

## **PART B - Conditions of Contract**

### ***Services for Trapping Dogs***

#### **1. DEFINITIONS**

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

- a) **“Contract”** means the resulting contract between the SPCA and the Contractor for the provision of the Services as a result of the SPCA’s acceptance of the Contractor’s Tender Offer which terms and conditions are contained in the following:
  - i. the Instructions to Tenderers;
  - ii. the Contractor's Tender Offer;
  - iii. these Conditions of Contract;
  - iv. the Requirement Specifications;
  - v. the Letter of Acceptance;
  - vi. the Contract for Services;
  - vii. any Purchase Orders issued by the SPCA to the Contractor;
  - viii. any correspondence exchanged between the SPCA and the Contractor which is agreed to by the SPCA in writing as amplifying or modifying the Invitation to Tender or the Contractor’s Tender Offer; and
  - ix. any formal agreement executed between the Parties, including all schedules and annexes to such documents as relevant.
  
- b) **“Contract Period”** has the meaning set out in Clause 25, and where applicable, shall include such period as extended by the SPCA.
  
- c) **“Contractor”** means a successful Tenderer whose Tender Offer has been accepted by the SPCA.
  
- d) **“Instructions”** means any further details, written/oral instructions, directions and/or explanations issued by SPCA to the Contractor for the performance of Services under the Contract.
  
- e) **“Invitation to Tender”** means the invitation to participate in the tender for the supply of Services and comprises all the tender documents forwarded to the Tenderer, inclusive of the Covering Letter, Form of Tender, Instructions to Tenderers, Conditions of Contract, Requirement Specifications, Guidelines for Tender, Evaluation Criteria and any other documents and forms enclosed.
  
- f) **“Letter of Acceptance”** means the letter issued by the SPCA accepting the Contractor’s Tender Offer.

- g) **“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.
- h) **“Parties”** means the SPCA and the Contractor, and **“Party”** means either of them.
- i) **“Purchase Order”** means an order issued by the SPCA, making reference to the Contract, to purchase the Services.
- j) **“Requirement 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 time.
- k) **“Services”** means the services proposed in the Contractor’s Tender Offer as being capable of meeting or exceeding the Requirement Specifications and accepted in the Letter of Acceptance which the Contractor is required to provide under the Contract.
- l) **“SPCA”** means the Society for the Prevention of Cruelty to Animals, Singapore, of 50 Sungei Tengah Road Singapore 699012 and shall include any officer authorised by the SPCA to act on its behalf.
- m) **“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.
- n) **“Tender Offer”** means the offer submitted by the Tenderer to provide Services to the SPCA in response to the Invitation to Tender, and other documents submitted by the Tenderer and accepted in writing by the SPCA as modifying such offer submitted by the Tenderer.
- o) **“Tenderer”** means a person or its permitted assigns and successors offering to provide the Services pursuant to the Invitation to Tender, and shall be deemed to include two or more persons if appropriate.
- p) **“Working Day”** means a day which is not a Saturday, Sunday or a public holiday in Singapore.

## 2. INTERPRETATION

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

- 2.2. The headings are for convenience of reference only and shall not be taken into consideration for the purpose of interpretation.
- 2.3. 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).
- 2.4. 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”.
- 2.5. 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.
- 2.6. In the Contract, “month” means calendar month and “day” means calendar day.
- 2.7. 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.
- 2.8. If any provision of this Contract is held to be void, illegal or unenforceable under Singapore law, then such provision (insofar as it is void, illegal or unenforceable) shall be given no effect and deemed not to be included in this Contract without invalidating any of the remaining provisions of this Contract.

### **3. CLAUSE REFERENCES**

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

### **4. SCOPE OF CONTRACT**

- 4.1. The Contractor shall perform and complete all items of Services in accordance with the terms of the Contract and within the date and time stipulated therein.
- 4.2. The Contractor shall be an independent contractor and shall not be an agent, partner or employee of SPCA. For the avoidance of doubt, the Contractor is not authorised to enter into any contracts on behalf of the SPCA.

- 4.3. The Contractor shall do all things which are necessary or reasonably to be inferred from the Contract even if not specifically set out in the Contract.
- 4.4. The Contractor shall monitor closely the progress of the Services and notify SPCA of all and any possible delays and their likely effect on the overall period of completion of the Services, and shall propose all necessary actions to minimise any such delays.
- 4.5. SPCA may, from time to time issue Instructions to the Contractor in regard to the Services. The Contractor shall forthwith comply with and duly execute any work comprised in such Instructions.

