DATED THIS DAY OF 2012

BETWEEN

[●]

(The Principal Agency)

AND

[●]

(The Concession Company)

CONCESSION AGREEMENT

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THIS AGREEMENT is made on 2012.

BETWEEN:

(1) **[●]** (Unique Entity No. [●]), a body corporate incorporated under [the law of Singapore] and having its office at [●] (the "**Principal Agency**"); and

(2) [●] (Company Registration No. [●]), a company incorporated in Singapore and having its registered address at [●] (the "**Concession Company**").

WHEREAS:

A. The Info-communications Development Authority of Singapore ("**IDA**") issued a Call for Proposal for interested parties to submit Proposals to undertake the Project (the "Call for Proposal").

B. The [Preferred Participant / Concession Company]* submitted a Proposal in response to the Call for Proposal. [The Preferred Participant incorporated the Concession Company to carry out the Project for and on behalf of the Preferred Participant]*.

C. The [Preferred Participant has represented for and on behalf of the Concession Company / Concession Company has represented]* that it possesses the necessary expertise, personnel, resources and experience to undertake the Project.

D. In reliance on the representations set out above, the Concession Company has been selected to undertake the Project by the Evaluation Committee and based on further evaluation and due diligence conducted by the Principal Agency, the Principal Agency has separately and independently agreed to grant the Concession to the Concession Company, in accordance with the terms and subject to the conditions hereinafter appearing.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions and Interpretation

(a) Words and expressions used in this Agreement shall have the meanings set out in Annexure 1 unless the context requires otherwise.

(b) The Appendices shall form an integral part of this Agreement.

(c) The Call for Proposal and the Proposal (both where applicable) shall form part of this Agreement.

1.2. Ambiguities and Inconsistencies

(a) If any party discovers any ambiguity or inconsistency within this Agreement or inconsistency between this Agreement and the Law:

(i) the party which makes the discovery shall promptly notify the other party of such ambiguity or inconsistency in writing; and

(ii) the Principal Agency will issue instructions which in its opinion are necessary to resolve the ambiguity or inconsistency.

(b) The Concession Company shall not be entitled to any additional costs, adjustment to the Price Ceiling, Price Ceiling Adjustment Formula and Minimum Load Factor and extension of time to the Scheduled Commercial Operation Date, any Milestone Date and the Term by reason of the Principal Agency's instruction under Clause 1.2(a).

2. CONDITIONS PRECEDENT

2.1. Conditions Precedent

The obligations of the Principal Agency under this Agreement are conditional upon the satisfaction of each Condition Precedent.

2.2. Responsibility for Satisfaction

(a) The Concession Company shall use its best endeavours to procure the satisfaction of the Conditions Precedent as soon as reasonably practicable and in any event by the Cut-Off Date.

(b) The Concession Company shall regularly report to the Principal Agency as to its progress in satisfying the Conditions Precedent.

2.3. Waiver or Satisfaction of Conditions Precedent

(a) the Principal Agency may at any time at its sole discretion waive in whole or in part, conditionally or unconditionally, any of the Conditions Precedent by notice in writing to the Concession Company.

(b) the Principal Agency shall give written notice to the Concession Company, upon it being satisfied that all of the Conditions Precedent have been satisfied or waived.

2.4. Non-Satisfaction of Conditions Precedent

If any of the Conditions Precedent has not been satisfied on or before the Cut-Off Date, then unless waived in writing by the Principal Agency, the Principal Agency may, in its absolute discretion, by notice in writing to the Concession Company, terminate this Agreement. Upon such termination, this Agreement shall have no further effect (save for the Surviving Provisions) and neither party shall have any claim of any nature whatsoever against the other under this Agreement (save in respect of any breach by the Concession Company of Clause 2.2).

3. PROJECT

3.1. Overview

(a) In consideration of the right, licence and authority granted to the Concession Company under Clause 3.2, the Concession Company agrees to undertake the Project, including designing, building, testing, commissioning, financing, maintaining and operating the Plant, in accordance with this Agreement.

(b) The Plant shall be located on the Site.

(c) The Principal Agency will provide the Concession Company with access to and possession of the Site in accordance with the terms of the Lease Documents and this Agreement, throughout the Term.

3.2. Concession

For the purposes of Clause 3.1(a) and subject to the conditions of this Agreement, the Principal Agency hereby grants the Concession Company the right, licence and authority to:

(a) undertake the Project and supply Chilled Water Service to the Tenants in the manner contemplated in this Agreement; and

(b) do the things necessarily incidental to the activities referred to in Clause 3.2(a).

3.3. Acceptance of Project

(a) The Concession Company shall undertake the Project at its own risk and cost. The Concession Company acknowledges that it has investigated and accepts what is known and can be reasonably anticipated regarding:

(i) the general character, quality, quantity and availability of resources required to execute and complete the Project; and

(ii) the nature and magnitude of and the financial risks associated with the Project (including any actual or potential shortage in the number of Tenants occupying the Data Centre Park, lack of or insufficient demand for the Chilled Water Service and payment default by the Tenants under the CWSA).

(b) The Principal Agency gives no warranty in respect of the success, viability and profitability of the Project. The Concession Company shall have no recourse whatsoever against the Principal Agency should the Project be unsuccessful or unprofitable in any respect and hereby unconditionally waives all rights to claim against the Principal Agency for the same.

3.4. Representatives

(a) Either party shall within 10 Days from the Signing Date appoint a representative to act on that party's behalf for the purpose of this Agreement and such representative shall be deemed to be empowered to act for and on behalf of that party in all matters concerning this Agreement.

(b) Any change in a party's representative shall be notified to the other party in writing at least 20 Days before such change is to take effect.

4. TERM

(a) Subject to Clause 4(b), this Agreement shall be and remain in full force and effect for the Term, unless otherwise terminated earlier in accordance with this Agreement.

(b) The Concession Company acknowledges and agrees that the Term of this Agreement shall be for the same duration as the Lease Term and in the event the Lease Term is reduced by the Principal Agency in accordance with the Lease, the Term shall be automatically reduced by the same period of reduction as effected to the Lease Term under the Lease.

5. CONCESSION COMPANY

5.1. Establishment of Concession Company

The Concession Company shall be and remain a company duly incorporated in the Republic of Singapore in accordance with the laws of the Republic of Singapore throughout the Term.

5.2. Nature of Concession Company's Business

The Company's sole business shall be the Business.

5.3. Capital of the Concession Company

Subject to the rights and obligations of the Financing Parties under the Financing Documents and Clause 5.4, the Concession Company undertakes that:

(a) the proportionate shareholding of the Shareholders as set out in **Annexure 3** will not be altered;

(b) each Shareholder is the registered, legal and beneficial owner of the number of shares of the Concession Company set out opposite such Shareholder's name in **Annexure 3**;

(c) all issued shares shall, when issued, have been authorized, allotted and called-up and validly issued and registered and fully paid; and

(d) there are no outstanding Encumbrances, options, warrants, rights, calls, commitments, conversion rights, rights of exchange, plans or other agreements of any character (including all rights for first refusal of any other Shareholders of the Concession Company) providing for the purchase, issuance or sale of any shares of the capital stock in, or the voting of, the Concession Company, other than as created under the Financing Documents.

5.4. Restrictions on Transfer of Equity

(a) Notwithstanding any other provision of this Agreement, no Shareholder may transfer any part of its Equity in the Concession Company during the Equity Lock-In Period.

(b) After the Equity Lock-In Period, no Shareholder may transfer any part of its Equity in the Concession Company except with the prior written approval of the Principal Agency.

(c) If a Shareholder wishes to transfer any part of its Equity at any time after the Equity Lock-In Period, the Concession Company shall first submit to the Principal Agency a written request for approval to do so. Such request shall include a description of:

(i) the proposed transfer of Equity;

(ii) the transferee; and

(iii) if applicable, any proposed amendment to the Shareholder's Agreement.

The Principal Agency may request the Concession Company to, and the Concession Company shall, provide the Principal Agency, within 14 Days following receipt of the request, any additional information which the Principal Agency considers necessary for its evaluation of the transfer of Equity.

(d) The Principal Agency shall either approve or reject in writing a request by the Concession Company under Clause 5.4(c) within 30 Days following the receipt of such request.

(e) The Principal Agency shall not unreasonably refuse to grant approval for any transfer of Equity where the proposed transferee is suitably skilled, experienced and qualified and possesses the necessary expertise, financial ability and resources to undertake the Project.

(f) The Concession Company warrants that the Shareholders' Agreement shall materially conform to the provisions of this Clause 5.4. In the event of any inconsistency between the Shareholders' Agreement and such provisions, the Concession Company shall cause the Shareholders' Agreement to be revised to remove such inconsistency.

(g) Any transfer of Equity in breach of this Clause 5.4 shall be null and void and have no force and effect and shall be a Default for the purposes of this Agreement.

6. IMPLEMENTATION OF THE PROJECT

6.1. Financing

The Concession Company shall provide and/or arrange for the funding of the Project without recourse to funds from or support of the Principal Agency (including the provision of guarantees).

6.2. Design and Construction

The Concession Company shall design, engineer, procure, construct, test and commission the Plant in compliance with this Agreement and do all things necessary to complete the Building Works on or before the Scheduled Commercial Operation Date.

6.3. Operation and Maintenance

The Concession Company shall be responsible for the operation and maintenance of the Plant throughout the Operating Period and supply Chilled Water Service to the Tenants in accordance with the CWSAs.

6.4. Hand-Over

On the Expiry Date, the Concession Company shall, at the written election of the Principal Agency (which election shall be at the sole and absolute discretion of the Principal Agency), either:

(a) hand-over the Plant and the Site to the Principal Agency (or its nominee) in accordance with paragraph 1, 3 and 4 of **Annexure 13** and otherwise in accordance with the Lease; or

(b) decommission and demolish the entire Plant in accordance with Good Industry Practice and reinstate the Site to, and hand-over to the Principal Agency the Site in, the Site's Original Condition in accordance with paragraph 2, 3 and 4 of **Annexure 13** and otherwise in accordance with the Lease;

in either case, at the Concession Company's sole cost and expense. The Principal Agency shall notify the Concession Company in writing of its election under this Clause 6.4 not later than 3 Years prior to the Expiry Date. For the avoidance of doubt, this Clause 6.4 shall only apply where this Agreement is terminated on the last day of the Term (and not pursuant to Clause 28.2, 28.3 or otherwise).

6.5. Project Agreements

(a) The Concession Company shall enter into the Project Agreements and any other agreements necessary to be entered into by the Concession Company to enable it to fulfil its obligations under this Agreement and shall provide the Principal Agency with certified copies of these agreements (other than the Lease Documents) as soon as practicable after the Conditions Satisfaction Date.

(b) Without prejudice to Clause 14.4(d), if at any time an amendment is made to any Project Agreement to which it is a party, or the Concession Company enters into a new Project Agreement (or any agreement which affects the interpretation or application of any Project Agreement), the Concession Company shall deliver to the Principal Agency a conformed copy of each such amendment or agreement (other than any such amendment or agreement pertaining to the Lease Documents to which the Principal Agency is a party) within 5 Business Days of the date of its execution or creation (as the case may be), certified as a true copy by an Officer of the Concession Company.

6.6. Authorisations

(a) The Concession Company shall diligently obtain, maintain and renew all Authorisations necessary for it to undertake the Project and to otherwise perform its obligations under this Agreement and the other Project Agreements.

(b) The Concession Company shall, at the Principal Agency's request, promptly provide the Principal Agency with a certified copy of all Authorisations referred to in Clause 6.6(a).

(c) If any Authorisation obtained in accordance with Clause 6.6(a) is revoked or withdrawn, the Concession Company shall:

(i) immediately inform the Principal Agency in writing of that revocation or withdrawal, and the impact of that revocation or withdrawal on the Concession Company's ability to perform its obligations under this Agreement; and

(ii) promptly do everything necessary to regain or renew that Authorisation.

6.7. General Standard of Performance

The Concession Company shall procure that the Project is at all times performed:

(a) in an efficient, effective and professional manner;

(b) in compliance with all Laws and this Agreement;

(c) in accordance with Good Industry Practice;

(d) in a manner that is not likely to be injurious to health or to cause damage to property (including the Plant, the Data Centres and any property adjacent thereto); and

(e) in such manner as not to detract from the image and reputation of the Principal Agency.

6.8. Complaints

The Concession Company shall deal with any complaints received in relation to the Project (whether received orally or in writing, and whether from the Principal Agency, the Tenants or other third parties) in a prompt, professional and efficient manner.

6.9. Protection of Roads and Facilities

In the execution of the Project or any part thereof, the Concession Company shall:

(a) comply with all instructions of the Principal Agency, the police and the Government Agencies given to prevent any congestion of or hazard to traffic and in any event arrange for the delivery and removal of all material to and from the Site with as little inconvenience to the Tenants, pedestrians and traffic as possible;

(b) take such steps as may be necessary to prevent any earth, soil, mud or other similar material from being deposited on public or private roads (including footpaths and roads belonging to or under the control of the Principal Agency), surrounding drains and gutters and take immediate steps where necessary for clearing and cleansing any of the aforesaid to the satisfaction of the Principal Agency;

(c) make good any damage caused to public or private roads (including footpaths and roads belonging to or under the control of the Principal Agency), sewers, drains or other works in the course of the carrying out of the Project, and if the Principal Agency elects to carry out such work of making good the same (whether by itself or appointment of a contractor), forthwith on demand repay the Principal Agency all costs of doing so; and

(d) provide in any contract for the carrying out of the Project or any part thereof a provision requiring the contractor or the supplier to comply with the terms of this Clause.

6.10. Non-Interference

(a) The Project shall be carried out so as not to interfere or interrupt with:

(i) the construction and operation of the Data Centre(s) or other projects or services undertaken by the Principal Agency or any Tenants at the land surrounding or adjacent to the Site or the Data Centre Park;

(ii) the access to, use and occupation of public or private roads, footpaths, cycleways or footways (whether under the control or in the possession of the Principal Agency or any other person) serving or leading to the Site or the Data Centre Park;

(iii) the use and occupation of the owners and occupiers of adjoining land, of the land surrounding the Site or the Data Centre Park; and

(iv) the convenience of the general public.

If such interference or interruption is unavoidable notwithstanding the Concession Company's exercise of reasonable diligence to avoid the same, the Concession Company shall take all necessary measures to minimize the effect of such interference or interruption and remove the cause thereof as soon as reasonably practicable.

(b) The Concession Company shall indemnify and keep indemnified the Principal Agency from and against all and any Loss arising out of or in relation to any interference or interruption contemplated under this Clause.

6.11. Safety and Security

The Concession Company shall:

(a) maintain at the Plant all safety devices and safety practices required by applicable Law, all its insurance policies under Clause 24 and Good Industry Practice;

(b) keep accurate records of any accident or other occurrence at the Site that results in injury to persons or damage to property and provide the Principal Agency with reasonable access to these records, from time to time as requested by the Principal Agency, subject to requirements of confidentiality; and

(c) maintain safety and security of the Site and the Plant.

6.12. Pollution Control

The Concession Company shall:

(a) prevent nuisance and unreasonable noise and disturbance when performing its obligations under this Agreement;

(b) ensure that any discharge by the Building Works and/or the Plant of all emissions, effluents and residual waste are in accordance with all Environmental Laws and all other Laws; and

(c) ensure that the Plant does not cause or contribute to any environmental damage or pollution.

