CONDITIONS OF CONTRACT FOR GOODS AND SERVICES

1. DEFINITIONS

1.1 In these Conditions of Contract, unless the context otherwise requires:

(a) "**Employer**" shall mean SG Enable Ltd or SGE and includes any officer authorised by SG Enable Ltd to act on its behalf.

(b) "**Contract**" means the resulting contract between the Employer and the Contractor for the provision of the Goods and Services as a result of the Employer's acceptance of the Contractor's Tender Offer.

(c) "**Contract Price**" means the aggregate Tender Price for Goods and Services accepted by the Employer under the Contract.

(d) "**Contractor**" means the successful Tenderer whose Tender Offer has been accepted by the Employer.

(e) "**Goods**" means all goods proposed in the Contractor's Tender Offer as being capable of meeting or exceeding the Specifications and accepted in the Letter of Acceptance which the Contractor is required to supply under the Contract, including technical documentation, parts or units thereof.

(f) "**GST**" means goods and services tax charged under the GST Act.

(g) "**GST Act**" means the Goods and Services Tax Act (Cap. 117A).

(h) "**Invitation to Tender**" means the invitation to participate in the tender for the supply of Goods and Services and comprises all the tender documents forwarded to the Tenderer.

(i) "**Letter of Acceptance**" means the letter issued by the Employer accepting the Contractor's Tender Offer.

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

(k) "**Parties**" means the Employer and the Contractor, and "**Party**" means any one of them.

(l) "**Specifications**" means the specifications set out in the Invitation to Tender and any amendments or additions to the aforesaid as may be mutually agreed in writing between the Parties from time to t i m e .

(m) "**S$**" means the lawful currency of Singapore.

(n) "**Services**" means the services proposed in the Contractor's Tender Offer as being capable of meeting or exceeding the Specifications and accepted in the Letter of Acceptance which the Contractor is required to provide under the Contract.

(o) "**Subcontractor**" means any person, firm or company engaged by the Contractor to perform any part or parts of the Contractor's obligations and includes the

Subcontractor's duly appointed representatives, successors and permitted assignees and the Subcontractor's subcontractor.

(p) "**Tender Offer**" means the offer submitted by the Tenderer to provide Goods and Services to the Employer in response to the Invitation to Tender, and other documents submitted by the Tenderer and accepted in writing by the Employer.

(q) "**Tender Price**" in respect of any of the Goods or Services, shall mean the consideration under the Contract including the quoted lump tender price(s), unit rate(s), or in the unit(s) that was stipulated in accordance with the Tender (non-exhaustive example, percentage, rate) which the Tenderer has submitted in accordance with the Invitation to Tender.

(r) "**Tenderer**" means a person or its permitted assigns and successors offering to provide the Goods and Services pursuant to the Invitation to Tender, and shall be deemed to include two or more persons if appropriate.

1.2 Words importing the singular only shall also include the plural and vice versa where the context requires.

1.3 The headings are for convenience of reference only and shall not be taken into consideration for the purpose of interpretation.

1.4 References to a person include any company, limited liability partnership, partnership, business trust, unincorporated association or government agency (whether or not having separate legal personality).

1.5 Unless a contrary intention appears, a reference in the Contract to "including" shall not be construed restrictively but shall mean "including without prejudice to the generality of the foregoing" and "including but without limitation".

1.6 Unless otherwise provided, any reference to any legislation shall be deemed a reference to such legislation as amended or revised from time to time and be deemed to include any subsidiary legislation made under such legislation.

1.7 In the Contract, "month" means calendar month and "day" means calendar day.

1.8 For the purposes of computing time, unless the contrary intention appears, a period of days from the happening of an event or the doing of any act or thing shall be deemed to be exclusive of the day on which the event happens or the act or thing is done.

2. CLAUSE REFERENCES

2.1 All references to clauses in these Conditions of Contract or any other document, unless otherwise expressly stated, are references to clauses numbered in these Conditions of Contract or the document in which the reference appears respectively.