## **5. ORDER OF PRECEDENCE**

- 5.1. In the event and to the extent only of any conflict between any provisions of the Contract, the conflict shall be resolved, subject to Clause 5.2, in accordance with the following order of precedence:
  - a) these Conditions of Contract (as amplified or modified by any correspondence exchanged between the SPCA and the Contractor which has been agreed to by the SPCA in writing as amplifying or modifying these Conditions of Contract);
  - b) the Requirement Specifications;
  - c) the Contract for Services;
  - d) the Letter of Acceptance;
  - e) the Purchase Orders, if any;
  - f) any formal agreement executed between the Parties;
  - g) the Contractor's Tender Offer (as amplified or modified by any correspondence exchanged between the SPCA and the Contractor which has been agreed to by the SPCA in writing as amplifying or modifying the Contractor's Tender Offer).
- 5.2. Where the Contractor's Tender Offer (as amplified or modified by any correspondence exchanged between the SPCA and the Contractor which has been agreed to by the SPCA in writing as amplifying or modifying the Contractor's Tender Offer) contains provisions which are more favourable to the SPCA in relation to the rest of the Contract, such provisions of the Contractor's Tender Offer shall prevail. The SPCA shall in its absolute and sole discretion determine whether any provision is more favourable to it in relation to the Contract.

## **6. PAYMENT**

- 6.1. The Contractor shall provide their invoices promptly, no later than forty-five (45) days after the performance of the respective Service for which the Contractor is claiming payment for.
- 6.2. Payment shall be made monthly in accordance to SPCA's credit terms upon satisfactory delivery and acceptance of Services.
- 6.3. Payment shall not be made if complete documentation as specified by SPCA, is not received.
- 6.4. The SPCA 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 SPCA.
- 6.5. The SPCA 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 SPCA, the Contractor shall re-perform such rejected Services at the Contractor's own expense.
- 6.6. Where any Services are rejected by the SPCA pursuant to Clause 6.5 or pursuant to any other provision of law, the Contractor shall be deemed to have completely failed to perform such Services.
- 6.7. Any payment made to the Contractor shall not prejudice the SPCA's right to reject deficient Services or the Contractor's responsibility to re-perform deficient Services. The SPCA reserves the right to reject any claim for payment (whether in whole or in part) that it determines in its absolute discretion not to be in accordance with the provisions of this Contract. If any item or part of an item of an invoice rendered by the Contractor is disputed or subject to question by the SPCA, the SPCA shall make payment of that part of the invoice which is not contested. Without prejudice to any of the SPCA's other rights and remedies whether under the Contract, at law or otherwise, wherever in the Contract provision is made for the SPCA to recover any amount from the Contractor, such amount may be:
  - a) set off, deducted from or reduced by any sum due or to become due at any time thereafter from the SPCA to the Contractor under this or any other contract between the Contractor and the SPCA; or
  - b) may be recovered from the Contractor as a debt due and payable,provided that any such payment or deduction of sums shall not relieve the Contractor from his obligations under the Contract and his responsibilities and liabilities thereto.

## 7. TAXES, FEES AND DUTIES

- 7.1. 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.
- 7.2. Where the Contractor is a taxable person under the Goods and Services Tax Act (Cap. 117A), the SPCA shall pay to the Contractor a sum equal to the GST chargeable on the supply to the SPCA of any Services by the Contractor in accordance with the Contract.
- 7.3. 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 GST, 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 Goods and Services Tax Act (Cap. 117A).

## 8. COMPLIANCE WITH LAW

- 8.1. The Contractor shall, at its own costs, obtain and maintain all licences, permits, certifications and regulatory authorisations without any restrictions or qualifications whatsoever so as to enable the Contractor to fulfil all its obligations under the Contract.
- 8.2. The Contractor shall, in performing its obligations under the Contract, comply with all applicable laws, and the Contractor shall also ensure that his employees, servants and/or agents, are aware of and shall comply with the same. The Contractor shall keep the SPCA indemnified against any and all penalties and liabilities resulting from the breach of any such laws.
- 8.3. No person of foreign nationality shall be deployed to carry out any Works under this Contract unless that person is in possession of a permit or pass issued by the relevant authorities which does not prohibit him from working in Singapore.

## 9. NOTICES

- 9.1. Subject to Clause 9.2, any notice, request, waiver, consent or approval ("**Notice**") shall be in writing and shall be deemed to have been duly given or made upon delivery, whether by hand or by pre-paid registered post to the Party as follows:
  - a) in the case of the Contractor, the address set out in the Tender Offer; and
  - b) in the case of the SPCA, the following address:

**Contact Person:** Executive Director

**Address:** 50 Sungei Tengah Road, Singapore 699012

9.2. Any Notice may be made by the SPCA 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.

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

## **10. LANGUAGE**

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

10.2. 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.