The Concession Company shall continually monitor its compliance with Clause 6.12 and notify the Principal Agency immediately if it discovers that it is not in full compliance with Clause 6.12.

7. LEASE

7.1. Execution of Lease

(a) On or before the Conditions Satisfaction Date, the Principal Agency shall issue the Lease Letter of Award to the Concession Company and the Concession Company shall accept the terms and conditions of the Lease Letter of Award in the manner provided therein.

(b) Subject to the due acceptance of the Lease Letter of Award by the Concession Company, the occurrence of the Conditions Satisfaction Date and the terms of the Lease Documents, the Principal Agency shall grant to the Concession Company a licence of the Site, for the Licence Term with effect from the Licence Commencement Date and the subsequent lease of the Site for the Lease Term, with retrospective effect from the Licence Commencement Term.

7.2. Breach and Termination

(a) A breach of the terms of this Agreement by the Concession Company shall constitute a breach of the Lease Documents by the Concession Company and vice versa.

(b) No compensation shall be payable to the Concession Company upon termination of the Lease Documents pursuant to this Agreement.

7.3. Safety and Security Measures

In accessing the Site, the Concession Company shall comply with the safety and security requirements of the Principal Agency, as notified in writing from time to time by the Principal Agency to the Concession Company.

7.4. Cumulative Rights

The rights and remedies of the Principal Agency under this Agreement are cumulative and are in addition, and without prejudice, to any other rights and remedies that may be available to the Principal Agency under or arising from the Lease Documents.

7.5. Inconsistency

This Agreement and the Lease Documents shall be read and construed as a whole. In the event of any discrepancy or inconsistency between any of the provisions in this Agreement, and the Lease Documents, relating to the Site conditions, protection of road and facilities, non-interference of or interruption with the use, occupation or general convenience of third parties and health, safety and environment protection (collectively, "**Site-Related Provisions**"), the Site-Related Provisions in the Lease Documents shall prevail unless such provisions impose less stringent requirements than the Site-Related Provisions in this Agreement, in which case the latter shall prevail and the Concession Company shall comply with the more stringent requirements.

8. ACCEPTANCE OF SITE AND THE PRINCIPAL AGENCY'S DOCUMENTS

8.1. Condition of the Site

(a) The Concession Company takes and accepts the Site on an as-is where-is basis and in the Site's Original Condition, and at all times from the Conditions Satisfaction Date, the condition of the Site shall be the sole responsibility of the Concession Company.

(b) The Concession Company shall be deemed, prior to executing this Agreement to have, and warrants that it has:

(i) inspected and examined to its satisfaction the Site and their surroundings and, where applicable, any existing structures or works on, over or under the Site;

(ii) satisfied itself as to the nature of the climatic, hydrological, ecological, environmental and general conditions of the Site, the nature of the ground and subsoil (including its ground levels, topography and subterranean conditions and soil contaminants, content, compounds, characterisation and conditions), the form and nature of the Site, the risk of injury or damage to property adjacent to or affecting the Site, the nature of the materials (whether natural or otherwise) to be excavated and the nature of the design, work, plant and materials necessary for the Project;

(iii) satisfied itself as to:

(aa) the adequacy of the means and rights of access to and through the Site and any accommodation it may require for the purposes of fulfilling its obligations under this Agreement (such as additional land or buildings outside the Site);

(bb) the possibility of interference by persons with access to or use of the Site (including the Principal Agency as contemplated under Clause 19);

(cc) the precautions and times and methods of working necessary to prevent any nuisance or interference, whether public or private, being caused to any persons occupying properties adjacent or adjoining to the Plant including the Data Centres and any other third parties;

(iv) generally obtained for itself all necessary information as to:

(aa) the risks, contingencies and all other circumstances which may influence or affect the Project; and

(bb) any other factors which would affect its decision to enter into this Agreement or the terms on which it would do so.

(c) Without prejudice to the generality of Clause 8.1(a) and (b), the Concession Company shall bear the risk of any man-made or artificial features or obstructions which may be encountered in the course of carrying out the Project and shall not be entitled to Claim for extension of time to the Scheduled Commercial Operation Date, any Milestone Date or the Term, or Loss or any compensation whatsoever, including any delay or additional costs arising from or in connection with:

(i) the Concession Company's compliance with any instruction which the Principal Agency's Representative may issue to the Concession Company in connection therewith; or

(ii) any proper and reasonable measures which the Concession Company may take in the absence of specific instructions from the Principal Agency's Representative.

8.2. Acceptance of the Principal Agency's Documents

The Principal Agency gives no warranty for the documents, information or data provided by the Principal Agency Parties (collectively, the "**Principal Agency's Documents**" and includes

any documents and information provided as part of or in connection with the Call for Proposal) as to their accuracy or sufficiency or as to how the same should be interpreted or otherwise howsoever used and the Concession Company shall make use of, interpret or rely upon the same entirely at its own risk and where necessary, consult its advisors and consultants and the relevant authorities to confirm, review and verify the Principal Agency's Documents (whether in respect of their accuracy, sufficiency or otherwise). All the Principal Agency's Documents shall:

(a) remain the Principal Agency's property and are be returned to the Principal Agency on written demand; and

(b) not be used, copied nor reproduced for any purpose other than for the undertaking of the Project or the performance of this Agreement.

8.3. Waiver of Claims

(a) The Concession Company shall not be entitled to make any Claim against any of the Principal Agency Parties, whether in compensation, damages or for extensions of time under this Agreement on the ground of any misunderstanding or misapprehension in respect of the Principal Agency's Documents or on the ground that incorrect or insufficient information relating thereto or to the Site, the Plant, the Data Centres, the Data Centre Park or the Project was given to it by any person (whether or not in the employment of the Principal Agency).

(b) Any neglect, inability or failure on the part of the Concession Company in obtaining the information in relation to the matters referred to in this Clause or in any other matters whatsoever shall not relieve it of its obligations and liabilities under this Agreement.

9. PERFORMANCE BOND

9.1. Form of Performance Bond

(a) On or before the Signing Date, the Concession Company shall furnish to the Principal Agency an irrevocable and unconditional on demand bank guarantee ("**Performance Bond**") in favour of the Principal Agency as security for the performance by the Concession Company of its obligations and liabilities under this Agreement.

(b) The Performance Bond shall be:

(i) issued by a bank ("**Issuing Bank**") licensed to do business in the Republic of Singapore and acceptable to the Principal Agency;

(ii) in the aggregate amount of S$10,000,000;

(iii) in the form set out in **Annexure 5**; and

(iv) valid for the period from the Signing Date until the date being 6 Months after the Commercial Operation Date ("**Validity Period**").

9.2. Utilisation of Monies under the Performance Bond

The Principal Agency may utilise the monies received under the Performance Bond (in full or in part) to make good any Loss sustained or likely to be sustained by the Principal Agency as a result of or in connection with any breach of obligations, duties, warranties, representations or covenants under this Agreement by the Concession Company or the termination of this Agreement under Clause 28 (including the Liquidated Damages and any other sum due to the Principal Agency under or arising from this Agreement). Nothing herein is intended nor shall it be construed to render the Performance Bond to be a conditional bond. The Performance Bond furnished (or to be furnished) by the Concession Company under this Clause shall in all circumstances be irrevocable and unconditionally payable on demand.

9.3. Maintenance of Guaranteed Value

The Concession Company shall ensure that, throughout the Validity Period, the Performance Bond is maintained in the amount set out in Clause 9.1. The Concession Company shall ensure that any shortfall in the amount of the Performance Bond pursuant to any claim or demand made by the Principal Agency is rectified within 5 Business Days from the date of payment being made from the Performance Bond.

9.4. Maintenance of Validity

The Performance Bond shall remain in full force and effect from the Signing Date until the last day of the Validity Period. Where the validity period of the Performance Bond delivered to the Principal Agency pursuant to this Clause 9 shall expire prior to the last day of the Validity Period, the Concession Company shall renew and/or extend the validity period of the Performance Bond as and when necessary to ensure that the Performance Bond remains valid and enforceable until the last day of the Validity Period.

9.5. No Restraint

The Concession Company agrees that except in the case of fraud, the Concession Company shall not for any reason whatsoever be entitled to enjoin or restrain:

(a) the Principal Agency from making any call or demand on the Performance Bond or utilising or receiving any monies under the Performance Bond (or any part thereof); or

(b) the Issuing Bank from paying any cash proceeds under the Performance Bond,

on any ground including the ground of unconscionability. Any dispute which the Concession Company has against such call, demand, receipt, utilisation or payment shall be resolved in accordance with Clause 30. In the event it is subsequently resolved, or determined by any arbitrator or court, that the amount of the Performance Bond utilised by the Principal Agency is greater than the amount of loss or damage actually sustained by the Principal Agency, the Principal Agency shall pay to the Concession Company the amount so over-utilised by the Principal Agency as soon as practicable after the resolution or determination has been made but shall not for any reason whatsoever be liable for any interest on such over-utilisation including but not limited to any interest under Section 12 of the Civil Law Act (Cap 43).

9.6. No prejudice

Nothing in this Clause 9 (including any agreement between the Issuing Bank and the Principal Agency with respect to any demands made and amounts paid by the Issuing Bank under the Performance Bond) shall prejudice, limit or affect any rights and remedies which the Principal

Agency may have against the Concession Company for any breach of obligations, duties, warranties, representations or covenants under this Agreement by the Concession Company.

10. DEVELOPMENT AND CONSTRUCTION OF THE PLANT

10.1. Design and Construction

(a) The Concession Company shall design, engineer and construct the Plant:

(i) in compliance with the Design and Technical Specifications and all Laws;

(ii) so as to be fit for the purposes of supplying Chilled Water Service to the Tenants and to satisfy the Performance Requirements and pass the Performance Tests;

(iii) so as not to damage, disrupt or interfere with the operation of the Data Centres and any other properties and operations or activities of the Principal Agency or the Tenants at the land surrounding or adjacent to the Site or the Data Centre Park; and

(iv) otherwise in accordance with the terms set out in this Agreement.

(b) The Concession Company shall consult with the Principal Agency in respect of the finalisation of the design of the Building Works and submit to the Principal Agency for its approval all design drawings and data in respect of the Building Works.

(c) The Building Works shall be constructed, carried out and completed in accordance with the final design approved by the Principal Agency.

10.2. Implementation Schedule

(a) The Concession Company shall adhere to the Implementation Schedule in the performance of the Building Works.

(b) The Concession Company shall update the Implementation Schedule and submit to the Principal Agency for its approval the updated Implementation Schedule as may be required from time to time as the Project progresses.

10.3. Testing and Commissioning

(a) The Concession Company shall at its own cost be responsible for the development and implementation of the start-up, testing and commissioning of the Project and the disposal of all wastes generated during the start-up, testing and commissioning of the Project.

(b) Prior to commencement of the Performance Tests, the Concession Company shall give the Principal Agency at least 21 Days' prior written notice. Such notice shall specify the date on which the Performance Tests is to be carried out. The Principal Agency's Representative shall be entitled to be present at the Performance Tests.

10.4. Completion

(a) The Concession Company shall complete the Building Works on or before the Scheduled Commercial Operation Date.

(b) When the Building Works have been completed, the Concession Company shall issue a Completion Certificate to the Principal Agency for its acceptance. The Completion Certificate shall be accompanied with performance test reports detailing the results of all Performance Tests carried out by the Concession Company.

(c) The Concession Company shall furnish the Principal Agency with any additional data that it may reasonably require to establish to its satisfaction that the Building Works have been completed within 14 Days from the date of such request made by the Principal Agency.

(d) Within 14 Days from the Principal Agency's receipt of the Completion Certificate, the performance test reports and where applicable, the additional data from the Concession Company under Clause 10.4(c), the Principal Agency shall, if satisfied that the Building Works have been completed, countersign the Completion Certificate or if not so satisfied, state in writing why it is not prepared to do so. If the Completion Certificate has not been countersigned by the Principal Agency within the 14 Day period (or such longer period as the parties may agree), the Completion Certificate shall be deemed to have been refused.

(e) If, in the event of a dispute, the Expert subsequently determines (in accordance with Clause 10.4(f) and 30.7) that the Building Works had been completed and the Completion Certificate had therefore been correctly issued, the Completion Certificate shall be deemed to have been countersigned on the date it was issued.

(f) Any dispute arising under this Clause shall be referred to an Expert for determination in accordance with Clause 30.7.

(g) Notwithstanding any acceptance or countersignature by the Principal Agency of the Completion Certificate, the Concession Company shall remain fully liable for or in respect of the Building Works and the Project without any recourse whatsoever to the Principal Agency.

10.5. Conditions for Completion

The Building Works shall not be regarded as complete for purposes of this Agreement unless all of the following conditions have been satisfied:

(a) the Plant is ready for immediate occupation and supply of Chilled Water Service to any Tenant and can be safely placed immediately in commercial operation in compliance with the requirements of the Agreement;

(b) TOP has been issued for the entire Building Works;

(c) all Authorisations which are necessary for the use and operation of the Plant have been obtained (including those Authorisations set forth in the Performance Requirements); and

(d) all Performance Tests have been passed.

10.6. Documents to be Kept at Site

Throughout the Operating Period, the Concession Company shall retain at the Site:

(a) for all items of equipment incorporated into the Plant, copies of the specifications and operation and maintenance manuals for such equipment;

(b) copies of all test results for tests performed on the Plant and all items of equipment incorporated into the Plant;

(c) as-built drawings for the Plant;

(d) all warranties and indemnities given or issued in respect of any part of the Building Works; and

(e) all other detailed technical documents related to the design, engineering and construction of the Plant, to the extent that such items are normally retained in accordance with Good Industry Practice or are otherwise required to be retained under this Agreement.

10.7. The Principal Agency to be Kept Informed

(a) The Principal Agency shall be entitled to access the Site to inspect any part of the Building Works in the course of construction, start-up, testing or commissioning in accordance with Clause 19. If following any such inspection, it is determined in the opinion of the Principal Agency that any materials, plants or equipment are defective or not in accordance with the Design and Technical Specifications or other requirements of this Agreement, the Concession Company shall at its own cost remove such materials, plants or equipment and replace the same.

(b) The Concession Company shall, during the Construction Period:

(i) promptly inform the Principal Agency of any actual or potential delay in the Building Works and any material deviations from any Milestone Dates in the Implementation Schedule; and

(ii) provide to the Principal Agency monthly written reports on the progress of the Building Works which shall include a comparison of its actual and planned progress with details of any aspects which may affect the completion of the Building Works by the Scheduled Commercial Operation Date, and the measures being (or to be) adopted to overcome such aspects.

10.8. Changes to the Plant by the Concession Company

(a) The Concession Company shall not without the Principal Agency's prior written approval make any Concession Company Variation that may affect the Concession Company's ability to supply Chilled Water Service to the Tenants in compliance with this Agreement and the CWSAs, or the Plant's ability to satisfy the Performance Requirements and the Performance Guarantees.

(b) Any Concession Company Variation shall have as its purpose a design or system improvement required by, or desirable under, Good Industry Practice or the modification of a design or system in order to ensure that the Plant is constructed, installed and equipped as required under this Agreement in accordance with Good Industry Practice.

