

# **PART II**

## **Conditions of Contract**

**FAS/MKTG/2019/07/05**

**CONTENTS**

	Page
1. DEFINITIONS .....	2
2. SCOPE OF CONTRACT .....	2
3. COMMENCEMENT DATE .....	2
4. DELIVERY OF GOODS.....	2
5. PAYMENT TERMS.....	2
6. RIGHTS OF THIRD PARTIES.....	3
7. GIFTS, INDUCEMENTS OR REWARDS.....	3
8. DELAY IN PERFORMANCE .....	3
9. SUB-CONTRACTING, ASSIGNING AND BILLING.....	4
10. APPLICABLE LAW .....	4
11. SUSPENSION OR TERMINATION.....	4
12. RIGHTS OF THE FAS IN THE EVENT OF DEFAULT BY THE CONTRACTOR.....	5
13. VARIATION OF CONTRACT .....	6
14. TAXES, FEES AND DUTIES .....	6
15. COMPLIANCE WITH GOVERNMENT REGULATIONS .....	6
16. INDEMNIFICATION OF FAS AGAINST CLAIMS BY CONTRACTOR'S EMPLOYEES .....	6
17. MEDIATION CLAUSE .....	7
18. CONSORTIUM .....	7
19. INSURANCE .....	7
COMPENDIUM OF ADDITIONAL CLAUSES (COAC).....	8

## CONDITIONS OF CONTRACT

### 1. DEFINITIONS

1.1 In these Conditions unless the context otherwise requires:

- (a) "Contract" means the contract between the FAS and the Contractor for the Goods and/or Services and includes the Contractor's Contract Tender Offer, Instructions to Tenderers, these Conditions of Contract, the specifications and samples, Letter of Acceptance, and any Works Orders issued by the FAS to the Contractor for the supply of the Goods and/or Services.
- (b) "FAS" means Football Association of Singapore and includes any officer authorised by the Football Association of Singapore to act on its behalf.
- (c) "Goods and/or Services" means the supply, delivery and provision of [insert nature of goods or services] which the Contractor is required to perform under the Contract.
- (d) "Contractor" means the successful Tenderer who has been awarded the Contract by the FAS.
- (e) "Tenderer" means a person or his permitted assigns offering to supply the Services.
- (f) "Parties" refer to the FAS and the Contractor.
- (g) "Person" includes a corporation or an incorporated association.

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

1.3 The headings are for convenience only and not for the purpose of interpretation.

### 2. SCOPE OF CONTRACT

2.1 The Contractor shall supply and/or deliver the Goods and/or Services in accordance with the Contract including the manner as set out in the Specifications, Requirements and Evaluation Criteria included in Part III of the Tender Documents.

### 3. COMMENCEMENT DATE

3.1 The Contractor shall commence supply and/or deliver the Goods and/or Services upon the issuance of the Letter of Acceptance ("**12 August 2019**") and in the manner specified in the Contract.

### 4. DELIVERY OF GOODS

4.1 The Contractor shall supply the Goods at the place(s) and in the manner specified in the Contract. The Contractor shall obtain a receipt from the FAS. The issue of such receipt shall in no way relieve the Contractor from his responsibility for replacing defective or damaged Goods under Clause 5.2 hereof.

### 5. PAYMENT TERMS

5.1 Within thirty (30) days of receipt of the Contractor's invoices for the Goods and/or Services supplied and/or delivered by the Contractor under the Contract, the FAS will make payment to the Contractor

of the full value of the Goods and/or Services. Payment by the FAS for any Goods and/or Services shall not be considered as evidence of the quality of any such Goods and/or Services.

- 5.2 The payments under this clause shall not prejudice the FAS' right to subsequently reject defective Goods and/or Services and/or require the Contractor to rectify and/or re-perform and/or re-deliver and/or replace the defective Goods and/or Services. Without limiting the FAS' right under the Contract, the amount of any payment or debt owed by the Contractor to the FAS under the Contract may be deducted by the FAS from any monies payable by the FAS to the Contractor pursuant to this Contract.

## **6. RIGHTS OF THIRD PARTIES**

- 6.1 A person who is not a party to this Contract shall have no right under the Contracts (Rights of Third Parties) Act (Cap. 53B) to enforce any of its terms.

## **7. GIFTS, INDUCEMENTS OR REWARDS**

- 7.1 The FAS may terminate the Contract and recover from the Contractor the amount of any loss resulting from such termination if:

- a. The Contractor shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of the Contract with the FAS;
- b. For showing or forbearing to show favour to any person in relation to any contract with the FAS;
- c. If the like acts shall have been done by any person employed by the Contractor or acting on his behalf (whether with or without the knowledge of the Contractor);

If in relation to any Contract with the FAS the Contractor or any person employed by him or acting on his behalf shall have committed any offence under Chapter IX of the Penal Code or under the Prevention of Corruption Act or shall have abetted or attempted to commit such an offence, or

- d. shall have given any fee or reward the receipt of which is an offence under Chapter IX of the Penal Code or under the Prevention of Corruption Act.

