

- 18.3.5. any hazardous material is identified and suitable safety notices issued;
- 18.3.6. any hazardous material for which it is responsible is safely contained or removed from the Site; and
- 18.3.7. the Site is at all times kept in a clean and tidy condition.
- 18.4. In addition to the requirement to comply with Applicable Laws, the Supplier shall ensure that its employees, subcontractors, and anybody working under its control shall be conversant with, and shall at all times comply strictly with any site safety regulations, safe working procedures and health and safety instructions issued to the Supplier from time to time by Sembcorp's Representative or Sembcorp.
- 18.5. The Supplier shall ensure that none of its nor any of its subcontractor's personnel performs any activity relating to the performance of the Works under the influence of intoxicating liquor, drugs or other similar substances.
- 18.6. If Sembcorp's Representative considers that any employee of the Supplier or of any subcontractor is incompetent or has been guilty of misconduct or has performed inadequately for the requirements of his job, or has failed to comply with the requirements of this clause 18.6, or whose presence on the Site is considered undesirable for any other good reason, then Sembcorp's Representative shall have the right to require the removal from the Site of the said person. The Supplier shall promptly comply with any instruction to that effect. Sembcorp shall have no obligation to reimburse the Supplier the cost of replacing the person and the Supplier shall not be entitled to any extension of time.
- 18.7. The Supplier shall be liable for and indemnify Sembcorp against any environmental pollution arising from its activities at the Site except to the extent that such pollution occurs as a result of compliance with the requirements of Sembcorp.
- 18.8. Without prejudice to the generality of clause 18.1 and clause 18.3.4, the Supplier shall comply with the CDM Regulations including:
  - 18.8.1. where the Supplier is the principal designer, complying with the duties of a principal designer and without charge, preparing and delivering to Sembcorp the health and safety file;
  - 18.8.2. complying with regulations 8 to 10 (inclusive) and 15 and where it is the principal contractor regulations 12 to 14 (inclusive); and
  - 18.8.3. whether or not the Supplier is the principal contractor complying with the regulations including any directions as referred to in regulation 15, which shall be at no cost to Sembcorp and for which the Supplier shall not be entitled to an extension of time.

## 19. COMPLIANCE

- 19.1. In performing its obligations under the Contract, the Supplier shall comply with:
  - 19.1.1. all Applicable Laws and the Supplier will inform Sembcorp as soon as it becomes aware of any changes in the Applicable Laws; and
  - 19.1.2. 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.**
- 19.2. Without prejudice to the generality of the foregoing, the Supplier warrants and represents that, in connection with the Contract:
  - 19.2.1. it shall observe and comply with all applicable Anti-Bribery Laws and shall ensure that, at all times during the Contract:
    - (i) it implements 'adequate procedures' designed to prevent it, its employees, agents or subcontractors 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
    - (ii) 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;
  - 19.2.2. 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:
    - (i) comprise a facilitation payment;
    - (ii) 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
    - (iii) violate any applicable Anti-Bribery Laws;
  - 19.2.3. 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 subcontractors;
  - 19.2.4. 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);
  - 19.2.5. for Works identified by Sembcorp that compliance to cybersecurity is required, it shall comply with any 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;
- 19.2.6. 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 Sembcorp'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;
- 19.2.7. notwithstanding anything to the contrary, it shall upon knowledge of any security incidents, breach or non-compliance of clauses 19.2.1 to 19.2.5, the Data Security Legislation, and/or Sembcorp's 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;
- 19.2.8. In the event of any breach or non-compliance referred to in clause 19.2.7, 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
- 19.2.9. it will:
- (i) 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
  - (ii) 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.
- 19.3. 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 <https://www.sembcorp.com/en/media/597360/sembcorp-supplier-code-of-conduct.pdf>), which may be updated from time to time.
- 19.4. 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.
- 19.5. 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 19.4. 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).
- 19.6. The Supplier warrants, represents, and undertakes it, its Affiliates and their respective directors, officers or employees:
- 19.6.1. comply with all Applicable Sanctions;
  - 19.6.2. 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
  - 19.6.3. are not the subject or the target of any Applicable Sanctions.
- 19.7. 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.
- 19.8. Both parties will comply with all applicable requirements of the Data Protection Legislation. Clauses 19.8 to 19.12 (inclusive) are in addition to, and do not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 19.9. The parties acknowledge that for the purposes of the Data Protection Legislation, Sembcorp is the Controller and the Supplier is the Processor.
- 19.10. Without prejudice to the generality of clause 19.8, 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.
- 19.11. Without prejudice to the generality of clause 19.8 the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under the Contract:
- 19.11.1. 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;
  - 19.11.2. 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);