(c) The Concession Company shall not be entitled to any additional costs or adjustment to the Price Ceiling, the Price Ceiling Adjustment Formula, the Minimum Load Factor and the Scheduled Commercial Operation Date or the Term by reason of a Concession Company Variation.

10.9. Changes to the Plant by the Principal Agency

(a) The Concession Company agrees to effect any changes requested by the Principal Agency in the scope, specifications or other characteristics of the Plant.

(b) Where the Concession Company considers that any compliance with the Principal Agency's request for changes or comments in respect of any part of the Building Works would amount to a Principal Agency Variation, the Concession Company shall, before complying with such request or comments and in any event within 10 Days from its receipt of such request or comments, notify the Principal Agency of the same and, if it is agreed by the parties or determined pursuant to Clause 30.7 that a Principal Agency Variation would arise if the request or comments were complied with, the Principal Agency may, if it wishes, implement the Principal Agency Variation and it shall be dealt with in accordance with Clause 26. Any failure by the Concession Company to notify the Principal Agency that it considers compliance with any such comments or request of the Principal Agency amount to a Principal Agency Variation in accordance with this Clause 10.9(b) shall constitute an irrevocable acceptance by the Concession Company that any compliance with the Principal Agency's request or comments shall be without any cost to the Principal Agency, adjustment in the Price Ceiling, the Price Ceiling Adjustment Formula or the Minimum Load Factor, or extension of time to the Scheduled Commercial Operation Date, any Milestone Date or the Term.

10.10. Design and Construction Liabilities

The Concession Company shall at all times be and remain responsible for the Building Works and liable for any defect or inadequacy in the design and construction of the Plant, including the functional adequacy, structural integrity and safety of the Plant. No:

(a) provision of any design criteria or specifications, technical requirements or other information provided for or in respect of the Project to the Concession Company;

(b) review, comment, opinion or approval expressed in respect of any part of the Building Works or otherwise (including any design specifications and drawings prepared by the Concession Company) or lack of review, comment, opinion or approval in regard thereto; and/or

(c) inspection or lack of inspection of the Building Works,

by the Principal Agency Parties, shall in any respect relieve or absolve the Concession Company from any obligations or liabilities under or in connection with this Agreement nor shall the Principal Agency Parties be liable to the Concession Company in any way for any such provision, review, comment, opinion, approval or inspection (or failure to do any of the foregoing).

10.11. Archaeological Finds

(a) As between the parties, any Archaeological Finds are or shall become, upon discovery, the absolute property of the Principal Agency.

(b) Upon the discovery of any Archaeological Finds, the Concession Company shall:

(i) immediately notify the Principal Agency of such discovery;

(ii) take all steps not to disturb the Archaeological Finds and, if necessary, cease any Building Works in so far as the carrying out of such Building Works could endanger the Archaeological Finds or prevent or impede its excavation; and

(iii) take all necessary steps to preserve the Archaeological Finds in the same position and condition in which it was found.

(c) The Concession Company shall at its own cost comply with any instruction in writing issued by the Principal Agency's Representative specifying what action it requires to be taken in relation to such discovery (including the removal or disposal of the Archaeological Finds).

(d) If any instruction referred to in Clause 10.11(c) includes a requirement for the Concession Company to suspend the carrying out of the Building Works and/or to carry out works (being any work of alteration, addition, demolition or extension or variation in the Plant) which are not works which would be strictly necessary for the purpose of compliance with Laws, such instruction shall be deemed to be a Delay Event and the provisions of Clause 11 shall apply.

11. EXTENSION OF TIME

11.1. Delay Notice

If and when it becomes reasonably apparent that the progress of the Building Works is or will be or has been delayed beyond the Scheduled Commercial Operation Date by any Delay Event, the Concession Company shall immediately, but in any event not later than 7 Days from date of the occurrence or commencement of the Delay Event, give a written notice ("**Delay Notice**") to the Principal Agency's Representative of the material circumstances including the cause(s) of the delay and identify in such notice any event which in its opinion is a Delay Event.

11.2. Further Particulars

In respect of each Delay Event identified in the Delay Notice, the Concession Company shall, if practicable in such notice, or otherwise in writing within 7 Days of such notice, submit to the Principal Agency's Representative sufficient particulars of:

(a) the expected effects thereof, including the estimated length of delay (whether or not concurrent with delay resulting from any other Delay Event); and

(b) the effect of the Delay Event on the Building Works,

to enable the Principal Agency's Representative to assess the extension of time that may be granted.

11.3. Extension of Time

Not later than 14 Days from the receipt by the Principal Agency's Representative of sufficient particulars from the Concession Company, the Principal Agency's Representative shall either:

(a) grant to the Concession Company in writing either prospectively or retrospectively such extension of the Scheduled Commercial Operation Date and/or Milestone Date as shall be reasonable in relation to such Delay Event; or

(b) reject the Concession Company's application.

11.4. Delay Event

The following are the Delay Events referred to in this Agreement:

(a) failure of the Principal Agency to provide the Concession Company with reasonable access to the Site in accordance with this Agreement;

(b) Force Majeure;

(c) a Principal Agency Variation;

(d) written instruction by the Principal Agency's Representative as referred to in Clause 10.11(d); and

(e) any act of prevention or breach of this Agreement by the Principal Agency not stated in this Clause 11.

11.5. Condition Precedent to Extension of Time

The Concession Company's entitlement to an extension of time to the Scheduled Commercial Operation Date and any Milestone Date shall be conditional upon and subject to:

(a) the Concession Company using constantly its best endeavours to prevent delay or reduce to a minimum and mitigate the effect of any delay including having recourse to alternate sources of services, equipment and materials and construction equipment; and

(b) the Concession Company submitting the Delay Notice and particulars within the period stated in Clauses 11.1 and 11.2 respectively.

The Concession Company further agrees that the Scheduled Commercial Operation Date and any Milestone Date will not be extended to the extent that any delay to the Building Works would have nevertheless been experienced had the Delay Event not occurred.

11.6. Project Term

Notwithstanding any extension of time granted under this Clause 11 and any other provision of this Agreement, there shall be no extension to the Term pursuant to this Agreement.

12. OPERATION AND MAINTENANCE OF THE PLANT

12.1. Operation, Maintenance and Repair

During the Operating Period, the Concession Company shall operate, maintain and repair the Plant:

(a) in a manner consistent with all relevant equipment manufacturers' instructions and Good Industry Practice;

(b) in accordance with the O&M Plan and all Laws;

(c) to ensure the safe, reliable and efficient operation of the Plant and supply of the Chilled Water Service to the Tenants; and

(d) otherwise in accordance with this Agreement.

12.2. Records

The Concession Company shall monitor and document the performance of the Plant and maintain at the Plant accurate and up-to-date Monthly Operation Reports, daily operations logs, inventory control reports, fault and outage reports, plant performance records, maintenance reports and such other documents and records (collectively, "**O&M Records**") relating to the Plant as appropriate in accordance with Good Industry Practice. The Concession Company shall make available the O&M Records for the Principal Agency's review during normal workings hours upon reasonable notice from the Principal Agency.

12.3. Personnel on Duty

The Concession Company shall ensure that its personnel are on duty at the Plant at all times, 24 hours a Day and 7 Days a week throughout the Operating Period.

12.4. Access to the Plant

Without prejudice to any other rights of access to the Plant and the Site that the Principal Agency may have under this Agreement, the Lease Documents or in Law, in the event that the Principal Agency reasonably believes that the Plant does not have sufficient safety, security and protection systems in place in accordance with this Agreement and Good Industry Practice such that the continued operation of the Plant would or is likely to pose danger to or a threat to the safety or security of any part of the Plant and/or the Data Centre Park, the Principal Agency may undertake an inspection of the Plant either (i) immediately, in the event of an imminent danger or threat, or (ii) upon having served at least 24 hours prior written notice to the Concession Company, with reasons therefor, in all other circumstances.

12.5. Performance Guarantees

The Concession Company guarantees that:

(a) it shall make Available the Chilled Water Service to each Tenant for at least 8,738 hours for every Operating Year ("**Availability Guarantee**"), provided that for the first and last Operating Year which is less than a full Year, the Availability Guarantee shall be pro-rated based on the actual number of hours for that Operating Year; and

(b) in the event of any Outage affecting any Tenant, the Concession Company shall respond immediately and fully restore the Chilled Water Service to that Tenant within the Guaranteed Response Time.

12.6. Achievement of Performance Guarantees

For the purposes of determining whether or not the Concession Company has met the Performance Guarantees:

(a) the Availability in respect of each Tenant for every Operating Year shall be determined by the Principal Agency based on the Monthly Operating Records submitted by the Concession Company to the Principal Agency for that Operating Year; and

(b) the Response Time for each Outage occurring to any Tenant shall be determined by the Principal Agency based on the Monthly Operating Records submitted by the Concession Company to the Principal Agency for the Month in which the Outage has occurred,

provided that in the event the Concession Company for any reason fails to submit to the Principal Agency any Monthly Operating Records in accordance with Clause 12.7 or the details or records submitted are insufficient in the opinion of the Principal Agency to determine whether or not the Concession Company has met the Performance Guarantees, the Principal Agency may at its sole discretion determine the Availability or the Response Time (as the case may be) from any relevant records that may be available or provided to the Principal Agency (including meter readings and records given by any Tenant).

12.7. Notification of Outages and Monthly Operating Records

The Concession Company shall:

(a) notify the Principal Agency in writing any Outage affecting any Tenant immediately upon its occurrence and keep the Principal Agency promptly informed of the status with respect to all Outages (including the measures being taken (or to be taken) by the Concession Company to restore the Chilled Water Service and the estimated Response Time);

(b) provide to the Principal Agency Monthly Operating Records within 10 Days of the end of each Month; and

(c) promptly respond to any queries and provide any information as may be reasonably requested by the Principal Agency in respect of any Outage and Monthly Operating Records.

12.8. Exclusive Guarantees

The Performance Guarantees are exclusive of each other.

12.9. Guarantee Exclusions

The Performance Guarantees shall not apply to the extent that the Concession Company's failure to meet the affected Performance Guarantee is caused by a Legitimate Circumstance.

13. LIQUIDATED DAMAGES

13.1. Delay Liquidated Damages

If the Concession Company fails to achieve the completion of the Building Works on or before the Scheduled Commercial Operation Date, the Concession Company shall pay liquidated damages at a rate of S$2,770 for each day of delay (or part thereof) until the Commercial Operation Date or the termination by the Principal Agency of this Agreement (whichever is earlier).

13.2. Abandonment Liquidated Damages

If the Concession Company Abandons the Project, the Concession Company shall pay to the Principal Agency as liquidated damages an amount of S$10,000,000.

13.3. Performance Liquidated Damages

(a) If an Outage occurs in any Operating Year with respect to any Tenant, the duration of which when aggregated with the duration of all previous Outages, if any, occurring in the same Operating Year with respect to that Tenant exceeds 22 hours (pro-rated for any Operating Year which is not a complete Year), the Concession Company shall pay liquidated damages at the rate of S$1,040 for each hour (or part thereof) that the Availability is less than the Availability Guarantee with respect to that Tenant.

(b) If the Concession Company fails to respond and fully restore the Chilled Water Service within the Guaranteed Response Time for any Outage affecting any Tenant, the Concession Company shall pay liquidated damages at the rate of S$1,040 for every hour of delay (or part thereof) from the commencement of such Outage until the full restoration of the Chilled Water Service to that Tenant.

13.4. Payment of Liquidated Damages

(a) The Liquidated Damages (or any part thereof) shall be paid by the Concession Company to the Principal Agency within 10 Days of the Concession Company's receipt of a written notice from the Principal Agency demanding payment, failing which the Principal Agency shall be entitled to recover the Liquidated Damages from the subsisting Performance Bond.

(b) The payment or deduction of the Liquidated Damages under this Clause shall not relieve the Concession Company of its obligation to complete the Building Works, its obligation to rectify its failure to meet the Performance Guarantees and its other obligations and liabilities under this Agreement.

13.5. Genuine Pre-Estimate of Loss

(a) The Concession Company agrees and acknowledges that the Liquidated Damages shall not constitute a penalty and are reasonable, genuine and fair pre-estimates of the Principal Agency's unavoidable damages resulting from the Concession Company's delay, event or failure as described in Clauses 13.1, 13.2 and 13.3 respectively. The Concession Company by entering into this Agreement agrees to pay the Liquidated Damages to the Principal Agency if the same become due without the need of the Principal Agency to prove its actual damage or loss and recognises the expense and inconvenience likely to be incurred from any such need to prove the actual damage or loss suffered by the Principal Agency.

(b) In the event that the Principal Agency is held or declared by any Court of Law not to be entitled to recover Liquidated Damages under this Agreement for any reason whatsoever, the Principal Agency shall remain entitled to recover such losses, expenses, costs or damages as the Principal Agency is entitled to at Law. The Concession Company's liability to pay the Principal Agency such losses, expenses, costs or damages shall not be limited in any way by the amount of Liquidated Damages for which it might otherwise have been liable.

14. CHILLED WATER SUPPLY

14.1. Supply of Chilled Water to Tenants

During the Operating Period, the Concession Company shall supply Chilled Water Service to the Tenants:

(a) in accordance with the CWSAs and all Laws;

(b) in a manner consistent with Good Industry Practice; and

(c) otherwise in accordance with this Agreement.

14.2. Supply of Chilled Water to Third Parties

During the Operating Period, the Concession Company may at its own risk and cost supply Chilled Water to any third parties ("**Third Party Chilled Water Supply**") provided that:

(a) the Third Party Chilled Water Supply is in accordance with all Laws;

(b) the Third Party Chilled Water Supply shall not, in the Principal Agency's reasonable opinion, impair the ability of the Concession Company to supply Chilled Water Service to the Tenants in compliance with Clause 14.1 nor cause any material disruption, disturbance or inconvenience to the operations of the Tenants;

(c) prior to entry into of such arrangements for the Third Party Chilled Water Supply, the Concession Company has submitted details of the proposed Third Party Chilled Water Supply (which shall include the name of the proposed third party customer and duration of the proposed supply) to the Principal Agency and the Principal Agency has approved the proposed Third Party Chilled Water Supply within 15 Business Days from its receipt of such details. The Principal Agency shall be entitled to withhold its approval to such proposed Third Party Chilled Water Supply in its absolute discretion, or impose such terms and conditions to its approval as it may in its absolute discretion require; and

(d) the Third Party Chilled Water Supply shall not be on terms more favourable than those applying to the Tenants under the CWSAs (including the charges for the Third Party Chilled Water Supply which for the avoidance of doubt shall not be less than those charged to the Tenants on equivalent terms).

14.3. Commitment Period

(a) Subject to the Concession Company's compliance with Clause 17.1, the Principal Agency shall use its best endeavours to procure that each Tenant obtains Chilled Water from the Concession Company for the Commitment Period to satisfy the Tenant's chilled water supply requirements for the purpose of operating its Data Centre.

(b) The Tenants following the expiry of the Commitment Period may at their discretion satisfy part or all of their chilled water supply requirements by obtaining chilled water from the Concession Company and/or a third party chilled water supplier for the purpose of operating their respective Data Centres (or any part thereof) without any obligation or liability whatsoever on the part of the Principal Agency.