## **8. DELAY IN PERFORMANCE**

- 8.1 If there is delay in the supply and/or delivery of the Goods and/or Services under the Contract due to any of the following circumstances, namely, acts of God, force majeure, riots and civil commotion, strikes, lock-outs or other causes or perils beyond the Contractor's control, then in any such case the Contractor shall for the duration of any such circumstance aforesaid, be relieved of his obligation to supply and/or deliver such Goods and/or Services thereby affected but the provisions of the Contract shall remain in full force in regard to any Goods and/or Services not affected by such circumstances aforesaid.

- 8.2 Subject to Clause 11, if the Contractor fails to complete the supply and/or delivery of the Goods and/or Services by the date specified in the Contract, the FAS shall have the right:-

- a. to cancel all or any such [Goods and/or Services] from the Contract without compensation and obtain them from other sources and all increased costs thereby incurred shall be deducted from any moneys due or to become due to the Contractor or shall be recoverable as damages; or
- b. to require the Contractor to pay a sum as stipulated in the Contract as liquidated damages for every day of delay until the Goods and/or Services are performed.

Provided that the recovery of such increased costs aforesaid shall be limited to the quantity of such Goods and/or Services as are obtained, not exceeding the quantity stated in the Contract, from other sources after the Contractor's failure as aforesaid but within three months of the expiry of the Contract

## **9. SUB-CONTRACTING, ASSIGNING AND BILLING**

- 9.1 The Contractor shall not sub-contract or assign the whole or any part of the Contract without the prior written consent of the FAS. The FAS shall be notified of any sub-contracting and/or assigning.
- 9.2 The Contractor is required to work closely with all application or hardware vendors, including third-party suppliers, to provide end-to-end services on the FAS' respective business applications and the FAS' data migration to proposed new system infrastructure.
- 9.3 The Contractor shall raise a single consolidated invoice for the work done under 9.2 above.

## **10. APPLICABLE LAW**

- 10.1 The Contract and all its subsequent variations shall be subject to, governed by and interpreted in accordance with the domestic Laws of the Republic of Singapore for every purpose.

## **11. SUSPENSION OR TERMINATION**

- 11.1 The FAS may, after giving seven (7) days prior written notice to the Contractor, have the right to suspend or terminate the Contract if the events described in Clause 8.1 above persist for more than 10 days. Neither party shall be liable to the other by reason of such suspension or termination save that the FAS shall pay the Contractor the price of the Goods and/or Services supplied and/or delivered and accepted by the FAS. The Contractor shall refund the balance of any payments or deposits from the FAS after deducting any outstanding sums owing by the FAS to the Contractor by reason of this Clause.
- 11.2 (a) The FAS may at any time give to the Contractor a written notice of termination 90 days in advance without furnishing any reason for the termination. This shall have the effect of terminating the employment of the Contractor under the Contract with effect from the expiry of the 90-day period ("**Date of Termination**").
  - (b) In the event of a notice of termination being served by the FAS under Clause 11.2 (a) above:-
    - (i) the FAS shall continue to make the monthly payments under the Contract to the Contractor up to the date of termination (less any monies that the FAS may be entitled to withhold or deduct under the Contract);
    - (ii) the Contractor shall not be entitled to the monthly or any other payment for the period after the date of termination; and

- (iii) the Contractor shall thereafter have no further claim whatsoever against the FAS under the Contract.
  - (iv) any rights accruing or already accrued to the FAS shall not be affected.
- 11.3 The FAS may terminate this Contract with immediate effect by giving notice in writing to the Contractor based on any one of the following grounds:
  - (a) If the Contractor becomes bankrupt or insolvent or makes a composition with creditors or if, being a company, a winding-up order of any kind is made in respect of the Contractor, and/or if a receiver or manager (including judicial manager) is appointed over the Contractor's undertaking or assets or possession of or execution on any part of such undertaking or assets is taken or levied by creditors;
  - (b) If any of the Contractor's license or permit in relation to the Contract is revoked or suspended;
  - (c) If the Contractor does not comply with or is in breach of any requirement under any applicable laws, regulations and rules;
  - (d) If any irregularity or fraud in relation to the Contract is found to have been committed by the Contractor or if the Contractor breaches any of the applicable laws, regulations and rules governing procurement by the FAS, including but not limited to the Government Procurement Act (Cap. 120) and the subsidiary legislation under the Act.
  - (e) If the Contractor does not comply with or is in breach of any FAS guidelines for Term Contractors.
- 11.4 Upon termination of the Contract under Clause 11.3 above:
  - (i) the FAS may engage other contractors to continue with the supply and delivery of the Goods and/or Services and the Contractor shall be liable to the FAS for all damages and additional costs and expenses incurred thereby; and
  - (ii) the FAS may withhold payment of any monies payable to the Contractor until the damages and costs payable to the FAS arising from such termination are quantified and ascertained by the FAS (such quantification and ascertainment to be made within a reasonable time). The FAS shall be entitled to deduct such damages and costs from the monies payable to the Contractor.
- 11.5 The rights of the FAS specified under this Clause 11 shall be in addition to such other rights and remedies as the FAS may have or be entitled to against the Contractor under the other provisions of this Contract or any applicable statute or law.