- 19.11.3. ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
  - 19.11.4. 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:
    - (i) Sembcorp or the Supplier has provided appropriate safeguards in relation to the transfer;
    - (ii) the Data Subject has enforceable rights and effective legal remedies;
    - (iii) 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
    - (iv) the Supplier complies with reasonable instructions notified to it in advance by Sembcorp with respect to the processing of the Personal Data;
  - 19.11.5. 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;
  - 19.11.6. notify Sembcorp without undue delay on becoming aware of a Personal Data Breach;
  - 19.11.7. 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
  - 19.11.8. maintain complete and accurate records and information to demonstrate its compliance with clauses 19.8 to 19.12 (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.
- 19.12. 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 19.8 to 19.12 (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 19.12.
- 19.13. The Supplier shall notify Sembcorp in writing immediately if the Supplier undergoes a change of control, the phrase '**control**' in this clause 19.13 having the meaning given to it in s.1124 of the Corporation Tax Act 2010.
- 19.14. In the event Sembcorp has reason to believe that a breach of any representations and warranties and undertakings in this clause 19 has occurred or may occur, Sembcorp may without prejudice to any other rights or remedies available to it, 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.
- 19.15. 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 19. Further, in the event of a breach or non-compliance with this clause 19 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 19.

## **20. INFORMATION AND AUDIT**

- 20.1. The Supplier shall, if requested, provide Sembcorp with evidence of the place of origin and any other information relating to components, parts or raw materials used in manufacturing the Works and/or the Works Deliverables.
- 20.2. The Supplier shall maintain complete and accurate records of the time spent and material used by the Supplier in performing the Works, and the Supplier shall allow Sembcorp to inspect and audit such records at all reasonable times on request.
- 20.3. The Supplier shall allow Sembcorp (or its professional advisers) to access the Supplier's premises, personnel, systems and relevant records to verify that the Price and any other sums charged to Sembcorp under the Contract are accurate.
- 20.4. The Supplier shall provide Sembcorp (and its professional advisers) with all reasonable co-operation, access and assistance in relation to each audit.
- 20.5. 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.

## **21. TERMINATION**

- 21.1. Sembcorp may terminate the Contract at any time by giving the Supplier not less than ninety (90) days' written notice.
- 21.2. Sembcorp may terminate the Contract with immediate effect by giving written notice to the Supplier if:

- 21.2.1. 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;
- 21.2.2. the Supplier commits a series of persistent minor breaches, which (in Sembcorp's reasonable opinion) when taken together amount to a material breach;
- 21.2.3. the right for Sembcorp to terminate arises under clauses 12.1 or 19.1414 or in respect of any other representation under the Contract;
- 21.2.4. 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;
- 21.2.5. Sembcorp does not approve the amended Design Works which have been re-submitted to Sembcorp's Representative for approval in accordance with clause 3.6.2, within fourteen (14) days of receipt of the amended Design Works;
- 21.2.6. the Supplier undergoes a change of control, the phrase "**control**" in this clause 21.2.6 having the meaning given to it in s.1124 of the Corporation Tax Act 2010;
- 21.2.7. 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;
- 21.2.8. 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
- 21.2.9. 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.
- 21.3. Either party may terminate the Contract with immediate effect by giving written notice to the other party if:
  - 21.3.1. 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;
  - 21.3.2. the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

## 22. CONSEQUENCES OF TERMINATION

- 22.1. On termination or expiry of the Contract the Supplier shall:
  - 22.1.1. immediately commence, and thereafter complete as soon as practicable, the: (i) making good and safe securing of any Works at the Site; (ii) demobilisation of all Supplier Equipment and personnel from the Site; and (iii) removal of all Waste Material (if any) from the Site in accordance with clause 18;
  - 22.1.2. immediately deliver to Sembcorp all Works Deliverables (whether or not then complete), and return all of the Sembcorp Equipment and Confidential Information 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 delivered or returned, the Supplier shall be solely responsible for the safe keeping of all Works Deliverables, Sembcorp Equipment and Confidential Information in its possession and will not use them for any purpose not connected with the Contract; and
  - 22.1.3. provide all assistance required by Sembcorp to facilitate the smooth, orderly and efficient transition of the Works to Sembcorp or any alternative or replacement supplier appointed by it.
- 22.2. On termination or expiry of the Contract, the licence granted pursuant to clause 16.5 shall terminate with immediate effect.
- 22.3. If Sembcorp terminates the Contract pursuant to clause 21.1, it shall pay to the Supplier for all Works properly carried out by the Supplier up to the date of termination either: (i) where the Charges are on a time and materials basis, for all time properly incurred and materials used up to the date of termination; or (ii) where the Charges are on a fixed price bases, fair and reasonable compensation for any Work carried out as at the date of termination as determined in the reasonable opinion of Sembcorp's Representative, provided that such compensation shall not include loss of anticipated profits or any consequential loss. The payments described herein shall be Sembcorp's sole and exclusive liability to the Supplier in respect of the termination of the Contract pursuant to clause 21.1.
- 22.4. Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of 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.
- 22.5. 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.