(c) The Principal Agency's obligation under this Clause 14.3 shall be deemed to have been satisfied in respect of each Tenant when in entering into any Data Centre Lease with that Tenant, incorporate in the Data Centre Lease provisions requiring that Tenant to obtain Chilled Water from the Concession Company for the Commitment Period to satisfy its chilled water supply requirements for the purpose of operating its Data Centre. The Principal Agency shall not be liable or responsible in any way in the event any Tenant institutes any contingency or business continuity plans for alternative chilled water supplies (whether in accordance with the CWSA or otherwise), fail to execute the CWSA with the Concession Company in breach of its Data Centre Lease or terminate, or breach any obligation under, the CWSA. Nothing in this Agreement shall require or oblige the Principal Agency to act as the mediator or otherwise intervene to resolve any issues or disputes that may arise between the Concession Company and any Tenant.

14.4. CWSA

(a) Unless the Tenant has elected to enter into an individualised CWSA with the Concession Company as contemplated in Clause 14.4(b), the Concession Company warrants that when entering into any CWSA, the CWSA shall materially conform to the CWSA Term Sheet (except for changes which have been approved in writing by the Principal Agency).

(b) The Concession Company shall in the first instance offer to provide Chilled Water Service to the Tenants on the terms and conditions which shall materially conform to the CWSA Term Sheet. Any Tenant following consideration of such terms and conditions may elect to:

(i) enter into the CWSA which materially conforms to the CWSA Term Sheet; or

(ii) enter into an individualised CWSA on individual terms and conditions to be agreed between that Tenant and the Concession Company.

Where the Tenant has elected to enter into an individualised CWSA with the Concession Company ("**Individualised CWSA Tenant**"), the Individualised CWSA Tenant may further elect to obtain the supply of the Chilled Water Service on the terms and conditions which materially conform to the CWSA Term Sheet on an interim basis pending the negotiations and finalisation of the individualised CWSA.

(c) The Concession Company shall do all things necessary (including entering into good faith negotiations with the Tenant) to give effect to the Tenant's election as contemplated in Clause 14.4(b). Should the Concession Company and an Individualised CWSA Tenant for any reason fail to agree on the terms and conditions of an individualised CWSA, the Concession Company shall procure such Individualised CWSA Tenant to accept and enter into a CWSA which shall materially conform to the CWSA Term Sheet.

(d) Except where required to comply with Clause 17.6, the Concession Company shall not agree to, or make, any material variation to the CWSA (including any change to the identity of the counterparties thereto), without the prior written consent of the Principal Agency, which consent will not be unreasonably withheld.

15. ELECTRICITY ENERGY SUPPLY

15.1. Supply of Electricity to the Plant

At all times during the Operating Period, the Concession Company shall at its own risk and cost:

(a) procure or produce sufficient electrical energy to enable the Plant to be operated so as to comply with its obligations under this Agreement; and

(b) provide or make available back-up electricity energy supply of not less than 100% of the Plant's energy requirements to supply Chilled Water Service to all Tenants in accordance with the CWSAs and this Agreement.

15.2. Supply of Electricity to the Grid System

The Concession Company may at its own risk and cost sufficient supply, sell and deliver electrical energy generated by the Plant to the Grid System ("**Grid Supply**"), provided that:

(a) the Grid Supply is in accordance with all Laws (including the Market Rules and the Transmission Code);

(b) the Grid Supply will not, in the Principal Agency's reasonable opinion, impair the ability of the Concession Company to supply Chilled Water Service to the Tenants in compliance with Clause 14.1; and

(c) prior to the commencement of the Grid Supply, the Concessional Company has obtained all relevant Authorisations (including the Electricity Licence).

15.3. No Claim against the Principal Agency

The Concession Company shall not be entitled to make any Claims against the Principal Agency on account of, nor are the Concession Company's obligations to supply Chilled Water Service to the Tenants in accordance with the CWSAs and this Agreement diminished or affected by, the interruption or cessation of the supply of electricity energy.

16. PRIORITY

During the Operating Period, the Concession Company shall ensure that the Plant shall at all times be made available for use in the following order of priority:

(a) the supply of Chilled Water Service to the Tenants;

(b) Third Party Chilled Water Supply; and

(c) Grid Supply.

17. CHARGES FOR SUPPLY OF CHILLED WATER

17.1. Prices charged by Concession Company

Unless the Tenant has elected to enter into an individualised CWSA with the Concession Company as contemplated in Clause 14.4(b), the Concession Company shall charge each Tenant for the supply of Chilled Water Service as follows:

(a) where its actual usage or consumption ("**Actual Load**") of the Chilled Water Service equals to or is higher than the Declared Demand Load of that Tenant, the Concession Company shall charge that Tenant the actual usage charge ("**Actual Usage Charge**") which is calculated as follows :

Actual Usage Charge = Actual Load(RT) * CWSA Charge ($/RTh) * Usage(h)

(b) where the Actual Load is less than the Declared Demand Load of that Tenant, the Concession Company shall charge that Tenant the minimum load charge ("**Minimum Load Charge**") which is calculated as follows :

Minimum Load Charge = Minimum Load Factor(%) * Declared Demand Load(RT) * CWSA Charge ($/RTh) * 730(h)

(c) in either case as described in Clause 17.1(a) or 17.1(b), the CWSA Charge shall be at a rate not exceeding the Price Ceiling.

17.2. Review of Price Ceiling Adjustment Formula and Minimum Load Factor

The Price Ceiling Adjustment Formula and the Minimum Load Factor shall be reviewed at the times and in the manner as follows:

(a) the *Eff* component of the Price Ceiling Adjustment Formula shall be reviewed upon the expiry of every Operating Year Block; and

(b) the *A*, *B*, *C* and *Eff* components of the Price Ceiling Adjustment Formula and the Minimum Load Factor shall be reviewed upon the 10th and 20th anniversary of the Commercial Operation Date,

(each such timeline referred to as "**Review Date**" and each such component and factor referred to as "**Relevant Component**").

17.3. Review Data

The Concession Company shall not later than 4 Months prior to each Review Date furnish to the Principal Agency the Review Data for purposes of the review of the Relevant Component as contemplated in Clause 17.2.

17.4. Rights of Review

(a) The Concession Company shall provide, and shall procure that its Affiliates shall provide, the Principal Agency and their authorised representatives and agents, upon prior reasonable notice, unrestricted access to all documents, records and materials (collectively, "**Review Documents**") in its or their possession or under its or their control, for the purpose of reviewing and verifying the completeness and accuracy of the Review Data, and to take copies of all such Review Documents ("**Review**"). The Concession Company shall also procure that: (i) its brokers and agents; and (ii) the EPC Contractor, the O&M Contractor and its other direct contractors directly provide the Principal Agency and its authorised agents and representatives all such Review

Documents as may be reasonably requested by the Principal Agency and its authorised agents and representatives for the purpose of the Review.

(b) The Concession Company shall preserve the Review Documents in appropriate detail in accordance with good and generally accepted Accounting Principles so as to accurately provide and substantiate the information to be given under Clause 17.3.

17.5. Good Faith Discussions

The parties shall enter into good faith discussions with a view to agree on the revisions to the Relevant Component, within 30 Days after the completion of the Review or where no such Review is carried out by the Principal Agency at its discretion, 30 Days after the Principal Agency's receipt of the Review Data ("**Review Period**"). If the parties are unable to agree upon the appropriate revisions within the Review Period, either party may refer the dispute to an Expert for determination in accordance with Clause 30.7.

17.6. Compliance under CWSAs

Unless the Tenant has elected to enter into an individualised CWSA with the Concession Company as contemplated in Clause 14.4(b), the Concession Company warrants that the Tenants will be charged for the Chilled Water Supply in the manner as set out in Clause 17.1 and the Concession Company shall when entering into any CWSA, incorporate in the CWSA provisions allowing the CWSA (including the CWSA Charges) to be revised accordingly in order to comply with this Clause 17 (including any adjustment made to the Price Ceiling and the Minimum Load Factor pursuant to this Clause 17).

17.7. Right to Publish

The Principal Agency may (but shall not be obliged to) from time to time publish, circulate or otherwise notify any Tenants (or direct the Concession Company to do any of the aforesaid) the Price Ceiling and/or the Price Ceiling Adjustment Formula (through or in any medium or form) without notice or liability whatsoever to the Concession Company.

18. REPRESENTATIONS, WARRANTIES AND COVENANTS

18.1. Mutual Representations and Warranties

Each party represents and warrants that as of the Signing Date and the Conditions Satisfaction Date:

(a) **authority**: it has full power and authority to enter into and perform its obligations under this Agreement;

(b) **authorisations**: it has taken all necessary action to authorise the execution, delivery and performance of this Agreement in accordance with its terms; and

(c) **binding obligations**: this Agreement constitutes legal, valid and binding obligations and, subject to any necessary stamping and registration, is enforceable in accordance with its terms.

18.2. Concession Company Warranty

(a) In addition to any other warranties contained in this Agreement and any implied terms or warranties imposed by any Law, the Concession Company represents and warrants that as of the Signing Date and the Conditions Satisfaction Date, the Concession Company and all of its Officers, subcontractors, employees and consultants involved in the Project are duly licensed at Law and have the requisite skill, expertise and capabilities to carry out the Concession Company's obligations under this Agreement.

(b) The Concession Company warrants that the design and construction of the Plant will conform with the Design and Technical Specifications and the other requirements set out in Clause 10.1, and the Building Works will be in accordance with this Agreement and free from defects and deficiencies.

18.3. Concession Company Covenants

The Concession Company covenants and undertakes that:

(a) **Site**: it will maintain the Site in a good, safe, secure and clean condition and punctually pay all sums due under the Lease Documents and other payments, and comply with all its obligations under the Lease Documents;

(b) **Plant**: it will:

(1) be the legal and beneficial owner of the Plant;

(2) comply with all Laws in relation to the Plant (including in the manner in which the Plant is used) and all of its agreements that have an effect on the Plant;

(3) keep the Plant (including all fixtures and fittings, machinery, and other equipment) operable and in good state and condition (including by replacing, rebuilding or renewing those parts of the Plant where necessary);

(4) not carry out or permit any:

(A) material alterations or additions to the Plant (whether structural or otherwise), unless otherwise required or permitted under this Agreement;

(B) additional development (beyond the development necessary to bring the Plant to operation in the manner as contemplated by this Agreement); and

(C) change in use of the Plant or part of the Plant, except:

(i) with the prior written consent of the Principal Agency (which may be given with or without conditions); or

(ii) as otherwise required under this Agreement;

(5) not enter into any agreement with a person (other than the Project Agreements) under which:

(A) that person obtains a right to prevent or limit the Concession Company's use of the Plant or any part of the Plant; or

(B) the Plant or any part of the Plant and/or the ability of the Concession Company to perform its obligations under this Agreement will be adversely affected;

(6) inform the Principal Agency promptly upon becoming aware of any:

(A) agreements, interests, or other rights which adversely affect the Plant or any part of the Plant (other than in the Project Agreements); and

(B) notice of any adverse Claim by any person in respect of the ownership of the Plant or any part of the Plant;

(7) promptly pay as and when due, all Taxes and outgoings which are assessed, charged or imposed upon or payable in respect of the Plant; and

(8) if it becomes aware of any act or condition materially affecting or is likely to materially affect the Project or its ability to perform its obligations under this Agreement and any other Project Agreement, promptly notify the Principal Agency and provide the Principal Agency with a written report describing the occurrence of that act or condition;

(c) **Negative undertakings**: it will not, without the prior written consent of the Principal Agency:

(1) incur any financial indebtedness or create or grant any Encumbrance over the whole or any part of the present and future assets of the Concession Company (other than financial indebtedness or an Encumbrance created under a Financing Document);

(2) sell or dispose of any of its assets other than in the ordinary course of business;

(3) engage in any business activity other than those specifically related to the Project;

(4) enter into any merger or consolidation or acquire any investment in any business;

(5) make or agree to make available any loan or other financial accommodation whatsoever to or for any person (other than in the ordinary course of business); and

(6) directly or indirectly, purchase, acquire or lease any property from or sell, transfer or lease any property to, or otherwise have any dealings or enter into any transactions with, any Affiliate;

(d) **Litigation:** it will inform the Principal Agency, promptly upon it (or its Affiliate) becoming aware of:

(1) any pending or threatened, action, suit, investigation, arbitration or other proceeding that could impair the ability of the Concession Company to perform its obligations under this Agreement;

(2) writs, judgments, injunctions, decrees or similar orders of any Government Agency outstanding against the Concession Company which could adversely affect its occupancy, use, operation or maintenance of the Plant or the Site; or

(3) a breach or potential breach of any Law which affects:

(A) the value of the Plant or the Building Works;

(B) the Concession Company's use or occupancy of the Site; or

(C) the Concession Company's right to construct the Plant, or own or operate the Plant on the Site, in circumstances where the breach or potential breach has (or is likely to have) a material adverse effect on:

(i) the ability of the Concession Company to perform its obligations under this Agreement; or

(ii) the ability of the Concession Company to use the Site for the purposes contemplated by this Agreement or by other Project Agreement;

(e) **Environmental Law**: it will:

(1) comply with all Environmental Laws and the terms and conditions of all Authorisations applicable to the Project;

(2) notify the Principal Agency, promptly upon becoming aware, of any Claim under any Environmental Law which is current or to the Concession Company's knowledge pending or threatened against the Concession Company that will have a material adverse effect on the ability of the Concession Company to perform its obligations under this Agreement; and

(3) notify the Principal Agency promptly upon becoming aware of any act, omission, event or circumstance which could form the basis of any Claim against it under any Environmental Law and that will have a material adverse effect (or is likely to have material adverse effect) on the ability of the Concession Company to perform its obligations under this Agreement; and

(f) **No solicitation**: it has not and will not:

(1) offer, give or agree to give any person any gift or consideration as an inducement or reward for doing or not doing any action in relation to the obtaining or execution of this Agreement; or

(2) otherwise commit or abet any offence or attempt to commit or abet an offence under the Penal Code (Cap. 224) or the Prevention of Corruption Act (Cap. 241).

18.4. Concession Company's Acknowledgements, Waivers and Indemnity

(a) Without prejudice to Clause 8, the Concession Company acknowledges and agrees that, except as expressly set out in this Agreement and the Lease Documents:

(1) the Principal Agency has not made any representation, given any advice or given any warranty or undertaking of any kind in respect of:

(A) any of the Project Agreements;

(B) any transaction or arrangement contemplated under any of the Project Agreements; or

(C) any other matter relevant to the Concession Company's decision to enter into the Project Agreements; and

(2) the Principal Agency is not liable, and the Concession Company has no Claims whatsoever against the Principal Agency (or any person acting on behalf of, or associated with, the Principal Agency) for any Loss, damage or Claim (including any Claim due to the negligence of the Principal Agency) which arises as a consequence of any information or representation provided by the Principal Agency Parties being incomplete, inaccurate or misleading.

(b) Without limiting Clause 18.4(a), the Concession Company acknowledges and agrees that:

(1) the Disclosed Information, and all Intellectual Property in the Disclosed Information, will remain the property of the Principal Agency; and

(2) the Concession Company has not relied in any way on any information provided by, or the skill or judgment of, the Principal Agency or any person acting on behalf of or associated with the Principal Agency, and the Concession Company has relied absolutely on its own opinion and professional advice based upon their own independent analysis, assessment, investigation and appraisal, in deciding to enter into this Agreement or the other Project Agreements.