## 12. RIGHTS OF THE FAS IN THE EVENT OF DEFAULT BY THE CONTRACTOR

- 12.1 If the Contractor defaults in his performance of this Contract (including but not limited to the supply and/or delivery of the Goods and/or Services in accordance with the provisions of this Contract), the FAS may issue a notice of default to the Contractor ("**Notice of Default**"). The Contractor shall, within thirty (30) days of the date of the Notice of Default, remedy the default. If the Contractor fails to do so, the Contractor shall be taken to have repudiated the Contract and the FAS shall have the right to terminate the Contract or cancel any part thereof by way of a written notice to the Contractor ("**Notice of Termination**") without the FAS being liable therefore in damages or compensation.
- 12.2 The Contractor shall also be taken to have repudiated the Contract if the Contractor defaults in his performance of this Contract on more than 2 occasions notwithstanding that the Contractor may have remedied each default within thirty (30) days of the date of the Notice of Default. In such an

event, the FAS shall have the right to terminate the Contract or cancel any part thereof by issuing a Notice of Termination to the Contractor.

12.3 Termination under Clause 12.1 shall take immediate effect from the date of the Notice of Termination. The FAS shall not be liable to the Contractor for any loss of profits, compensation or damages.

12.4 In the event of termination under Clause 12.1 above, the FAS shall have the right to procure from other sources all Goods and/or Services that remain unperformed by the Contractor at the time of termination or any such similar Goods and/or Services, and all increased costs reasonably incurred by the FAS shall be recoverable from the Contractor.

### **13. VARIATION OF CONTRACT**

13.1 No variation whether oral or otherwise to the terms of this Contract shall apply thereto unless such variation has been expressly accepted in writing by both the Contractor and an authorised signatory from the FAS.

### **14. TAXES, FEES AND DUTIES**

14.1 The Contractor shall be responsible for all corporate and personal income taxes, customs fees, duties, fines, levies, assessments and other taxes payable under the laws of Singapore, by the Contractor or its employees, including the Contractor's resident engineers and inspectors (if applicable), in carrying out its obligations under the Contract.

14.2 If the FAS receives a request from the tax authorities to pay on behalf of the Contractor and/or the Contractor's employees, or to withhold payments from the Contractor in order that the FAS may subsequently so pay, any of the abovementioned taxes, fees, duties, fines, levies and assessments, the Contractor hereby authorizes the FAS to comply with the terms of the said request and (where applicable) the Contractor shall thereafter reimburse the FAS for the taxes, fees, duties, fines and levies and assessments so paid.

14.3 The FAS shall pay to the Contractor a sum equal to the Singapore Goods and Services Tax ("**GST Tax**") chargeable on the supply to the FAS of any Goods and/or Services by the Contractor in accordance with the Contract. For clarification, GST Tax shall refer to tax under the (Singapore) Goods and Services Tax Act, Cap. 117A ("**GST Act**").

14.4 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 Tax, be in the same form and contain the same information as if it were a tax invoice for the purposes of the GST Act.

### **15. COMPLIANCE WITH GOVERNMENT REGULATIONS**

15.1 The Contractor shall, at its own costs, obtain and maintain all licenses and authorisations, including export licenses and permits and other governmental authorisations or certification required without any restrictions or qualifications whatsoever so as to enable the Contractor to fulfill all its obligations under the Contract.

### **16. INDEMNIFICATION OF FAS AGAINST CLAIMS BY CONTRACTOR'S EMPLOYEES**

16.1 In the event that the FAS (including for this purpose every officer and department thereof) is held liable for damages arising out of any claim by any workman or employee employed by the Contractor in and for the performance of the Contract, the Contractor shall indemnify the FAS, its officers or departments against such claim and any costs, charges and expenses in respect thereof,

PROVIDED the same is not caused by the gross negligence or willful default of the FAS, its officers or agents.

## 17. MEDIATION CLAUSE

17.1 Notwithstanding anything in this Contract, in the event of any dispute, controversy or claim arising out of or relating to this Contract, 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 rules of the Singapore Mediation Centre.