3. SCOPE OF CONTRACT

3.1 The Contractor shall carry out and complete the supply of all items of Goods and Services in accordance with the Contract. Unless otherwise stated in the Contract, all Goods shall be new and unused.

4. DELIVERY AND PERFORMANCE

4.1 The Contractor shall, unless otherwise specified by the Employer prior to delivery or performance, deliver the Goods and perform the Services at the time(s) and place(s) and in the manner specified in the Contract. The Contractor shall obtain a receipt therefor from the Employer. The issue of such receipt shall in no way relieve the Contractor from its obligations under Clause 5 to re-perform deficient Services.

5. REMOVAL AND REPLACEMENT

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5.2 The Employer may reject any Services that are not performed in accordance with the Contract or with reasonable care, skill and diligence, and if so required by the Employer, the Contractor shall re-perform such rejected Services at the Contractor's own expense.

5.3 Where any Goods or Services are rejected by the Employer pursuant to Clause 5.2 or pursuant to any other provision of law, the Contractor shall be deemed to have completely failed to perform such Services, as the case may be.

5.4 Notwithstanding anything to the contrary, the risk of loss, damage deficiency of Services (whether rejected pursuant to this Clause 5 or otherwise) shall be borne by the Contractor at all times and possession shall be deemed to have never passed to the Employer.

6. COMMENCEMENT AND DURATION OF CONTRACT

6.1 This Contract shall commence on the date stated in the Letter of Acceptance or any other formal agreement executed between the Parties, and shall remain in force for the period as specified in the Contract or any extended completion date allowed.

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8. CONTRACTOR'S PERSONNEL

8.1 The Contractor shall provide all necessary personnel with adequate skills and required professional certification (where applicable) for the performance of the Contract. Upon request by the Employer, the Contractor shall provide evidence of certification and competency of the personnel assigned.

8.2 If required by the Employer, the Contractor shall provide to the Employer the names and particulars (in such form as may be required by the Employer) of the personnel provided by the Contractor to perform the Contract.

8.3 The Employer shall not be obliged to provide any reasons for objecting to any of the Contractor's personnel. If the Employer objects by notice in writing to any personnel provided by the Contractor to perform the Contract, the Contractor shall remove such person immediately and furnish a suitable and adequate replacement at no additional expense to the Employer within 14 days.

8.4 The Contractor undertakes not to change its personnel approved under this Clause 8 without the Employer's consent, whose consent shall not be unreasonably withheld. If required, all new or replacement personnel shall also be subject to the approval of the Employer. The Contractor shall not reduce the quality of its personnel if this may adversely affect the performance of the Contract, including the quality of the Services.

9. PAYMENT

9.1 The Vendor (i.e. successful Tenderer) may submit invoice upon successful delivery of the desktop computers and laptops.

9.2 Payment due to the Vendor shall be made within thirty (30) days of the receipt of invoice.

9.3 The Employer shall not be required to pay for expenses or cost of whatever nature other than those expressly set out in the Contract or otherwise expressly agreed to in writing by the Employer.

9.4 The Contract Price is exclusive of any GST chargeable on the supply of goods and services to the Employer by the Contractor under the Contract. If the Contractor is a taxable person under the GST Act, the Employer shall reimburse the Contractor for any such GST charged on the supply by the Contractor of Goods or Services under the Contract.

9.5 Any invoice or other request for payment of monies due to the Contractor under the Contract shall, if he is a taxable person for the purpose of the GST Act, be in the same form and contain the same information as if it were a tax invoice for the purposes of the regulations made under the GST Act.

10. TAXES, FEES AND DUTIES

10.1 The Contractor shall be responsible for all corporate and personal income taxes, customs fees, duties, fines, levies, assessments and other taxes payable by the Contractor or its employees in carrying out its obligations under the Contract.