(c) The Concession Company indemnifies the Principal Agency and will hold it harmless against all Claims and liabilities that it may sustain or incur as a result of or in connection with any breach of this Clause 18.4 by the Concession Company.

18.5. Continuing Warranties

(a) The representations, warranties and covenants in Clauses 8.1(b), 18.1 and 18.2 are deemed to be repeated by the Concession Company on 1 January of each Year after the Signing Date until the termination or expiry of this Agreement, with reference to the facts and circumstances existing at that time.

(b) The Concession Company shall promptly notify the Principal Agency in writing if any representations, warranties and covenants given by it in Clauses 8.1(b), 18.1 and 18.2 ceases to be true in any material respect.

18.6. Independent Warranties

Each warranty made by the parties under this Agreement is independent and is not limited by reference to any other warranty in the relevant Clause.

19. MONITORING, RECORDS AND AUDIT

19.1. Monitoring

(a) The Principal Agency has the right from time to time to:

(i) monitor the Project and access the Plant; and

(ii) review and make copies as reasonably requested by the Principal Agency of all materials relevant to the exercise of the Principal Agency's audit rights under Clause 19.2.

(b) The monitoring and review rights referred to in Clause 19.1(a) may be exercised by the Principal Agency for the purposes of amongst others:

(i) determining, in the case of design, engineering, procurement and construction, whether the Plant is designed, engineered, constructed, tested and commissioned in accordance with the Design and Technical Specifications, the Implementation Schedule, and otherwise in accordance with this Agreement;

(ii) observing the progress of construction, testing and commissioning of the Plant;

(iii) in the case of operations, determining whether the Plant is being operated and maintained (whether by reviewing operating data, sampling, carrying out Performance Guarantee Tests, testing or other means) in accordance with the terms of this Agreement and Good Industry Practice;

(iv) determining whether the Concession Company has met the Performance Guarantees and, if applicable, the amount of Performance Liquidated Damages payable; and

(v) verifying any Claim by the Concession Company for costs.

(c) The Concession Company shall permit the Principal Agency to conduct monitoring and review during normal business hours upon reasonable notice to the Concession Company. The monitoring and review must be conducted in the presence of and, in the case of inquiries addressed to the Concession Company's employees and contractors, through a representative of the Concession Company designated by the Concession Company for this purpose. For the avoidance of doubt, nothing in this Clause shall limit the Principal Agency's rights and remedies under the Lease Documents.

19.2. Books, Records and Audit

(a) The Concession Company shall:

(i) prepare, maintain and keep on Site separate, up to date books of account relevant to the performance of its obligations under this Agreement;

(ii) maintain proper and true accounts relevant to the performance of its obligations under this Agreement in accordance with good and accepted Accounting Principles and all relevant Laws;

(iii) maintain on Site copies of the accounts and records for the period of time specified in Clause 19.2(c); and

(iv) within the first Month of each financial year of the Concession Company, submit to the Principal Agency the audited accounts in respect of the Plant so as to allow the Principal Agency to conduct a review of the CWSA Charges and other charges imposed by the Concession Company on the Tenants and to verify its compliance under Clause 14.1 and 14.2(d).

(b) The Principal Agency may at reasonable times during the Term, and at its own expense, conduct audits pertaining to metering, invoicing, adjustments of the Price Ceiling, Price Ceiling Adjustment Formula and CWSA Charges, additional costs, indemnity claims, termination payments, reimbursements and any other charges in all such cases for the purpose of determining whether the Concession Company's charges have been computed in accordance with the provisions of this Agreement. The Concession Company must make available to the Principal Agency any personnel, contractors or consultants of the Concession Company as reasonably requested by the Principal Agency to assist in explaining the records, data and other information being audited by the Principal Agency.

(c) The Principal Agency has the right, upon reasonable prior written notice to the Concession Company, to examine and/or make copies of the records and data referred to in Clauses 19.2(a) and (b) at any time during normal office hours during the period such records and data are required to be maintained. All records and data must be maintained for a minimum of 6 Years after the creation of such record or data and for any additional length of time required by Government Agencies with jurisdiction over the Concession Company. Upon expiration of that 6 Year period, the Concession Company may not dispose of nor destroy any such records or data without first giving 30 Days' prior written notice to the Principal Agency.

19.3. Disclaimer

(a) Any review or audit conducted under this Clause 19 is solely for the Principal Agency's own information and the Principal Agency does not endorse the design, engineering, construction or operation of the Plant, or make any representation or warranty of the safety, durability or reliability of the Plant or any part of the Plant by reason of that review or audit.

(b) The Concession Company shall not represent to any third party that, as a result of any review or audit conducted under this Clause 19, the Principal Agency is responsible for the design, engineering or construction, or the safety, durability or reliability of the Plant or any part of the Plant.

20. TRANSFER AND ASSIGNMENT

(a) Subject to Clause 20(b), the Concession Company may not sell, assign or transfer its interest under this Agreement to any person ("**Transferee**") without the Principal Agency's prior written consent. The Concession Company shall provide the Principal Agency with reasonable details of the Transferee at a reasonable time before the proposed date of such sale, assignment or transfer.

(b) For the purposes of financing the Project, the Concession Company may assign, charge, encumber, transfer or otherwise create a security in favour of the Financing Party over all or any of its rights and interests under or pursuant to this Agreement, any other Project Agreement, the Plant, the Site, the moveable property, the revenues or any of the rights or assets of the Concession Company.

(c) Any actual, attempted or purported sale, assignment or other transfer by the Concession Company of any of its rights or obligations or interests in, under or pursuant to this Agreement that does not comply with the terms of this Clause 20 shall be null, void and of no force or effect.

21. INTELLECTUAL PROPERTY

21.1. Ownership

(a) The Concession Company shall grant to the Principal Agency a global, royalty-free, transferable, perpetual, non-exclusive licence to use all Intellectual Property in any Proprietary Information:

(i) owned by or licensed to the Concession Company on the Signing Date; and

(ii) first discovered or developed by the Concession Company during the course of performing its obligations under this Agreement,

if the Principal Agency takes over or purchases the Project in accordance with this Agreement.

21.2. Warranty by the Concession Company

(a) The Concession Company warrants to the Principal Agency that:

(i) the Concession Company owns or has obtained licences to use, or will own or will obtain licences to use, at the relevant time, all Intellectual Property rights in any Proprietary Information provided by the Concession Company and necessary for performance of the Concession Company's obligations under this Agreement; and

(ii) the performance of the Concession Company's obligations under this Agreement will not infringe any other person's Intellectual Property rights.

(b) This warranty survives the termination of this Agreement.

(c) If the Concession Company is in any way prevented from performing its obligations or exercising its rights under this Agreement as a direct or indirect consequence of any Claim for the alleged breach of any Intellectual Property right, the Concession Company shall:

(i) inform the Principal Agency of that fact as soon as reasonably practicable; and

(ii) at its sole cost take all steps necessary to defend the Claim and secure the right to perform its obligations or exercise its rights in the manner intended.

(d) If the Concession Company is unsuccessful in the proceedings referred to in Clause 21.2(c), or is otherwise unable to secure the right to perform its obligations or exercise its rights under this Agreement within the time required by the Principal Agency, the Concession Company will take such steps or carry out such modifications, at no cost to the Principal Agency and to full satisfaction of the Principal Agency, to ensure that the Concession Company can perform its obligations and exercise its rights under this Agreement.

22. INDEMNITY

22.1. Indemnification by the Concession Company

(a) The Concession Company shall be liable for and shall indemnify, defend and hold harmless the Principal Agency Parties, from and against all Claims made against, or Loss suffered by any the Principal Agency Parties as follows:

(i) any Claim or Loss arising from loss of or damage to real or personal property (including the man-made or artificial features or obstructions referred to in Clause 8.1(c)), or death or injury to persons resulting from any act, omission, default or breach of the Concession Company that arises out of, or is in any manner connected with, the performance of this Agreement;

(ii) under any applicable Environmental Law arising out of the state and condition of the Site, the Concession Company's ownership or operation of the Plant including the discharge, release, storage, treatment, generation, disposal or escape of pollutants or other toxic or hazardous substances from the Plant, the contamination of the soil, air, sea, surface water or groundwater at or around the Site or any pollution, abatement, replacement, removal or other decontamination or monitoring obligations;

(iii) under any Law arising out of the Concession Company's design, construction, testing, commissioning (or decommissioning) and operation of the Plant;

(iv) any Claim, Loss or action arising from any use of the Concession Company's Intellectual Property or any design, materials, documents and methods of working provided by the Concession Company which infringes or is claimed to infringe any third party's rights to any Intellectual Property; and

(v) any Claim, Loss or action made, suffered or instituted by any Tenant arising from any act, omission, default or breach of the Concession Company that arises out of, or is in any manner connected with, the performance of this Agreement or the CWSA.

22.2. Procedures

(a) The Principal Agency shall notify the Concession Company in writing of any matter potentially indemnifiable under this Agreement as soon as the Principal Agency becomes aware of a potentially indemnifiable event provided that the failure to provide timely notice does not reduce the Concession Company's obligation to indemnify the Principal Agency.

(b) The Principal Agency will not be indemnified by the Concession Company to the extent the Principal Agency has received payment for a Claim or Loss from another source.

(c) If after receipt of payment from the Concession Company in respect of a Claim or Loss the Principal Agency receives a payment from another source in respect of that Claim or Loss, the Principal Agency must promptly pay to the Concession Company an amount equal to the amount of the payment received from such other source in respect of that Claim or Loss (provided that the Principal Agency is not obliged to pay an amount in excess of the amount paid by the Concession Company to the Principal Agency).

(d) The Concession Company shall pay to the Principal Agency all reasonable costs and expenses incurred by the Principal Agency in the enforcement of this Clause 22.2 if the Concession Company admits, or is adjudged, to have breached its obligation to indemnify the Principal Agency for a Claim or Loss.

23. FINANCIAL MODEL

23.1. Financial Model

(a) At all times during the Term, the Concession Company shall not agree to, or make, any amendments, modifications or supplements to, or consent to any changes to the Financial Model without the prior written consent of the Principal Agency.

(b) The Concession Company shall comply and adhere to the Financial Model, and shall not materially deviate from the Financial Model (including varying the amounts of Senior Debt and/or Equity as set out in the Financial Model as at Conditions Satisfaction Date) without the prior written consent of the Principal Agency.

23.2. Concession Company Refinancing

(a) Without limiting Clause 23.1, the Concession Company shall not undertake any Refinancing without the prior written consent of the Principal Agency, except if such refinancing is an Exempt Refinancing in which case the prior written consent of the Principal Agency shall not be required. The Concession Company shall inform the Principal Agency in writing of any Exempt Refinancing which occurs.

(b) Where the prior written consent of the Principal Agency is required pursuant to Clause 23.2(a), the Principal Agency shall be entitled to withhold its consent in its absolute discretion, or impose such terms and conditions to its consent as it may in its absolute discretion require

24. INSURANCES

24.1. Insurance Policies

(a) Without limiting and/or without prejudice to the Concession Company's obligations under this Agreement, the Concession Company, at its sole cost, shall obtain and maintain in effect, as a minimum, such insurance policies and coverage as is required by Law, the Financing Documents, the Lease Documents and Good Industry Practice (including the contractor's all-risk insurance during the Construction Period and all risk property/machinery insurance during the Operating Period).

(b) Notwithstanding the provision by the Principal Agency of any information, requirement or recommendation in respect of any insurance coverage or insurance policies, or any review by the Principal Agency of the insurance policies or the receipts and statements of such insurance policies obtained by the Concession Company:

(i) the Principal Agency will not be responsible for the adequacy of the insurance coverage, or any insurance policies, obtained by the Concession Company; and

(ii) the Concession Company remains liable for any failure to comply with its obligations to obtain the required insurance coverage and policies under this Clause 24.

24.2. Endorsements

All insurance policies maintained by the Concession Company under this Clause 24 shall:

(a) state that such insurance is primary, or excess only with respect to the specific primary policy provided by the Concession Company for such coverage, and not excess or contributing in respect to any other insurance (or self-insurance) available to the Principal Agency Parties or the additional insured and that all provisions thereof, except the limits of liability, shall operate in the same manner as if there were a separate policy covering each insured under each such policy;

(b) provide that the following cross liability clause is incorporated into each and every insurance policy maintained by the Concession Company under this Clause (other than any workmen's compensation insurance for its personnel): "In the event of claims being made by reason of: (i) personal and/or bodily injuries suffered by any employee or employees of one insured hereunder for which another insured hereunder is or may be liable; or (ii) damage to property belonging to any insured hereunder for which another insured is or may be liable, then this policy shall cover such insured against whom a claim is made or may be made in the same manner as if separate policies have been issued to each insured hereunder, except with respect to the limits of insurance";

(c) provide that there will be no recourse against any additional insured for the payment of premiums or commissions, or deductibles or, if such policies provide for the payment thereof, additional premiums or assessments or deductibles, it being understood that these are obligations of the Concession Company;

(d) waive any right of subrogation of the insurers against the Principal Agency Parties in respect of a Claim arising under its insurance policies;

(e) with respect to the interest of any additional named insured, provide that such insurance shall not be invalidated regardless of any breach or violation of any warranty, declaration or condition contained in such insurance by the primary named insured or any other named insured; and

(f) with respect to its comprehensive or public liability insurance, the Principal Agency and its directors, Officers, employees and agents shall be additionally insured under those policies. Insurance proceeds shall be payable to the named insured and the additionally insured as their interests may appear.

24.3. Insurance Certificates

The Concession Company shall upon the Principal Agency's request provide to the Principal Agency certificates of insurance evidencing the policies and terms specified in this Clause 24.

24.4. Payment of Premiums

The Concession Company shall punctually pay all premiums due under the insurance policies contemplated in this Clause and not do or omit to do anything which may result in such insurance policies being cancelled or terminated or entitle any insurer not to pay a claim thereunder. The Concession Company shall upon the Principal Agency's request provide the Principal Agency with copies of receipts or statements from its insurers evidencing payment of the annual premiums in respect of the insurance coverages and endorsements or that such premiums are not overdue.

24.5. Notice of Potential Claims

The Concession Company shall, as soon as practicable, inform the Principal Agency in writing of any occurrence that may give rise to a claim under an insurance policy required under this Clause and shall keep the Principal Agency informed of subsequent developments concerning the claim.

24.6. Failure to Procure Insurance

(a) If the Concession Company fails to procure or maintain any insurance required under this Clause 24, the Principal Agency shall be entitled to procure that insurance at the Concession Company's expense, provided:

(i) the Principal Agency gives 14 Days prior written notice to the Concession Company of its intention to exercise such right; or

(ii) if that intention arises from the Concession Company's non-payment of premiums for existing insurance, the Principal Agency shall at least give 5 Days prior written notice of such intention.

(b) The Concession Company shall reimburse the Principal Agency for those premiums paid under Clause 24.6(a) within 5 Days of being notified to do so, failing which the Principal Agency is entitled to recover such premiums under the Performance Bond.