## 23. FORCE MAJEURE

- 23.1. Provided it has complied with clause 23.2, if a party (an **Affected Party**) is prevented from or hindered or delayed in performing any of its obligations under the Contract as a result of Force Majeure, the Affected Party shall not be in breach of the Contract or otherwise liable for any such failure or delay in the performance of such obligations and the time for performance of such obligations shall be extended accordingly.
- 23.2. The Affected Party shall:
  - 23.2.1. as soon as reasonably practicable (and in any event within five (5) Business Days) after commencement of the Force Majeure, notify the non-affected party in writing of the occurrence of Force Majeure, the date on which it started, the likely or potential duration of the Force Majeure, the effect of the Force Majeure on its ability to perform any of its

obligations under the Contract, and the steps being taken by the Affected Party to remove or mitigate the effect of the Force Majeure;

- 23.2.2. at all times use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations and to minimise any delay to the Works;
  - 23.2.3. regularly notify the non-affected party, so long as the Force Majeure is continuing, of any updated information relating to the likely or potential duration of the Force Majeure, the effect of the Force Majeure on its ability to perform any of its obligations under the Contract, and the steps being taken by the Affected Party to remove or mitigate the effect of the Force Majeure; and
  - 23.2.4. upon the non-affected party's request, provide such other details relating to the Force Majeure and its effects as may be requested by the non-affected party.
- 23.3. If the Affected Party is prevented from or hindered or delayed in performing any of its obligations under the Contract as a result of Force Majeure for a continuous period of ninety (90) days, the non-affected party may terminate the Contract with immediate effect upon written notice to the Affected Party.
- 23.4. As at the date of the Contract, the parties acknowledge the existence and potential impact of the coronavirus disease pandemic (COVID-19) on the performance of the Works. The Supplier confirms that it has taken COVID-19 and its potential impact on the Works into account in making business plans and appropriate contingency arrangements in respect of the Works to ensure that COVID-19 will not prevent, hinder or delay it performing any of its obligations under the Contract. For the avoidance of doubt, any circumstances where the Supplier is prevented, hindered or delayed from performing any of its obligations under the Contract as a result of COVID-19 shall not be considered Force Majeure.

## 24. DISPUTES

- 24.1. Sembcorp and the Supplier shall endeavour to avoid the escalation of problems into disputes as defined in clause 24.3 and to avoid disputes both between themselves and with third parties. The parties acknowledge and agree that this shall not prejudice any right either party may have under clause 25.12 to commence proceedings at any time, if that party so wishes, notwithstanding the provisions of clause 24.3.
- 24.2. If the Supplier is dissatisfied with any decision, instruction, direction, certificate or valuation of Sembcorp's Representative or if Sembcorp or the Supplier is dissatisfied with any other matter arising under or in connection with the Contract or the carrying out of the Works, either party may at any time refer such dissatisfaction to Sembcorp's Representative giving full details of the nature of the matter. Sembcorp's Representative shall give a written decision on the matter (giving the reasons for such decision) within twenty-eight days of such reference to him.
- 24.3. Sembcorp and the Supplier agree that no matter shall constitute, nor be said to give rise to, a "**dispute**", which shall include any difference, unless the same has been referred to Sembcorp's Representative under clause 24.2 and:
- 24.3.1. Sembcorp's Representative has failed to give his decision on the said matter within the prescribed time; or
  - 24.3.2. a decision given within the prescribed time is either unacceptable to the Supplier and/or Sembcorp or has not been implemented within twenty-one days of the said decision;
- and, as a consequence, either the Supplier or Sembcorp has served notice setting out the nature of the dispute (hereinafter called a "**Notice of Dispute**") on the other with a copy to Sembcorp's Representative. For the purposes of the performance of the Works and all matters arising out of or in connection with the Contract, the word "**dispute**" shall be construed in accordance with this clause 24.3.
- 24.4. Notwithstanding the existence of any dispute or any reference to Sembcorp's Representative under clause 24.2, Sembcorp and the Supplier shall continue to perform their obligations under the Contract.
- 24.5. The parties shall attempt in good faith to negotiate a settlement of any dispute or difference.
- 24.6. If a dispute cannot be resolved by negotiation the parties may by agreement refer it to mediation in accordance with the procedures of an appropriate body.

## 25. GENERAL

- 25.1. **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.
- 25.2. **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.
- 25.3. **Variation.** No variation of the Contract shall be effective unless it is agreed in writing and signed by the parties.
- 25.4. **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 [CompanySecretarySCJUK@sembcorp.com](mailto:CompanySecretarySCJUK@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 25.4 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.