10.2 If the Employer receives a request from the tax authorities or otherwise decides to pay on behalf of the Contractor or the Contractor's employees, or to withhold payments from the Contractor in order that the Employer may subsequently so pay, any of the abovementioned taxes, fees, duties, fines, levies and assessments ("**Taxes**"), the Contractor hereby agrees that the Employer may deduct such Taxes from payment due to the Contractor and forward the balance to the Contractor without any obligation to gross up such payment or pay the Contractor any amount so withheld.

10.3 For the avoidance of doubt, in the event that withholding taxes are imposed by the tax authorities on any payments due under the Contract, the Contractor shall bear all such withholding taxes and the Employer shall deduct such taxes from payment due to the Contractor and forward the balance to the Contractor without any obligation to gross up such payment or pay the Contractor any amount so withheld.

11. DELAY IN DELIVERY AND PERFORMANCE

11.1 If the Contractor fails to deliver any Goods or complete the performance of any Services by the date(s) specified in the Contract, the Employer shall have the right (in addition to and without prejudice to all other rights or remedies available, including the Employer's right to terminate the Contract pursuant to Clause 15.1) to do one or more of the following:

(a) cancel all or any such Goods or Services from the Contract without compensation and obtain them (the "**Replacement Goods and Services**") from other sources and all increased costs thereby incurred shall be borne by the Contractor provided that the quantity of the Replacement Goods and Services so obtained shall not exceed the quantity stated in the Contract; or

(b) require the Contractor to pay as liquidated damages, a sum calculated at the rate stipulated in the Specifications/Conditions of Contract (if applicable) as liquidated damages for every day of delay until such Goods delivered and/or Services are performed or cancelled pursuant to Clause 1 1 . 1 (a).

11.2 The Employer shall have the right, at its sole discretion, to elect to claim general damages in common law from the Contractor instead of imposing liquidated damages under this Clause 11.

12. COMPLIANCE WITH LAW

12.1 The Contractor shall, at its own costs, obtain and maintain all licences, permits, certifications and regulatory authorisations without any restriction or qualification whatsoever so as to enable the Contractor to fulfil all its obligations under the Contract.

12.2 The Contractor shall, in performing its obligations under the Contract, comply with all applicable laws and shall keep the Employer indemnified against all penalties and liabilities of every kind for the breach of any such laws.

13. CARE AND DILIGENCE

13.1 The Contractor shall with due care and diligence carry out its obligations to the Employer under the Contract.

13.2 The Contractor acknowledges and accepts that the Employer relies on the skill and judgment of the Contractor and also upon the accuracy of all representations and statements made and advice given by the Contractor in the delivery of the Goods and provision of the Services under the Contract.

14. GIFTS, INDUCEMENTS AND REWARDS

14.1 The Employer shall be entitled to immediately terminate or rescind the Contract and recover from the Contractor the amount of any loss resulting from such termination or rescission if:

(a) any Contractor Representative has offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for:

(i) doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or performance of the Contract; or

(ii) showing favour to any person in relation to any contract with the Employer; or

(b) any Contractor Representative has engaged in any activity or conduct that has resulted or will result in a violation of any Anti-Corruption Laws.

14.2 In this Clause14:

"**Anti-Corruption Laws**" means:

(a) Chapter IX of the Penal Code (Cap. 224);

(b) the Prevention of Corruption Act (Cap. 241); and

(c) any other applicable law including any foreign law which:

(i) prohibits the conferring of any gift, payment or other benefit on any person or any officer, employee, agent or adviser of such person; or

(ii) is broadly equivalent to the laws set out in paragraphs (a) or (b) or which has as its objective the prevention of corruption.

"**Contractor Representative**" means any of the following:

(a) the Contractor;

(b) any person employed by the Contractor; or

(c) any person acting on behalf of the Contractor (whether with or without the knowledge of the Contractor).