24.7. Application of Insurance Proceeds

(a) Subject to Clause 24.7(c) and 24.7 (d), the Concession Company shall apply all insurance proceeds ("**Insurance Proceeds**") received by it:

(i) in the case of comprehensive or public liability insurance or workmen's compensation insurance, in satisfaction of the claim, demand, proceeding or liability in respect of which such proceeds are payable; and

(ii) in the case of any other insurance, to ensure the performance by Concession Company of its obligations under this Agreement, including where necessary the reinstatement, restoration or replacement ("**Repair**") of the Plant.

(b) If the Insurance Proceeds are insufficient to cover the settlement of any claims referred to in Clause 24.7(a)(i) or to Repair the Plant, the Concession Company shall make good any shortfall.

(c) In the event the Plant is entirely or substantially destroyed or damaged by a Force Majeure Event such that the Plant is incapable of operation without its entire or substantial rebuilding, the Concession Company shall promptly notify ("**Loss Proceeds Notification**") the Principal Agency in writing the amount of the Insurance Proceeds ("**Loss Proceeds**") received (or to be received) by the Concession Company in respect of such destruction or damage. The Principal Agency shall be entitled, at its sole and absolute discretion, to elect, by written notice to the Concession Company within 30 Days from the Loss Proceeds Notification, to require the Concession Company not to apply the Loss Proceeds towards the Repair of the Plant. During such 30-Day period, the Concession Company shall provide information and documents as may be reasonably required by the Principal Agency in order to enable the Principal Agency to assess whether it should make such election under this Clause.

(d) Upon written notification of the Principal Agency's election under Clause 24.7(c):

this Agreement shall terminate and the provisions of Clause 28.5(b) shall apply as though the Principal Agency had terminated this Agreement for prolonged Force Majeure under Clause 28.3; and

(i) the Loss Proceeds shall first be applied towards any payment of purchase price payable by the Principal Agency to the Concession Company as determined in accordance with paragraph 3 of **Annexure 11** and any balance thereof shall be paid to the Principal Agency.

25. FORCE MAJEURE

25.1. Definition of a Force Majeure

For the purposes of this Agreement, "**Force Majeure**" means any of the following events or circumstances:

(a) acts of war (whether declared or not), invasion or act of foreign enemy, in each case occurring within or involving the Republic of Singapore;

(b) acts of rebellion, riot, civil commotion, strikes of a political nature, act or campaign of terrorism, or sabotage of a political nature in each case occurring within the Republic of Singapore;

(c) nuclear contamination of the Plant or the Site (unless the Concession Company or a Concession Company Party is the source of such nuclear contamination);

(d) chemical or biological contamination of the Plant or the Site (unless the Concession Company or a Concession Company Party is the source of such contamination);

(e) lightning, fire, earthquake, epidemic or plague, tsunami, unusual flood, storm, cyclone, typhoon, tornado or other natural calamity;

(f) strikes, works to rule or go-slows (other than by employees of the party claiming this as a Force Majeure or of any shareholders of such party, or by employees of any direct or indirect Affiliate, parent or subsidiary of any shareholder of that party); and

(g) accidents or explosions (except if such accidents or explosions are caused by the fault or negligence of the party claiming this as Force Majeure);

provided that any such event or circumstance:

(1) is not within the reasonable control, directly or indirectly, of the party affected ("**Affected Party**") resulting in or causing a total or partial failure of the Affected Party in the fulfilment of any of its obligations under this Agreement (other than the payment of money);

(2) that event, despite the exercise of reasonable diligence, cannot be or could not have been prevented, avoided or removed by the Affected Party;

(3) the Affected Party took, or has taken, all reasonable precautions, due care and reasonable alternative measures in order to avoid the effect of such event on the Affected Party's ability to perform its obligations under this Agreement and to mitigate the consequences of that event;

(4) the event is or was not the direct or indirect result of the breach by the Affected Party of any of its obligations under this Agreement or any of the other Project Agreements; and

(5) the Affected Party has given the other party ("**Non-Affected Party**") notice in accordance with Clause 25.2(a).

25.2. Responsibilities of the Parties during a Force Majeure

(a) An Affected Party shall advise the Non-Affected Party in writing ("**Force Majeure Notice**") of:

(i) the date of commencement of the Force Majeure;

(ii) the nature and expected duration of the Force Majeure;

(iii) the anticipated effect of the Force Majeure on the performance of the obligations by the Affected Party; and

(iv) the actions to be taken in order to comply with requirements of this Clause 25.

(b) The Force Majeure Notice shall be sent by the Affected Party no later than 10 Days after the date on which the Affected Party first had knowledge or ought reasonably to have knowledge of the Force Majeure. If the Affected Party does not deliver the Force Majeure Notice in accordance with this Clause 25.2(b), the Affected Party is not entitled to rely on this Clause 25 for the period prior to delivery of the late Force Majeure Notice.

(c) The Affected Party shall:

(i) make all reasonable efforts to prevent and reduce to a minimum and mitigate the effect of any delay occasioned by any Force Majeure and to have recourse to alternate sources of services, equipment and materials and construction equipment; and

(ii) use its best efforts to ensure resumption of normal performance of this Agreement after the cessation of any Force Majeure as promptly as possible and otherwise perform its obligations in accordance with this Agreement.

(d) Within 10 Days following the cessation of any Force Majeure, the Affected Party shall submit to the Non-Affected Party reasonable proof of the nature of the delay and its effect upon the performance of the obligations of the Affected Party under this Agreement.

25.3. Effect of Force Majeure on Performance

Except as provided in Clause 25.4, but subject always to the provisions of Clause 25.2(c), the Affected Party shall be excused from performance and will not be construed to be in default or breach of this Agreement for so long as, and to the extent that, the failure to perform the obligation is due to a Force Majeure event. The Affected Party shall, however, continue to perform all of its obligations under this Agreement which are not affected by Force Majeure in accordance with this Agreement. For the avoidance of doubt, the Affected Party shall not be entitled to Claim from the Non-Affected Party any Loss arising from or as a result of the Force Majeure event (including any prolongation costs, repair costs and loss of profits).

25.4. Effect of Force Majeure on CWSA Charges

The provisions in Clause 17 (including Clause 17.1 in respect of the CWSA Charges) shall apply with no change during any period of Force Majeure.

25.5. Delay Relief

If a Force Majeure occurs prior to the Commercial Operation Date which results in material damage to, or loss of the Plant or delay in achieving a Milestone Date or the Scheduled Commercial Operation Date, then the following shall occur:

(a) as soon as practicable after service of the Force Majeure Notice the parties shall:

(i) consult between themselves the effect of the Force Majeure upon the affected Milestone Dates and/or the Scheduled Commercial Operation Date; and

(ii) agree an equitable adjustment to the Implementation Schedule and/or the Scheduled Commercial Operation Date, including the Milestone Dates to take into account the effect and the ability of the Concession Company to reschedule any part of the Building Works to avoid or minimise overall delays resulting from the Force Majeure.

(b) If the parties are unable to agree upon the equitable adjustment of the Implementation Schedule (including the Milestone Dates) within a period of 30 Days after the Non-Affected Party received the Force Majeure Notice, either party is entitled to submit this Dispute for determination in accordance with the provisions of Clause 30.

25.6. Certain Events do not Constitute Force Majeure

For the avoidance of doubt, the following events shall not constitute Force Majeure:

(a) the Concession Company's inability to obtain access to, or supply of, energy for operation of the Plant;

(b) any order of a Government Agency issued for health or safety reasons by reason of any act or omission of the Concession Company requiring any act on the part of the Concession Company which limits the ability of the Concession Company to provide Chilled Water under this Agreement;

(c) any action, inaction, intended action or intended inaction by a Government Agency of which the Concession Company was or should have been aware (such as publicly-available draft Law) prior to signing this Agreement;

(d) any failure by a party to reach agreement with a third party;

(e) lack of funds for any reason or inability to use available funds for any reason;

(f) failure of either party to make any payment of money in accordance with its obligations under this Agreement;

(g) late or non-delivery of equipment, machinery, the Plant or materials caused by the breach or negligent acts or omissions on the part of the Concession Company or any contractor;

(h) late performance by the Concession Company or any contractor caused by the Concession Company's failure to engage qualified contractors and suppliers or to hire an adequate number of personnel or labour;

(i) mechanical or electrical breakdown or failure of equipment, machinery or plant owned or operated by either party due to the manner in which such equipment, machinery or plant has been operated or maintained;

(j) failure of either party to perform any of its obligations under this Agreement in accordance with the requirements thereof which contributed to the occurrence of a Force Majeure;

(k) unfavourable weather, unfavourable or unsuitable ground conditions, or other similar adverse conditions; and

(l) lack or insufficient number of Tenants occupying the Data Centre Park, or lack or insufficient demand for Chilled Water services, for any reason.

26. PRINCIPAL AGENCY VARIATION AND CHANGE IN LAW

26.1. Principal Agency Variation

(a) The Principal Agency shall be entitled to propose Variations by written notice (**the** "**Principal Agency Variation Notice**") to the Concession Company.

(b) The Concession Company shall, as soon as practicable and in any event within 21 Days from receipt of the Principal Agency Variation Notice, give notice to the Principal Agency's Representative:

(i) whether, in the Concession Company's opinion, any adjustments to the provisions of this Agreement would be necessary as a result of the proposed Variation to enable the Concession Company to perform its obligations under this Agreement; and

(ii) the estimated increase or reduction in the annual operating costs for each Operating Year which would result if the proposed Variation were carried out and the estimated capital cost of carrying out the proposed Variation,

accompanied by full details and supporting evidence (the " **Principal Agency Variation Proposal**").

(c) As soon as practicable after the matters referred to in Clause 26.4(a) have been agreed between the parties, or determined by the Expert pursuant to Clause 26.4(c), the Principal Agency's Representative shall either confirm the proposed Variation (as modified under Clause 26.4(c), if applicable) (the "**Confirmed Principal Agency Variation**") or withdraw it. If the Principal Agency does not confirm the proposed Variation within 30 Days after such agreement or determination, it shall be deemed to have been withdrawn.

(d) The Concession Company shall carry out with all diligence and complete within a reasonable period all work necessary to comply with or give effect to a Confirmed Principal Agency Variation and, be bound by the provisions of this Agreement as though that Confirmed Principal Agency Variation were provided for in the Design and Technical Specifications.

26.2. Certain Instructions or Requests do not Constitute a Principal Agency Variation

The following shall not constitute a Principal Agency Variation:

(a) any instruction, comment or request which has arisen due to or is necessitated by and/or any Variation intended to cure any default of and/or breach of this Agreement by the Concession Company;

(b) any changes to the Building Works pursuant to any comment or request by the Principal Agency for which the Concession Company has failed to give prior notice under Clause 10.9(b);

(c) any changes or refinement to the design and specifications of the Building Works by the Principal Agency which do not deviate substantially from the Design and Technical Specifications; and

(d) any changes to the Building Works which has arisen due to or is necessitated by a Force Majeure.

26.3. Change in Law

(a) If the Concession Company believes that a Change in Law has occurred, the Concession Company may within 12 Months of the occurrence of that Change in Law, deliver to the Principal Agency a notice identifying the Change in Law and the net amount of the resulting costs or savings to the Concession Company, accompanied by full details and supporting evidence.

(b) The Concession Company may from time to time deliver to the Principal Agency additional notices with respect to any such Change in Law identifying additional costs or savings that have resulted or are reasonably expected to result from such Change in Law, provided that any such additional notice must be given not later than 2 Months after the Concession Company knew of or should have known of such additional costs or savings.

(c) The procedures outlined in this Clause 26 do not in any way diminish the obligation of the Concession Company under this Agreement to minimise costs and to maximise savings in accordance with Good Industry Practice.

26.4. Procedure

(a) Within 5 Days following the receipt by the Principal Agency of the Principal Agency Variation Proposal or any notice specified in Clause 26.3 (as the case may be), the parties shall meet and begin (or, if they already have begun, continue) negotiating in good faith, with a view to reaching agreement on, whether the proposed Variation amounts to a Principal Agency Variation or a Change in Law has occurred, and what changes should be made to the terms of this Agreement and/or adjustment made to the Price Ceiling and/or Price Ceiling Adjustment Formula to provide or allow for that Change in Law.

(b) The terms of this Agreement shall be changed and/or the Price Ceiling and/or Price Ceiling Adjustment Formula adjusted so as to:

(i) ensure that the Concession Company has the same Project Return as if such costs had not been incurred or such savings had not been realised; and

(ii) be retroactive to the date upon which such costs were incurred or such savings were realised.

(c) If the parties fail to agree upon all those changes within 30 Days from the date of receipt of the Principal Agency Variation Proposal or notice delivered in accordance with Clauses 26.3(a) or 26.3(b), such dispute shall be referred to an Expert for determination in accordance with Clause 30.7.

(d) In the case of a Claim by reason of a Principal Agency Variation or Change in Law, the Concession Company shall not be entitled to any changes to the terms of this Agreement or adjustment to the Price Ceiling or Price Ceiling Adjustment Formula if that Principal Agency Variation or Change in Law:

(i) is otherwise provided for under the terms of this Agreement; or

(ii) could have been reasonably contemplated or allowed for in entering into this Agreement.

27. EFFECT OF A STEP-CHANGE IN TECHNOLOGY

27.1. Maintain Updated Technology

(a) As part of operating, maintaining and repairing the Plant, the Concession Company shall maintain a level of technology in its systems that:

(i) is consistent with Good Industry Practice; and

(ii) ensures that the Plant is able to operate effectively and efficiently.

(b) The Concession Company shall:

(i) keep abreast of relevant advances in technology; and

(ii) undertake to procure access to research and development,

with the aim of readily identifying any Step-change in Technology.

(c) If, at any time during the Term, a Step-change in Technology occurs, the Concession Company shall notify the Principal Agency of that fact. If, at any time during the Term, the Principal Agency considers that a Step-change in Technology has occurred, it may notify the Concession Company of that fact.

(d) If, at any time during the Term, a Step-change in Technology occurs, the Concession Company may adopt and implement the Step-change in Technology at the Plant, in which case the Price Ceiling shall be reduced by a fair and reasonable amount and the

Price Ceiling Adjustment Formula and the Minimum Load Factor shall be adjusted in a fair and reasonable manner, such reduction and adjustment to be determined by the parties in good faith, having regard to all of the circumstances, including the cost savings obtained and the capital costs and risks incurred by the Concession Company in adopting the new technology.

(e) The parties shall promptly meet and negotiate in good faith with a view to reaching agreement on what adjustments (if any) should be made to the Price Ceiling, the Price Ceiling Adjustment Formula and the Minimum Load Factor.

(f) If the parties fail to reach agreement on what adjustments should be made to the Price Ceiling, the Price Ceiling Adjustment Formula or the Minimum Load Factor or whether a Step-change in Technology has occurred, then either party may refer the matter to the Expert for determination. The Expert shall be instructed to determine:

(i) whether a Step-change in Technology has occurred;

(ii) if so, whether the Step-change in Technology has resulted in a substantial reduction in the Concession Company's operating costs of producing Chilled Water; and

(iii) if so, what is a fair and reasonable reduction to the Price Ceiling or adjustment to the Price Ceiling Adjustment Formula or the Minimum Load Factor.

(g) Unless otherwise agreed, adjustments to the Price Ceiling, the Price Ceiling Adjustment Formula and the Minimum Load Factor that are agreed or determined in accordance with this Clause shall apply with effect from and including the date the Step-change in Technology is implemented at the Plant.