## **11. SUB-CONTRACT, TRANSFER AND ASSIGNMENT**

11.1. The Contractor shall not, without the prior written consent of the SPCA, assign, transfer or otherwise deal with all or any of his rights or obligations under this Contractor or sub-contract all or any portion of the provision of Services under this Contract.

11.2. In the event that the Contractor sub-contracts the Services or any part thereof, the Contractor shall be deemed to be in breach of the Contract. Further and in such event, notwithstanding that any portion of the Services is sub-contracted, the Contractor shall remain solely and personally liable and responsible at all times for the due and proper performance of the Contract, as well as for any act or omission by any sub-contractor that constitutes or may constitute a breach, repudiation, default or failure to comply with any of the terms and conditions of the Contract, whether total or partial, and shall indemnify the SPCA against all and any losses, expenses, costs (including legal costs), damages, liabilities, proceedings or claims arising therefrom

## **12. REMEDIES**

12.1. 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.

12.2. The SPCA 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.

### **13. SET-OFF**

13.1. 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 SPCA.

### **14. SEVERABILITY**

14.1. 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.

### **15. SURVIVING PROVISIONS**

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, shall survive the termination or expiry of the Contract.

### **16. GOVERNING LAW**

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.

### **17. DISPUTE RESOLUTION**

17.1. The Parties submit to the non-exclusive jurisdiction of the Courts of Singapore.

17.2. 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 17.3, no Party shall proceed to litigation or arbitration 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 17.1 if they have gone through at least one mediation session at the Singapore Mediation Centre.

- 17.3. 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 17.
- 17.4. 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.
- 17.5. Failure to comply with Clause 17.1 or 17.2 shall be deemed to be a breach of the Contract.
- 17.6. Subject to Clause 17.2, any Dispute 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**”) for the time being in force which rules are deemed to be incorporated by reference into this Clause.
- 17.7. The seat of the arbitration shall be Singapore.
- 17.8. The arbitrator shall be agreed upon between the Parties, or on failure to agree within thirty (30) days of a written proposal by one Party to the other Party, to be appointed by the SIAC acting in accordance with the SIAC Rules.

## **18. CONFIDENTIALITY AND SECURITY**

- 18.1. Except with the written consent of the SPCA, 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.
- 18.2. 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 and shall, at the request of the SPCA, procure that each of its employees, servants and agents and those of its Subcontractors and agents sign an undertaking to safeguard

official information or a confidentiality and non-disclosure agreement containing terms substantially similar to this Clause, if they have not already done so.

18.3. 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 SPCA.

18.4. For the purposes of this Clause, "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 SPCA;
- b) information which relates to the existence and the provisions of the Contract or any Purchase 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:

- d) 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;
- e) 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
- f) independently developed by the Contractor.

18.5. 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 (including stock exchange) 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 SPCA prompt

and prior notice of any such requirement and shall cooperate with the SPCA to limit the scope of such disclosure to the maximum extent legally possible.

18.6. No later than fourteen (14) days from the termination or expiry of the Contract, the Contractor shall:

- a) return all Confidential Information received from the SPCA 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 18.6(a) and (b), the Contractor shall provide a written confirmation that it has complied with Clauses 18.6(a) and (b).

18.7. The Contractor shall immediately notify the SPCA where the Contractor becomes aware of any breach of this Clause 18 by its employees, servants, agents and Subcontractors and cooperate with the SPCA to limit the extent and impact of such breach.

18.8. This Clause 18 shall survive the termination or expiry of the Contract.

## **19. DATA PROTECTION AND SECURITY**

### **Data Protection**

19.1. The Contractor shall not, and shall ensure that all of its directors, officers, employees, servants, agents and Subcontractors do not, access, monitor, use or process personal data obtained or held in connection with the Contract, except as reasonably necessary to perform its obligations under the Contract.

19.2. The Contractor shall not, and shall ensure that all of its directors, officers, employees, servants, agents and Subcontractors shall not, disclose any personal data obtained or held in connection with the Contract without the prior consent of the SPCA. Any request for the SPCA's consent under this Clause 19 must include an explanation of why the proposed disclosure is necessary for the purposes of fulfilling the Contractor's obligations under the Contract.