15. TERMINATION

15.1 If the Contractor is in breach of any of its obligations under the Contract and:

(a) the Contractor fails to remedy the breach within **thirty (30)** days from a written notice from the Employer to do so; or

(b) the breach is not capable of being remedied within a reasonable time,

The Employer shall have the right (in addition to and without prejudice to all other rights or remedies available, including the right to claim damages) to terminate the Contract with immediate effect by written notice.

15.2 If any of the following events occur, the Employer shall be entitled to terminate the Contract with immediate effect by written notice to the Contractor, and the Contractor shall have no claim for any damages or compensation:

(a) the Contractor becomes insolvent;

(b) where the Contractor is a company, a receiver or liquidator is appointed over any undertaking or property of the Contractor or an order is made or a resolution is passed for winding-up or dissolution without winding-up (other than for the purpose of amalgamation or reconstruction) of the Contractor;

(c) where the Contractor is a partnership, the Contractor is dissolved or has a bankruptcy

order made against it;

(d) where the Contractor is an individual, the Contractor becomes bankrupt or dies;

(e) legal proceedings alleging insolvency are brought against the Contractor;

(f) the Contractor enters into any composition or arrangements with creditors; or

(g) any action is contemplated or any legal proceedings are commenced against the Contractor alleging infringement of IP rights.

15.3 If the Contract is terminated, the following shall apply:

(a) termination shall be without prejudice to any rights and obligations of either Party which has accrued prior to such termination and any obligation which expressly or by implication is intended to come into or continue in force on or after such termination;

(b) the Contractor shall forthwith refund to the Employer all amounts paid to the Contractor under the Contract, less the price of the Goods and Services which have been accepted by the Employer as at the date of termination;

(c) the Contractor shall immediately deliver property belonging to or provided by the Employer pursuant to the Contract and all deliverables prepared by the Contractor for the Contract (including works-in-progress if so requested by the Employer);

(d) in the event of a termination pursuant to Clause 15.1 or 15.2, the Employer shall, at its sole discretion, have the right to engage another person to provide the remaining Goods and Services to be provided under the Contract, and any additional costs and expenses incurred shall be paid by the Contractor, and the Contractor shall give reasonable assistance to the incoming contractors; and

(e) in the event of a termination pursuant to Clause 15.2(g), the Employer shall, at its sole discretion, have the right to return any Goods which have been provided to the Employer as at the date of termination, and the Contractor shall forthwith refund to the Employer all amounts paid to the Contractor under the Contract in respect of such Goods.

15.4 Nothing in this Clause 15 shall be deemed to prejudice any other rights or remedies available to the Employer against the Contractor for any breach of the Contractor's obligations whether under the Contract or at law or in equity.

16. FORCE MAJEURE

16.1 Neither Party shall be liable for any failure to perform its obligations under the Contract if the failure results from events which are beyond its reasonable control ("**Force Majeure Event**") provided always that whenever possible the affected Party will resume that obligation as soon as the factor or event occasioning the failure ceases or abates. For purposes of the Contract, "**Force Majeure Event**" shall include acts of God, acts of civil or military authority, civil disturbance, wars, strikes, fires and other catastrophes.

16.2 If the effect of any Force Majeure Event continues for a period exceeding 14 days, the Employer may at any time thereafter give notice to the Contractor to terminate the Contract with immediate effect without being liable to the Contractor in damages or compensation.

16.3 If a Force Majeure Event occurs, the Contractor or the Employer (as the case may be) shall for the duration of such Force Majeure Event be relieved of any obligation under the Contract as is affected by the Force Majeure Event except that the provisions of the Contract shall remain in force with regard to all other obligations under the Contract which are not affected by the Force Majeure Event.

16.4 Failure of the Contractor's Subcontractors or suppliers to perform their obligations shall not be regarded as events beyond the control of the Contractor.