28. DEFAULT AND TERMINATION

28.1. Default by Concession Company

It is a default ("**Default**") by the Concession Company if:

(a) the Concession Company fails to comply with the Implementation Schedule, except as excused by a Legitimate Circumstance;

(b) the Concession Company fails to complete the Building Works by the Scheduled Commercial Operation Date, except as excused by a Legitimate Circumstance;

(c) the Plant is unable to supply Chilled Water to any Tenant for a continuous period of 24 hours or more without the Principal Agency's consent, except where excused by a Legitimate Circumstance;

(d) there are at least 6 Outages occurring in any one Operating Year with each lasting more than 4 hours, except where excused by a Legitimate Circumstance;

(e) the Concession Company Abandons the Project;

(f) the Concession Company refuses or fails to comply with any reasonable instruction of the Principal Agency's Representative in respect of its obligations under this Agreement;

(g) the Concession Company has:

(i) offered, given or agreed to give any person any gift or consideration as an inducement or reward for doing or not doing any action in relation to the obtaining or execution of this Agreement; or

(ii) otherwise committed or abetted any offence, or attempted to commit or abet an offence under the Prevention of Corruption Act (Cap. 241) or any other similar offence under the Penal Code;

(h) the Concession Company fails to pay any part of the Liquidated Damages within the time period specified in Clause 13.4 or make any other payment under this Agreement within 30 Days after it has become due and payable;

(i) the Concession Company breaches Clause 20;

(j) the Concession Company fails to deliver to the Principal Agency the Performance Bond in accordance with Clause 9.1 or breaches Clause 9.3 or 9.4;

(k) there is any transfer of Equity in breach of Clause 5.4;

(l) the Concession Company fails to meet any Performance Guarantees, except as excused by a Legitimate Circumstance;

(m) the Concession Company materially breaches or contravenes any term of this Agreement or the Lease Documents, except as excused by a Legitimate Circumstance;

(n) the Concession Company materially breaches or contravenes any of the Project Agreements (other than this Agreement and the Lease Documents), or a default arises and remains uncured under any of the Project Agreements (other than this Agreement and the Lease Documents) and results in an adverse and material impact upon this Agreement or the Lease Documents, except as excused by a Legitimate Circumstance;

(o) the Principal Agency discovers that any of the information provided by the Concession Company in the Proposal is false or misleading; or

(p) the Concession Company suffers an Insolvency Event.

28.2. Termination upon Default

Upon the occurrence of a Default by the Concession Company, the following procedures shall apply:

(a) The Principal Agency may give a default notice ("**Default Notice**") to the Concession Company, specifying:

(i) in reasonable detail the Default giving rise to the Default Notice; and

(ii) the period within which the Concession Company shall remedy the Default, being:

(A) a period of 14 Days where the Default relates to a failure to pay money; or

(B) a period of 30 Days where the Default does not relate to a failure to pay money (or such other period as may be specified by the Principal Agency), ("**Default Cure Period**").

(b) During the Default Cure Period, the parties shall consult with each other as to what steps shall be taken with a view to mitigating the consequences of, and curing, the Default.

(c) If the Default remains unremedied at the end of the Default Cure Period:

(i) the Principal Agency may terminate this Agreement by giving a written notice ("**Termination Notice**") of not less than thirty 30 Days to the Concession Company, upon which it shall be entitled (but not obliged) to purchase the Project in accordance with Clause 28.5(a). The Termination Notice shall indicate the Principal Agency's election of whether it will or will not purchase the Project upon such termination; and

(ii) the Concession Company shall, on written demand, pay to the Principal Agency any Loss incurred by the Principal Agency in connection with or arising from the termination of this Agreement.

In the event the Principal Agency at its sole and absolute discretion elects not to purchase the Project for any reason upon termination of this Agreement under Clause 28.2, the Concession Company shall at its own costs decommission and demolish the Plant, and reinstate the Site to, and hand-over to the Principal Agency the Site in, the Site's Original Condition in accordance with the provisions set out in paragraph 2(b), 2(c), 2(d), 3 and 4 of **Annexure 13** which provisions shall apply *mutatis mutandis* save that all references therein to the "date of the Reinstatement Election" and "Expiry Date" shall be regarded as references to the "date of the Termination Notice" and "Termination Date" respectively.

28.3. Termination upon Prolonged Force Majeure

If a Force Majeure prevents a party from performing any of its obligations under this Agreement for a continuous period of 180 Days, the Principal Agency may terminate this Agreement by giving to the Concession Company a Termination Notice of not less 30 Days provided that the said 30 Days' notice period may run concurrently with the aforesaid 180 Day period. Upon such termination, unless otherwise not required by the Principal Agency at its sole and absolute discretion, the Concession Company shall at its own costs decommission and demolish the Plant, and reinstate the Site to, and hand-over to the Principal Agency the Site in, the Site's Original Condition in accordance with the provisions set out in paragraph 2(b), 2(c), 2(d), 3 and 4 of **Annexure 13** which provisions shall apply *mutatis mutandis* save that all references therein to the "date of the Reinstatement Election" and "Expiry Date" shall be regarded as references to the "date of the Termination Notice" and "Termination Date" respectively.

28.4. Termination Upon Expiration of the Term

Unless terminated earlier in accordance with the provisions of this Agreement, this Agreement shall terminate on the last Day of the Term. For the avoidance of doubt, the Concession Company shall not be entitled to any compensation for termination of this Agreement on the last Day of the Term.

28.5. Purchase Price of Project

(a) In the event of termination of this Agreement by the Principal Agency under Clause 28.2 due to a Default by the Concession Company and the Principal Agency has elected in writing under Clause 28.2(c)(i) to purchase the Project upon such termination, the Principal Agency shall purchase the Project for the purchase price determined in accordance with paragraph 2 of **Annexure 11**.

(b) In the event of termination of this Agreement by the Principal Agency in accordance with Clause 28.3 due to the occurrence of a prolonged Force Majeure, the Principal Agency shall purchase the Project for the purchase price determined in accordance with paragraph 3 of **Annexure 11**.

28.6. Other Agreements, Approvals and Authorisations

(a) Following termination of this Agreement for any reason, the Concession Company shall promptly (where so required by the Principal Agency) procure to the extent possible, an effective assignment, novation or transfer of the rights, entitlements, benefits and interests under or pursuant to the following agreements and documents, free from any Encumbrances and on the same terms and conditions (except for the Lease Documents where the Principal Agency may vary the terms and conditions therein), by the Concession Company to the Principal Agency (or its nominee):

(i) any utilities supply arrangements existing as at the date of termination;

(ii) where the Principal Agency nominates a person ("**Successor Operator**") as the operator for the Plant, the Lease Documents;

(iii) any Project Agreements that the Principal Agency may in its discretion require; and

(iv) all Authorisations, where within the Concession Company's control, required by Law in order for the Principal Agency (or its nominee) to undertake the Project.

(b) The Concession Company shall further promptly transfer to the Principal Agency (or its nominee) following termination of this Agreement for any reason, free from all Encumbrances, all of the Concession Company's right, title and interest in the Transfer Items to the extent so required by the Principal Agency.

(c) The Concession Company shall procure, when negotiating and finalising the terms of the Project Agreements (other than the Lease Documents), the inclusion of terms providing for such assignment, novation or transfer as contemplated in this Clause.

28.7. Transfer of Project

All rights, title, interest and entitlements of the Concession Company in respect of the Plant, the Site and the Project free from all Encumbrances shall be transferred to and vested in the Principal Agency (or its nominee):

(a) upon payment by the Principal Agency of the relevant Purchase Price in accordance with **Annexure 11**; or

(b) if no payment is required to be made by the Principal Agency to the Concession Company (including where this Agreement is terminated by effluxion of time on the last day of the Term), immediately upon termination of this Agreement.

28.8. Concession Company's Obligations

Following termination of this Agreement for any reason, for a reasonable period both before and after any such termination, in addition to any other obligations of the Concession Company under Clause 28, the Concession Company shall:

(a) co-operate fully with the Principal Agency and the Successor Operator (if any) in order to achieve a smooth and efficient transfer of the Project and to avoid or mitigate in so far as reasonably practicable any undue delay or inconvenience to the Principal Agency, the Successor Operator or the Tenants, or any risk to the health and safety of the employees of the Tenants and members of the public;

(b) remove from the Site all plant, materials, equipment, temporary buildings, spare parts and other property not required by the Principal Agency or the Successor Operator. If the Concession Company has not performed such removal within 10 Days after any notice from the Principal Agency or the Successor Operator requiring it to do so, the Principal Agency or the Successor Operator may (without being responsible for any Loss) remove and sell any such property and shall hold any proceeds less all costs incurred to the credit of the Concession Company. Neither the Principal Agency nor the Successor Operator shall be liable for any Loss incurred or suffered by the Concession Company during or arising from such removal;

(c) deliver to the Principal Agency or the Successor Operator:

(i) the Transfer Items to the extent that they are so required by the Principal Agency or the Successor Operator and deliverable in a physical form;

(ii) keys to all control rooms, store rooms and any other rooms or parts of the Plant which have been installed with a locking system; and

(iii) codes and passwords to all computers and computerised systems used by the Concession Company for the operation of the Plant;

(d) remove or cause the removal from the Site all its workmen, employees, servants, agents and contractors and vacate and leave the Site in a clean and orderly condition to the satisfaction of the Principal Agency;

(e) provide assistance and all such information concerning the Project to the Principal Agency or the Successor Operator, and training necessary for the operation and maintenance of the Plant, as is reasonably required for the smooth and efficient transfer of the Project; and

(f) where the Principal Agency wishes to carry out a competitive bid prior to the Termination Date or the Expiry Date (as the case may be) with a view of entering into an agreement for the operation and maintenance of the Plant following the Termination Date or the Expiry Date (as the case may be), grant to all participants in any such bid reasonable access to the Site and the Plant.

28.9. Transfer of Employment

(a) Following the termination of this Agreement for any reason, the Concession Company shall promptly disclose to the Principal Agency upon request all relevant information in relation to each employee ("**Employee**") engaged by the Concession Company for purposes of carrying out its obligations under this Agreement (including information on the salary, job performance, role and duties of such employee).

(b) The Concession Company shall comply with all instructions from the Principal Agency with regard to any transfer of employment of any Employee to the Principal Agency if and to the extent requested by the Principal Agency. The Concession Company shall co-operate in the orderly transfer of such employment.

(c) All salaries and other emoluments (including tax, insurance payments, allowances, expenses and bonus and commission payments) relating to any transferred Employee payable up to the Termination Date or the Expiry Date (as the case may be) shall be borne by the Concession Company and all necessary apportionments shall be made.

28.10. Other Rights and Remedies

(a) The payments made under this Clause 28 are without prejudice to the Principal Agency's other rights arising from a breach by the Concession Company of any covenant or warranty, or under any indemnity, that was not a cause of, or a ground relied upon for, termination of this Agreement.

(b) Upon the breach by the Concession Company of any covenant or warranty under this Agreement, the Principal Agency may, in its sole discretion, in addition to exercising any other remedies provided for in this Agreement, proceed in accordance with Clause 30 to:

(i) protect and enforce its rights;

(ii) recover any Losses to which it may be entitled (including all costs and expenses reasonably incurred in the exercise of its remedy); or

(iii) seek specific performance by the Concession Company of its obligations under this Agreement.

28.11. Rights Preserved

The expiry or termination of this Agreement does not affect any rights of the parties against one another in respect of any act, omission, matter, or thing occurring or under this Agreement before that expiry or termination.

29. STEP-IN

29.1. Step-in Rights

(a) The Principal Agency may, but is not obliged to, step-in and take possession and control of the whole or part of the Plant during the Operating Period for the purpose of operating the Plant as it deems necessary to ensure the continued operation of the Plant and/or Project (the "**Step-in Rights**").

(b) The Principal Agency shall be entitled to exercise the Step-in Rights when in the opinion of the Principal Agency:

(1) an Insolvency Event has occurred in respect of the Concession Company;

(2) there is breach (or anticipatory breach) by the Concession Company of any obligation under this Agreement that:

(i) creates or will create an immediate and serious threat to the health or safety of any Tenants or occupiers of the Site, the Plant and/or the Data Centre Park;

(ii) results or will result in a material interruption in the supply of Chilled Water Service to the Tenants; or

(iii) materially prejudices or affects or will materially prejudice or affect the development, construction or operation of any Data Centre, any property at the Plant or the Data Centre Park or the environment,

(each event described in Clause 29.1(b)(1) and (2) hereinafter referred to as a "**Step-in Event A**"); or

(3) it is in the public interest for the Principal Agency to step-in or the circumstances constitute a public emergency or the step-in is necessary for the Principal Agency to discharge its statutory duty, without in each case the Concession Company being in breach (or in anticipatory breach) of its obligations under this Agreement ("**Step-in Event B**"),

(each a "**Step-in Event**").

29.2. Extent of the Step-in Rights

(a) If the Principal Agency becomes entitled to exercise the Step-in Rights, then:

(i) the Principal Agency may step in and take possession and control of the whole or part of the Plant, equipment and supplies and operate the Plant as it deems necessary in accordance with Good Industry Practice;

(ii) the Principal Agency may enforce any of the contracts or arrangements to which the Concession Company is a party in relation to the Project to the extent necessary to enable the Principal Agency to operate the Plant; and

(iii) the Principal Agency may take whatever action it considers reasonably necessary to enable it to operate the Plant.

(b) The Principal Agency shall be deemed to exercise the Step-in Rights as agent of and on behalf of the Concession Company.

(c) Nothing in this Clause obliges the Principal Agency to exercise its rights under this Clause 29.2 or to remedy the Step-in Event.

29.3. Step-in Notice

(a) Prior to the exercise of the Step-in Rights, the Principal Agency shall give at least 1 Day written notice to the Concession Company, giving particulars of the circumstances giving rise to its exercise of the Step-in Rights.

(b) If the Principal Agency in good faith and acting reasonably forms the view that it is necessary to exercise the Step-in Rights before the expiry of the notice period referred to in Clause 29.3(a) in order to avoid actual or potential disruption to the continued supply of Chilled Water Service to the Tenants, then the Principal Agency may exercise all or any of the Step-in Rights without the need to wait for the expiry of that notice period.

(c) Immediately upon stepping-in, the Principal Agency will inspect the Plant and within a reasonable time provide the Concession Company with a written report on the state, condition and operability of the Plant.

29.4. Access to Plant, Equipment, etc.

For the purposes of exercising the Step-in Rights:

(a) the Concession Company shall provide the Principal Agency access at all times to the Site and Plant, and the Principal Agency may take possession and control of the Plant, equipment and supplies on Site and utilise them, to the extent that the Principal Agency reasonably considers necessary for the proper exercise of the Step-in Rights;

(b) the Concession Company shall provide, and the Principal Agency may take possession and control of any documents, information, and materials in the possession or control of the Concession Company or which are kept at the Plant or Site, that the Principal Agency reasonably considers necessary for the proper exercise of the Step-in Rights. The Concession Company shall not remove any material (including electronic information) from the Plant;

(c) to the extent required by the Principal Agency, the Concession Company shall enforce, assign or make available to the Principal Agency or its nominees all rights and benefits of the Concession Company under its existing contracts. The Principal Agency shall use reasonable endeavours to comply with the obligations of the Concession Company under such contracts but shall not be liable to the Concession Company for any failure to comply; and

(d) the Concession Company shall provide reasonable assistance to the Principal Agency or its nominees to take possession and control of the Plant, equipment and supplies, and to operate the Plant, and otherwise in the exercise of the Step-in Rights.