19.3. The Contractor shall not cause or permit personal data obtained or held in connection with the Contract to be processed, stored, accessed or otherwise transferred outside Singapore, or allow parties outside Singapore to have access to it, unless with the prior

written consent of the SPCA and subject to such conditions as the SPCA may impose. Any request for the SPCA's consent under this Clause 19 shall include an explanation of why the proposed transfer is necessary for the purposes of fulfilling the Contractor's obligations under the Contract. If consent is granted, the Contractor shall provide a written undertaking that the personal data which is transferred outside Singapore will be protected to a comparable standard as it is protected under the Personal Data Protection Act 2012.

- 19.4. The Contractor shall immediately notify the SPCA when it becomes aware of a breach of Clauses 19.1 to 19.3 by itself or any Subcontractor.
- 19.5. The Contractor shall immediately notify the SPCA as soon as it becomes aware that a disclosure of personal data may be required by law and cooperate at its own costs with the SPCA's reasonable requests and directions.
- 19.6. The Contractor shall ensure that all personal data obtained or held in connection with the Contract and any copies thereof, regardless of the medium of storage, and which is no longer necessary for the purposes of its performance of the Contract is, at the SPCA's option, either returned to the SPCA or destroyed by the Contractor upon the SPCA's written request within seven (7) days. Any personal data that is retained by the Contractor after such personal data is no longer necessary for the purposes of its performance of the Contract, or without the written authorisation of the SPCA, is a breach of the Contract. No later than seven (7) days from the termination or expiry of the Contract, the Contractor shall provide a written confirmation that it is no longer in possession of any personal data obtained or held in connection with the Contract or copies thereof, regardless of the medium of storage.
- 19.7. The Contractor agrees that SPCA may disclose personal data of the Contractor's employees and agents to government agencies as SPCA deems necessary. The Contractor shall ensure compliance with the Personal Data Protection Act 2012 (PDPA) and any other local legislation, where applicable, when performing the services contracted for.

## **Security**

- 19.8. The Contractor shall take all reasonable measures to ensure that personal data held in connection with the Contract is protected against loss or damage (whether accidental or otherwise), and against unauthorised access, use, modification, disclosure or other misuse and that only authorised personnel shall have access to the data.

19.9. The Contractor shall, in respect of any personal data held by it in connection with the Contract, comply with any reasonable requests, directions or guidelines of the SPCA relating to the handling of personal data.

19.10. The Contractor shall immediately notify the SPCA when it becomes aware of a breach of Clause 19.8 by itself or any Subcontractor.

### **Definition**

19.11. For the purposes of this Clause 19, the words “personal data” shall have the same meaning in the Contract as its definition in the Personal Data Protection Act 2012 (No. 26 of 2012).

### **Survival**

19.12. This Clause 19 shall survive the termination or expiry of the Contract.

## **20. REMOVAL OF PERSONNEL**

20.1. SPCA reserves the right to require the Contractor to remove immediately from service any Staff employed by the Contractor who is in the opinion of SPCA commits misconduct or whose performance is deemed to be unsatisfactory and/or has not met the Requirement Specifications, despite the implementation of action plans for improvement by the Contractor.

20.2. The Contractor shall furnish a suitable replacement within ninety (90) days from the date of termination notification, at no additional expense to SPCA.

## **21. WORKMEN SAFETY GUIDELINES**

21.1. The Contractor shall ensure the personal safety of the Staff and the public in general by complying with relevant guidelines drawn up by the Workplace Safety and Health Council (WSHC), which include the following:

- (a) Provision of adequate and appropriate protective equipment readily available to protect Staff from exposure to infectious hazards;
- (b) Implementation of a system to prevent and control the transmission of infectious diseases (e.g. vaccination policy for Staff against diseases which include rabies);
- (c) Implementation of a post exposure programme for infectious diseases;
- (d) All relevant Staff is trained to identify various wastes and their proper disposal procedures; and

- (e) Safe Work Procedures are adopted during animal handling to minimize being injured by animals.

## **22. RELEASE OF LIABILITY**

- 22.1. The Contractor shall arrange and take out the appropriate insurance against third party liability and any other risks associated with the performance of the Contract, and may be directed as such by SPCA.
- 22.2. SPCA shall not be liable for any injury, loss or damage to property arising from the Contract. The Contractor is advised to take up appropriate and adequate insurance. This exemption clause shall take effect to the fullest extent permitted by law.
- 22.3. The Contractor shall be solely liable for, fully indemnify and hold SPCA, its officers, personnel and agents, to the maximum extent permitted by law, harmless from and against:
  - (a) all liabilities, damages, costs and expenses arising from any claims, demands, actions, proceedings, recoveries, judgment or execution, damages, costs (including legal costs on a full indemnity basis and/ or reasonable solicitor's fees), losses and expenses of any nature which SPCA, its officers, personnel or agents, may suffer or incur, arising from the Contractor's performance of his obligations under the Contract; and
  - (b) all loss and damage to any premises, its adjoining or neighbouring premises and to all property therein howsoever caused whether directly or indirectly by the Contractor.