17. CORRESPONDENCE

17.1 Subject to Clause 17.2, any notice, request, waiver, consent or approval ("**Notice**") shall be in writing and shall be deemed to have been duly given or made when it is delivered by hand or by prepaid registered post or fax to the Party as follows:

(a) in the case of the Contractor, the address and fax number set out in the Tender Offer; and

(b) in the case of the Employer, the address and fax number set out in the Invitation to Tender.

17.2 Any Notice may be made by the Employer to the Contractor by electronic mail or other electronic means and shall be deemed to have been duly given or made when it is sent to the Contractor's electronic mail address set out in the Tender Offer.

17.3 Either Party may change its address, fax number and (in the case of the Contractor) electronic mail address referred to above by giving the other Party written notice of the change.

18. LANGUAGE

18.1 All data, documents, descriptions, diagrams, books, catalogues, instructions, markings for the Goods and correspondence shall be written in readily comprehensible English language.

18.2 The personnel of the Contractor and any Subcontractor shall be proficient in both written and spoken English for the purpose of performing the Contractor's obligations under the Contract.

19. CONSORTIUM

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

Joint and Several Responsibility

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

Addition of members to Consortium

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

19.4 Should additional member(s) be added to the Consortium at any time with the approval of the Employer pursuant to Clause 19.3, he or they shall be deemed to be included **in** the expression "the Contractor".

Withdrawal from Consortium

19.5 If any member of the Consortium goes into liquidation, is wound up or ceases to exist in accordance with the laws of the country of incorporation:

(a) the Contract shall continue and not be terminated, and

(b) the remaining member(s) of the Consortium shall be obliged to carry out and complete the Contract.

20. SUB-CONTRACT, TRANSFER AND ASSIGNMENT

20.1 The Contractor shall not, without the prior written consent of the Employer, sub-contract its obligations, or transfer or assign the benefit of the whole or any part of the Contract.

20.2 The Contractor shall be responsible for the acts, defaults, negligence and omissions of any Subcontractor, their agents, servants or workmen.

21. REMEDIES

21.1 The rights and remedies of a Party under the Contract are cumulative and are without prejudice and in addition to any rights or remedies such Party may have at law or in equity. No exercise by a Party of any one right or remedy under the Contract, or at law or in equity shall operate so as to hinder or prevent the exercise by it of any other right or remedy under the Contract, at law or in equity.

21.2 The Employer shall have the right, at its sole discretion, to elect to claim general damages in common law from the Contractor instead of imposing liquidated damages under the Contract.

22. VARIATION

22.1 No variation of the Contract shall be of any force unless agreed upon in writing by both Parties.

23. WAIVER

23.1 In no event shall any delay, failure or omission on the part of either of the Parties in enforcing any right, power, privilege, claim or remedy ("**Remedy**"), which is conferred under the Contract or at law or in equity, or arises from any breach by the other Party, (a) be deemed to be or be construed as a waiver or variation thereof, or of any other such Remedy, in respect of the particular circumstances in question, or (b) operate so as to bar the enforcement or exercise thereof, or of any other such Remedy in any other instances at any time or times thereafter.

23.2 No waiver of any breach of the Contract shall be deemed to be a waiver of any other or of any subsequent breach.

23.3 Any waiver granted under the Contract must be in writing and may be given subject to

conditions. Such waiver under the Contract shall be effective only in the instance and for the purpose for which it is given.

24. SET-OFF

24.1 Whenever under the Contract any sum of money (including liquidated damages and any other damages) shall be recoverable from or payable by the Contractor, the same may be deducted from any sum then due or which at any time thereafter may become due to the Contractor under the Contract or any other agreement with the Employer.

25. ENTIRE AND WHOLE AGREEMENT

25.1 The Contract as set out herein and read with the Invitation to Tender, Specifications and any Annexes or further written agreement shall contain the entire and whole agreement between the Parties relating to the subject matter of the Contract.

26. SEVERABILITY

26.1 In the event any provision in the Contract is determined to be illegal, invalid or unenforceable, in whole or in part, such provision or part of it shall, to the extent it is illegal, invalid or unenforceable, be deemed not to form part of the Contract and the legality, validity and enforceability of the remainder of the Contract shall not be affected.