- 25.5. **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 25.5 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.
- 25.6. **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.
- 25.7. **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.
- 25.8. **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.
- 25.9. **Third Party Rights.** Except as expressly provided for in this clause 25.9, 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 the 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 Agreement, 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.
- 25.10. **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.
- 25.11. **Counterparts.** The Contract Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 25.12. **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.

## 26. ADJUDICATION

- 26.1. 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 Works, 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.
- 26.2. The following amendments shall be made to the Scheme for Construction Contracts (England and Wales) Regulations 1998:
- 26.2.1. delete paragraph 13(b) and insert "number not used";
- 26.2.2. 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"
- 26.2.3. in paragraph 16 delete "and to the terms of paragraph (2) below";
- 26.2.4. delete paragraph 16(2); and
- 26.2.5. 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."
- 26.3. Without limiting the generality of the foregoing:
- 26.3.1. 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;
- 26.3.2. 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;

- 26.3.3. 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;
- 26.3.4. 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 in bad faith;
- 26.3.5. where a Dispute has been referred to adjudication under this clause 26, the Supplier shall not suspend performance of the Works, unless instructed otherwise by Sembcorp; and
- 26.3.6. 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.



## Schedule 5: Waste Material Requirements

- 1.1. If and to the extent that the Works involve the collection, storage, handling, transportation and/or disposal of any Waste Material by the Supplier, the Supplier shall take all precautions as are necessary to ensure the safe and proper collection, handling, storage, transportation and/or disposal of any Waste Material.
- 1.2. The Supplier shall, in respect of the collection, storage, handling, transportation and/or disposal of any Waste Material:
  - 1.2.1. comply in all respect with all Applicable Laws, regulations, binding codes and/or best practices as recognised by the waste industry (including, without limitation, under the Environmental Protection Act 1990 and the Hazardous Waste (England and Wales) Regulations 2005;
  - 1.2.2. comply with any management procedures for the disposal of waste in place from time to time in respect of the Site;
  - 1.2.3. comply with any safety requirements notified by Sembcorp's Representative from time to time;
  - 1.2.4. take all precautions as are necessary to ensure the safe and proper collection, handling, storage, transportation and/or disposal of any Waste Material;
  - 1.2.5. ensure that it is appropriately licensed and shall hold (and produce at the reasonable request of the Sembcorp) all required permits and consents for the collection, storage, handling, transportation and/or disposal of the Waste Material;
  - 1.2.6. ensure that Waste Material is treated, kept and disposed of in a manner that minimises pollution of the environment and avoids harm to human health; and
  - 1.2.7. ensure that any containers provided by it for the storage of waste comply with all Applicable Laws and guarantee against leakage or spillage.
- 1.3. In the event that any land or premises owned or occupied by Sembcorp is contaminated as a result the Supplier collecting, storing, handling, transporting and/or disposing of the Waste Material (other than by reason of the act or default of Sembcorp), then the Supplier shall immediately notify Sembcorp whereupon Sembcorp shall, where reasonably practicable, mitigate the contamination and arrange for decontamination of that area at the expense of the Supplier.
- 1.4. Sembcorp shall have the right to approve in advance any site used to treat and/or dispose of Waste Material and no such site shall be so used without the Supplier first either obtaining any necessary consent or licence (which may include the consent of the appropriate planning authority) or a licence granted by the appropriate waste regulation authority, or ensuring that such consent or licence has been obtained.
- 1.5. Property and risk in the Waste Material (to the extent permitted by statute) shall pass to the Supplier at the point of the Supplier's handling, collection or removal of such Waste Material.
- 1.6. The Supplier (without the prior consent of Sembcorp's Representative) shall not bring any Waste Material originating from any other source onto the Site, nor shall the Supplier add to Waste Material collected from Sembcorp any other substance or material prior to deposition or treatment of such Waste Material.
- 1.7. On collection of Waste Material from Sembcorp, the Supplier shall deliver to Sembcorp a receipt (in a form prepared or approved by Sembcorp) for Waste Material collected and shall complete all such documentation as may be required under statute. In particular but without prejudice to the generality of the foregoing:
  - 1.7.1. The Supplier shall not provide a Works in respect of any Waste Material unless it shall first have ensured that any necessary consent or consignment/transfer note applicable to the carriage of the Waste Material has been obtained. The Supplier shall at all times duly perform and observe any conditions attached to such a consent and any regulations applicable to such carriage.
  - 1.7.2. The Supplier shall provide to Sembcorp such information as Sembcorp's Representative shall require to enable Sembcorp properly to complete such parts of a consignment note as must be completed by a producer of special waste prior to its removal from the premises.