17.2 A Party who receives a notice for mediation from the other Party shall consent and participate in the mediation process in accordance with Clause 17.1.

17.3 Failure to comply with Clause 17.1 or 17.2 shall be deemed to be a breach of contract.

## 18. CONSORTIUM

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

### *Joint and Several Responsibility*

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

### *Addition of members to Consortium*

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

18.4 Should additional member(s) be added to the Consortium at any time with the approval of the FAS, he or they shall be deemed to be included in the expression 'the Contractor'.

### *Withdrawal from Consortium*

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

- (i) this Contract shall continue and not be dissolved, and
- (ii) the remaining member(s) of the Consortium shall be obliged to carry out and complete the Contract.

## 19. INSURANCE

19.1 The Contractor shall be responsible for insuring its employees in respect of personal injuries or death arising out of or in the course of the supply and/or delivery of the Goods and/or Services including any liability of the Contractor under the Work Injury Compensation Act (Cap. 354) or any subsequent modification or re-enactment thereof ("WICA"). The Contractor shall not hold the FAS responsible for compensation arising out of any such claims by its employees whether under WICA or otherwise.

**COMPENDIUM OF ADDITIONAL CLAUSES (COAC)****A.1 WORKS ORDERS**

- A.1.1 All orders for Goods and/or Services to be supplied and/or delivered under the Contract shall be given from time to time, in writing, by the FAS on the appropriate order form (hereinafter referred to as the "Works Order"). All such Works Orders shall clearly state the details and nature of the Goods and/or Services to be supplied and/or delivered and shall also state the amount, calculated at the rates in the Contract, that shall become due to the Contractor on the satisfactory completion of all the Goods and/or Services specified on such Works Orders. On satisfactory completion of such Works Orders the Contractor shall submit his invoice to the FAS who shall certify the same for payment to the Contractor at the time and in the manner hereinafter provided.
- A.1.2 On receipt of any Works Order, the Contractor shall commence the supply and/or delivery of the Goods and/or Services referred to therein and complete the same as soon as promised in his Contract Tender Offer or otherwise as expeditiously as possible.

**A.2 SUPPLY OF SERVICES AS AND WHEN REQUIRED BY THE FAS**

- A.2.1 Where the FAS has entered into a Contract with the Contractor for the supply of Services as and when required by FAS during the period of time specified in the Contract, the Contract shall be deemed to be a Period Contract for the duration of the period of time specified. Where the Contractor receives, during the period of time specified in the Contract, any Works Order for specific Services specified in the Contract, the Contractor shall proceed to perform the Services in accordance with the Contract.

**A.3 ARBITRATION**

- A.3.1 Subject to Clause 17 of the Conditions of Contract, any dispute arising out of or in connection with this Contract, including any question regarding its existence, validity or termination shall be referred to and finally resolved by arbitration in Singapore in the English language by a sole arbitrator in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("**SIAC Rules**") for the time being in force which rules are deemed to be incorporated by reference into the Contract.

**A.4 REPLACEMENT OF PERSONNEL**

- A.4.1 The Contractor shall replace its personnel within seven (7) days from the date of written notice from the FAS that the said personnel is either:
- (a) Technically incompetent or negligent in carrying out the Services and all efforts by the Contractor have failed to resolve the issue within the said period; or
  - (b) The conduct of the said personnel is deemed by the FAS, acting reasonably, to be undesirable or unacceptable.

**A.5 CONFIDENTIALITY AND SCURITY**

- A.5.1 Except with the prior written consent of the FAS, the Contractor shall not disclose the Contract or any purchases pursuant to the Contract or any provisions thereof or any information issued or furnished by or on behalf of the FAS in connection therewith, directly or indirectly, to any person.
- A.5.2. In addition to the foregoing, the Contractor shall not make use of any information obtained directly or indirectly from the FAS or compiled or generated by the Contractor in the course of this Contract which pertains to or is derived from such information, other than use for the purposes of this Contract, without the prior written consent of the FAS.

A.5.3 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 FAS.

**A.6 JOINT AND SEVERAL LIABILITY**

A.6.1 If the Contractor is a joint venture or partnership, the individual companies or partners comprising the Contractor shall be deemed jointly and severally liable to the FAS under this Contract.

**A.7 COMPLIANCE WITH FAS REGULATIONS**

A.7.1 Where Services are required to be carried out or Goods are required to be delivered to the FAS' sites, the Contractor shall abide by, and shall ensure that all his employees, consultants, sub-contractors, suppliers and agents abide by, all applicable regulations, rules, procedures, policies, directions, guidelines and codes of conduct of the FAS relating to the management of FAS sites and premises, including (without limitation) site administration, safety and security, as may be amended from time to time.