27. RIGHTS OF THIRD PARTIES

27.1 A person who is not a party to the Contract shall have no right under the *Contracts (Rights of Third Parties) Act* to enforce any term of the Contract.

28. SURVIVING PROVISIONS

28.1 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract, including Clauses 14 (Gifts, Inducements and Rewards), 15.3 and 15.4 (Termination), 17 (Correspondence), 21 (Remedies), 22 (Variation), 23 (Waiver), 24 (Set-off), 25 (Entire and Whole Agreement), 26 (Severability), 27 (Rights of Third Parties), 28 (Surviving Provisions), 29 (Governing Law) and 30 (Mediation), shall survive the termination or expiry of the Contract.

29. GOVERNING LAW

29.1 The Contract shall be deemed to be made in Singapore and shall be governed by and construed in accordance with the laws of the Republic of Singapore.

30. MEDIATION

30.1 Notwithstanding anything in the Contract, in the event of any dispute, claim, question or disagreement arising out of or relating to the Contract (a "**Dispute**") and subject to Clause 30.3, no Party shall proceed to any form of dispute resolution unless the Parties have made reasonable efforts to resolve the same through mediation in accordance with the mediation procedure of the Singapore Mediation Centre. The Parties shall be deemed to have made

reasonable efforts in accordance with this Clause 30.1 if they have gone through at least one mediation session at the Singapore Mediation Centre.

30.2 A Party who receives a written notice for mediation from the other Party shall consent and participate in the mediation process in accordance with Clause 30.

30.3 The mediation session is to commence no later than **ninety (90)** days from the date of the written notice of mediation failing which either Party may proceed to dispute resolution.

30.4 Failure to comply with Clause 30.1 or 30.2 shall be deemed to be a breach of the Contract.

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32. CONFIDENTIALITY AND SECURITY

32.1 Except with the written consent of the Employer, the Contractor shall:

(a) treat as strictly confidential and not disclose any Confidential Information to any person other than employees, servants and agents of the Contractor or its Subcontractors on a need-to-know basis for the purposes of performing the Contractor's obligations under the Contract; and

(b) only use the Confidential Information for the sole purpose of performing the Contractor's obligations under the Contract and shall not use it for any other purpose.

32.2 The Contractor shall take all reasonable precautions in dealing with Confidential Information so as to prevent any unauthorised person from having such access to such Confidential Information. The Contractor shall procure that all its employees, servants and agents and those of its Subcontractors and agents to whom Confidential Information is to be made available observe the obligations contained in this Clause 32 and shall, at the request of the Employer, procure that each of its employees, servants and agents and those of its Subcontractors and agents sign an undertaking to safeguard official information, if required by the Employer.

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

32.4 For the purposes of this Clause 32, "**Confidential Information**" means any information received or obtained as a result of entering into the Contract (or any agreement entered into pursuant to the Contract), including:

(a) information which relates to the Employer;

(b) information which relates to the existence and the provisions of the Contract [or any written order, or of any agreement entered into pursuant to the Contract; or

(c) any analyses, compilations, notes, studies, memoranda or other documents derived from, containing or reflecting such information.

but does not include information that is:

(a) or has become public knowledge otherwise than through breach of agreement or other legal obligation or through the default or negligence of the Contractor, his employees,

servants, agents or Subcontractors;

(b) lawfully in the possession of the Contractor or already known to the Contractor on a non-confidential basis prior to the Contractor receiving or obtaining such information as a result of entering into the Contract, as evidenced by written records; or

(c) independently developed by the Contractor.