## **23. INDEMNITIES**

- 23.1 The Contractor shall be liable for and shall indemnify SPCA against any loss, expense, costs (including legal costs), damages, liability or claim whatsoever in respect of personal injury to or the death of any person whomsoever arising out of or in the course of or by reason of the carrying out of the Services, unless the same is shown to be due solely to any negligent or wilful act or default of SPCA or of any person for whom SPCA is responsible.
- 23.2 For the avoidance of doubt, the indemnity provided by the Contractor shall include any damages or compensation payable at common law or under any statute in respect of or in consequence of any accident, illness or injury to any workman or other person in the employment of the Contractor, save and except an accident, illness or injury

resulting solely from an act or default of SPCA, or of any person for whom SPCA is responsible.

- 23.3 The Contractor shall be liable for and shall indemnify SPCA against any loss, expense, costs (including legal costs), damages, liability or claim due to damage of any kind to any property real or personal (including any property of SPCA) insofar as such damage arises out of or in the course of or by reason of the carrying out of the Services, unless the Contractor proves to the satisfaction of SPCA that it was not due to any negligence, omission, breach of contract or default of the Contractor, or of any person for whom the Contractor is responsible.

## **24. COMMUNICATION WITH THIRD PARTIES**

The Contractor shall ensure that any queries received from members of the public and/or the media when carrying out the Services are to be referred to SPCA. The Contractor shall not represent SPCA in any circumstances.

## **25. CONTRACT PERIOD**

The contract period shall be for up to five (5) years (or as determined by SPCA) and as stipulated in the Contract for Services.

## **26. TERMINATION**

- 26.1 The SPCA may terminate this Contract by giving at least seven (7) working days prior notice in writing to the Contractor, in an event the Contractor is in breach of any of the terms under the Contract, subject to Clause 26.2.
- 26.2 In an event of non-performance by the Contractor of any of the contractual obligations pursuant to the Contract, the SPCA shall first notify the Contractor of such non-performance. Failure by the Contractor to rectify the default within seven (7) working days of the date of receipt of the notice shall result in termination of this Contract by the SPCA (as stipulated under Clause 26.1).
- 26.3 Upon termination of this Contract by the SPCA, the Contractor shall (i) be entitled to payment for all Services completed and accepted by the SPCA up to and including the termination date, provided always that all terms and conditions of this Contract have in the opinion of the SPCA been duly and faithfully observed by the Contractor; and (ii) forthwith deliver to the SPCA all Services provided which have been agreed upon prior thereto up to and including the termination date.

26.4 For the avoidance of doubt, on the termination of this Contract, any monies or fees paid in advance by the SPCA shall, without affecting any remedy which the SPCA may have for any breach of this Contract by the Contractor, be pro-rated and refunded to the SPCA.

26.5 Termination of the Contract shall not prejudice or affect the accrued rights and liabilities of either Party to this Contract.

## **27. TERMINATION FOR CONVENIENCE**

The SPCA shall have the right to terminate the Contract for convenience by giving one (1) months' notice in writing to the Contractor without providing any reason, and the Contractor shall have no claim for any damages or compensation.

## **28. FORCE MAJEURE**

28.1 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, riots, fires and other perils beyond the control of the Contractor or which, in the absence of this clause, will operate to frustrate this Contract.

28.2 If the effect of any Force Majeure Event continues for a period exceeding thirty (30) days, the SPCA 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.

28.3 If a Force Majeure Event occurs, the Contractor or the SPCA (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.

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

## **29. VARIATION OF CONTRACT**

No variation of this Contract, whether oral or otherwise, shall be binding on either Party unless such variation is expressly accepted in writing by the Parties. Proposals for variation (including any alterations of specifications) from one party are to be given due consideration by the other party.

### **30. RIGHTS OF THIRD PARTIES**

Save as expressly provided herein, 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.

### **31. ENTIRE AND WHOLE AGREEMENT**

This Contract contains the entire and whole agreement between the Parties and supersedes all prior written or oral commitments, representations, arrangements, understandings or agreements between them.