32.5 The Contractor shall not be liable for disclosure of Confidential Information in the event and to the extent any Confidential Information is required to be disclosed by the Contractor pursuant to any applicable law, regulations or directives of any relevant government, statutory or regulatory body or pursuant to any legal process issued by any court or tribunal of competent jurisdiction in accordance with the provisions of the Contract, provided the Contractor shall, to the extent practicably possible and permissible by law or regulations, give the Employer prompt and prior notice of any such requirement and shall cooperate with the Employer to limit the scope of such disclosure to the maximum extent legally possible.

32.6 No later than 14 days from the termination or expiry of the Contract, the Contractor shall:

(a) return all Confidential Information received from the Employer for the purpose of the Contract and all documents and copies thereof produced in the course of performing its obligations under the Contract;

(b) securely destroy and erase all softcopies of Confidential Information that exist in hard disk, removable storage media and other storage media or facility whatsoever; and

(c) upon completion of the obligations under Clauses 32.6(a) and (b), the Contractor shall provide a written confirmation that it has complied with Clauses 32.6(a) and (b).

32.7 The Contractor shall immediately notify the Employer where the Contractor becomes aware of any breach of this Clause 32 by its employees, servants, agents and Subcontractors and cooperate with the Employer to limit the extent and impact of such breach.

32.8 This Clause 32 shall survive the termination or expiry of the Contract.

33. LOSSES

33.1 The Contractor shall indemnify and keep indemnified the Employer against any and all Losses sustained, incurred, paid by or suffered the Employer arising out of or in connection with any act or omission on the part of the Contractor, Subcontractor or any of their directors, officers, personnel, employees, servants or agents (the "**Contractor Parties**") unless the Contractor can show that:

(a) it is not due to the Contractor's breach, failure or delay in the performance of the Contract; and

(b) it is not due to the negligent, unlawful or wrongful action or omission, fraud, bad faith, willful misconduct or breach of any duty of any of the Contractor Parties.

33.2 If any claim is commenced against the Employer that may give rise to a claim against the Contractor under Clause 33.1, notice thereof shall be given to the Contractor as soon as practicable.

33.3 Upon receipt of such notice, if required by the Employer, the Contractor shall immediately

take control of the defence and investigation of such claim and shall employ and engage attorneys reasonably acceptable to the Employer to handle and defend the same, at the Contractor's sole cost and expense.

33.4 In the event the Contractor takes control of the defence and investigation of the claim, the Employer shall co-operate, at the cost of the Contractor, in all reasonable respects with the Contractor and its attorneys in the investigation, trial and defence of such claim and any appeal arising therefrom; provided, however, that this will not limit the Employer's right to participate, at the Contractor's cost and expense, through their attorneys or otherwise, in such investigation, trial and defence of such claim and any appeal arising therefrom. No settlement of a claim that involves a remedy other than the payment of money by the Contractor shall be entered into without the consent of the Employer.

33.5 Notwithstanding anything to the contrary in the Contract, the Employer shall, at all times, have the right to defend the claim in such manner as it may deem appropriate, at the sole cost and expense of the Contractor. If required by the Employer, the Contractor shall immediately relinquish control of the defence and investigation of such claim.

33.6 This Clause 33 shall survive the termination or expiry of the Contract.

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35 SUPPLY OF GOODS AND SERVICES AS AND WHEN REQUIRED BY THE EMPLOYER

35.1 The Employer may engage the Contractor for the supply of Goods or Services from time to time by issuing a written order.

35.2 All written orders shall state the Goods or Services to be supplied and shall also state the aggregate Tender Price of all Goods and Services specified in such written order.

35.3 Where the Contractor receives, during the Contract Period, any written order for Goods or Services, the Contractor shall supply the Goods and Services specified in the written order in accordance with the Contract.

35.4 The Employer shall be under no obligation to purchase any Goods or Services except to the extent of a written order for Goods or Services issued by the Employer.

36 TERMINATION FOR CONVENIENCE

36.1 The Employer shall have the right to terminate the Contract for convenience by giving **one (1)** month written notice to the Contractor without having to assign any reason, and the Contractor shall have no claim for any damages or compensation.

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