29.5. Costs for Step-in Event A

(a) While the Principal Agency is exercising the Step-in Rights as a result of a Step-in Event A, provided that the Concession Company provides the Principal Agency with reasonable assistance in exercising the the Step-in Rights, the Concession Company shall be entitled to continue receiving the CWSA Charges from the Tenants under the CWSAs and shall be obliged to pay to the Principal Agency all costs properly and reasonably incurred by the Principal Agency in exercising the Step-in Rights or as a result of the circumstances giving rise to the Step-in Event, including any remedial action the Principal Agency considers reasonably necessary to ensure the Plant continues to supply Chilled Water Service to the Tenants in accordance with the CWSAs.

(b) The Principal Agency will, on a Monthly basis ascertain the total cost incurred by it in carrying out the Step-in Rights, including costs of labour, management, consumables, equipment, operation and maintenance costs and will issue a certificate to the Concession Company certifying those amounts. This amount(s) will, on a Monthly basis, be payable by the Concession Company to the Principal Agency.

29.6. Costs for Step-in Event B

While the Principal Agency is exercising the Step-in Rights as a result of a Step-in Event B, provided that the Concession Company provides the Principal Agency with reasonable assistance in exercising the Step-in Rights, the Concession Company shall be entitled to continue receiving the CWSA Charges from the Tenants under the CWSAs.

29.7. No Liability on the Principal Agency

The Principal Agency will not be obliged to perform all or any of the Concession Company's obligations under this Agreement nor will the Principal Agency be liable for any Loss suffered by the Concession Company, as a result of actions taken or omissions made by or on the Principal Agency's behalf in the course of exercising or purporting to exercise the Step-in Rights, provided that the Principal Agency has acted in good faith. The Concession Company releases, to the maximum extent permitted by Law, the Principal Agency and anyone else acting on the Principal Agency's behalf from all Claims and liabilities in relation to the exercise of the Step-in Rights.

29.8. Duration of the Step-in Rights

(a) The Principal Agency may continue to exercise the Step-in Rights for so long as the Step-in Event persists and is not cured.

(b) The Principal Agency may at any time cease its exercise of the Step-in Rights by giving the Concession Company at least 1 Day written notice ("**Step-out Notice**") without providing any reason for such cessation.

(c) The Concession Company shall notify the Principal Agency when:

(i) the Step-in Event is cured; or

(ii) it reasonably believes that it is able to cure the Step-in Event immediately upon the Principal Agency's ceasing its exercise of the Step-in Rights,

and the Principal Agency, if satisfied that the Step-in Event is in fact cured, or that the Concession Company will be able to cure the Step-in Event immediately upon the Principal Agency's ceasing its exercise of the Step-in Rights, shall within a reasonable time give the Concession Company a Step-out Notice and relinquish possession and control of the Plant, equipment and supplies to the Concession Company and the Concession Company shall immediately step in, cure-the Step-in Event (where applicable), and re-commence the performance of its obligations under this Agreement.

(d) The cessation by the Principal Agency of its exercise of the Step-in Rights shall not in any way prevent or prejudice the further or additional exercise by the Principal Agency of the Step-in Rights, whether in respect of the same or different occurrence of a Step-in Event.

29.9. Step-in Rights Additional to Other Rights

The Principal Agency's rights to step in are in addition to, and do not limit in any way, any other rights or remedies available to the Principal Agency.

29.10. Disputes

Clause 30 shall apply to any dispute between the Principal Agency and the Concession Company as to whether or not the Principal Agency is entitled to exercise the Step-in Rights or as to the manner in which the Principal Agency exercises such rights. Pending the determination of the dispute, the Principal Agency shall be entitled to exercise, and to continue to exercise the Step-in Rights to the extent that the Principal Agency considers it necessary to do so in order to ensure the continued supply of Chilled Water Service to the Tenants.

29.11. Subcontracts

The Concession Company shall ensure that any contracts entered into by it contain similar clauses as this Clause 29 in order for the Principal Agency to exercise the Step-in Rights.

29.12. Appointment as Attorney

The Concession Company for the duration of the Principal Agency's exercise of the Step-in Rights:

(a) irrevocably appoints the Principal Agency, and such persons as are from time to time nominated by the Principal Agency, jointly and severally as its attorney with full power and authority to take any action in the exercise of the Step-in Rights; and

(b) agrees to ratify and confirm whatever action an attorney appointed under Clause 29.12(a) takes in accordance with that Clause.

30. DISPUTE RESOLUTION

30.1. Dispute

A dispute means a dispute or difference between the parties as to the construction of this Agreement or as to any matter or thing of whatsoever nature arising under or in connection with this Agreement, including any Claim in tort, under statute or for restitution based on unjust enrichment or for rectification or frustration, and includes a dispute relating to this Agreement's formation ("**Dispute**").

30.2. Notice of Dispute

When any Dispute arises between the parties, either party may give written notice to the other party that a Dispute exists ("**Dispute Notice**").

30.3. Nominated Representative

Within 5 Days of receipt of the Dispute Notice, the parties shall each nominate a person ("**Representative**") who has express authority to either settle the Dispute or to initiate proceedings for resolving the Dispute in accordance with this Clause 30.

30.4. Representatives to Meet

(a) Within 10 Days of receipt of the Dispute Notice, the Representatives shall meet and attempt to resolve the Dispute. Any resolution of the Dispute shall be reduced to writing signed by both Representatives, and will not be binding until so reduced to writing and signed by both parties.

(b) If the Representatives are unable to resolve the Dispute within 10 Days of their first meeting (or such other time as agreed by the parties):

(i) both parties may agree to refer the Dispute to mediation, upon which Clause 30.5 will apply; or

(ii) either party may refer the Dispute to arbitration, upon which Clause 30.6 will apply.

30.5. Mediation

(a) If the parties agree to refer the Dispute to mediation, the parties shall make reasonable efforts to resolve the Dispute in accordance with the mediation rules of the Singapore Mediation Centre.

(b) A party may at any time during the mediation process refer the Dispute to arbitration, upon which Clause 30.6 will apply.

30.6. Arbitration

(a) Any Dispute between the parties arising out of or relating to or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of the SIAC for the time being in force, which rules are deemed to be incorporated by reference in this Clause. The arbitral tribunal shall consist of a single arbitrator to be agreed between the parties or failing agreement between the parties within 30 Days after receipt by a party of a notice setting out the name of the proposed arbitrator from the other, appointed by the Chairman of the SIAC.

(b) The language of the arbitration shall be English.

30.7. Referral to an Expert

(a) If a Dispute arises between the Parties in respect of any matter under Clause 10.4, 17.5, 26.4, 27.1 or **Annexure 11**, or under any other Clause or Annexure which states that a dispute may be referred to an Expert for resolution, and that Dispute cannot be resolved by negotiations in accordance with Clause 30.4, then either party may by notice in writing to the other, specify the nature of the Dispute and call for submission of the Dispute to an independent expert ("**Expert**").

(b) Either party may propose to the other the name or names of one or more persons, one of whom would serve as the Expert.

(c) If no agreement is reached within 30 Days after receipt by one party of such a proposal from the other, the Expert is to be appointed by the Chairman of the SIAC.

(d) The parties agree that the Expert will be required to have appropriate commercial and practical experience and expertise in the area of Dispute.

(e) Any person nominated to act as an Expert shall be required to fully disclose any interest or duty prior to that person's appointment. If that person has or may have any interest or duty which conflicts with their appointment as an Expert, then that person may not be appointed except with the agreement of both parties.

(f) The Expert shall be required to deliver a written determination which sets out the reasons for the determination and the findings of fact on which the determination is based.

(g) The Expert shall act as an expert and not an arbitrator. The findings of the Expert shall be final and binding on the parties except in the case where there has been a manifest error, or otherwise provided in this Agreement, in which event the findings will be void and of no effect.

(h) The costs of the Expert shall be borne by the party initiating the appointment of the Expert, unless the Expert otherwise determines, or unless the Expert finds that either of the parties has acted unreasonably in relation to the Dispute in which case that party will bear all of the costs of the Expert.

30.8. Continuing Obligations

Despite the provisions of this Clause 30, both parties shall (subject to what may otherwise be provided for in this Agreement) continue performing their obligations under this Agreement.

31. LIMITS ON LIABILITY

31.1. Disclaimer of Liability

Without limiting Clause 31.2 and to the fullest extent permitted by Law, under no circumstances shall the Principal Agency be responsible or liable to the Concession Company for any Claim or Loss howsoever caused relating to or arising from this Agreement except for the responsibility and liability of the Principal Agency to pay the purchase price for the Project under Clause 28.5.

31.2. Exclusion of Consequential Loss

Notwithstanding any provision in this Agreement, the Principal Agency shall not be liable to the Concession Company for special, consequential, or punitive damages or indirect losses, costs or expenses or loss of actual or anticipated profits (whether direct or indirect), lost opportunities (including opportunities to enter into or complete arrangements with third parties), a failure to realise anticipated savings or loss of reputation, howsoever caused (including by negligence).

31.3. Net of Insurance Proceeds

Any payment or compensation by the Principal Agency to the Concession Company in discharge of any Claim shall be net of any insurance proceeds recovered or to be recovered by the Concession Company which is directly referable to the subject matter of the Claim,.

31.4. Liability of Employees and Agents

Every exemption from, and limitation of, liability, defence and immunity of whatever nature that applies to the Principal Agency, or to which the Principal Agency is entitled, including those set out in this Agreement, will also be available and extend to protect the Principal Agency Parties.

32. MISCELLANEOUS

32.1. Amendment

A variation of any term of this Agreement shall be in writing and signed by the parties.

32.2. Approvals and Consent

Subject to any express provision of this Agreement to the contrary, a party may conditionally or unconditionally give or withhold any consent to be given under this Agreement and is not obliged to give its reasons for doing so.

32.3. No Third Party Beneficiary

The terms and provisions of this Agreement are intended solely for the benefit of each party and their respective successors or permitted assigns, and it is not the intention of the parties to confer third party beneficiary rights upon any other person. A person who is not a party to this agreement shall have no right under the Contracts (Rights of Third Parties) Act (Cap. 53B) to enforce any of its terms.

32.4. Computation of Time

(a) Where time is to be reckoned by reference to a day or event, that day or the day of that event will be excluded.

(b) Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the preceding Business Day.

32.5. Confidentiality

Each party ("**Discloser**") shall hold, and shall use its best efforts to ensure its shareholders and Affiliates, hold, in strict confidence from any other person ("**Recipient**") all documents and information concerning the other party or any of the other party's Affiliates provided to the Discloser or its advisors, consultants, contractors or agents by the other party in connection with this Agreement or the transactions contemplated by this Agreement ("**Confidential Information**"), unless:

(a) the Discloser is required by Law to communicate the Confidential Information to a Recipient who is authorised by Law to receive it;

(b) the Confidential Information is required for submission to a court, or to an arbitrator or administrative tribunal or to legal counsel in the course of proceedings provided that, in the case of any arbitration proceedings, the Discloser first obtains from each other party to those proceedings an undertaking, enforceable by the other parties to this Agreement, that each such other party will similarly not divulge or communicate, without each non-disclosing party's written consent, any information referred to in this Clause;

(c) the Confidential Information is required to be disclosed to any Government Agency whether in connection with the granting of any Authorisation or otherwise;

(d) the Confidential Information is required to be disclosed to any stock exchange;

(e) the Confidential Information is disclosed to an employee, agent or contractor of the Concession Company or the Principal Agency, where that disclosure is reasonably necessary for the conduct of this Agreement;

(f) the Confidential Information had come into the public domain (otherwise than as a result of a breach of this Clause 32.5); or

(g) was consented to in writing by the other party.

32.6. Publicity

Other than as ordered or required by Law or in the course of administrative or judicial proceedings, or in accordance with the requirements of any applicable stock exchange, the Concession Company shall not issue any press release or make any other public announcement relating to the transactions contemplated by this Agreement without the prior written approval of the Principal Agency as to the contents and the manner of presentation and publication of such press release or public announcement.

32.7. Counterparts

This Agreement may be executed in any number of counterparts. All counterparts, taken together, shall constitute one and the same instrument. A party may execute this Agreement by signing any counterpart.

32.8. Binding

This Agreement is not binding on any party unless it or the counterpart has been signed by, or on behalf of, each person named as a party to it. This Agreement shall be binding on and inure to the benefit of the parties and their respective successors and permitted assigns.

32.9. Entire Agreement

This Agreement supersedes all previous agreements, presentations, communications, negotiations and understandings in respect of its subject matter (including the Call for Proposal) and embodies the entire agreement between the parties in respect of its subject matter.

32.10. Further Assurances

Each party shall do all things and execute all further documents necessary to give full effect to this Agreement.

32.11. Invalidity

If any part of this Agreement is or becomes for any reason invalid, illegal or unenforceable at law, that part of this Agreement is deemed to be severed from this Agreement without affecting the remainder of this Agreement and the remainder of this Agreement continues to be valid, legal and enforceable. The Parties agree to use good faith efforts to negotiate an equitable adjustment to any provisions of this Agreement determined to be invalid, illegal or unenforceable with a view towards giving effect to the purposes of this Agreement, and the validity, legality or enforceability of the remaining provisions of this Agreement shall not be affected thereby.

32.12. Governing Law

(a) This Agreement and any arbitration commenced under this Agreement is governed by the laws in force in the Republic of Singapore.

(b) The application to this Agreement of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.

32.13. Waiver of Immunity

To the extent that the Concession Company may in any jurisdiction claim for itself or its assets immunity from suit, execution, attachment (whether in aid of execution, before judgment or otherwise) or other legal process and to the extent that in any such jurisdiction there may be attributed to itself or its assets such immunity (whether or not claimed), the Concession Company irrevocably agrees not to claim and irrevocably waive such immunity to the full extent permitted by the laws of such jurisdiction.

32.14. Costs and Expenses

(a) Unless otherwise provided in this Agreement, each party shall bear its own legal and other costs and expenses relating directly or indirectly to the preparation of, and performance of its obligations under this Agreement.

(b) The Concession Company shall pay all reasonable costs and expenses of the Principal Agency (including legal costs and expenses and professional consultant's fees) in relation to any consent or approval sought by the Concession Company of the Principal Agency under this Agreement.

32.15. Cumulative Rights

Subject to any express provision in this Agreement to the contrary, the rights of a party under this Agreement are cumulative, and are in addition to any other rights of that party.

32.16. Notices

(a) Any notice or other communication including a request, demand, consent or approval, to or by a party:

(1) shall be in legible writing and in English addressed as follows (or as specified by a party by notice in writing to the other party pursuant to Clause 32.16(b)):

(A) if to the Principal Agency,

[*insert address*]

(B) if to the Concession Company,

[*insert address*]

(2) shall be signed by an Officer or under the common seal of the sender and regarded as being given by the sender and received by the addressee:

(A) if by delivery in person, when delivered to the addressee; or

(B) if by post, 2 Business Days, from and including the date of postage,

but if the delivery or receipt is on a day which is not a Business Day or is after 4.00 pm (addressee's time) it is regarded as received at 9.00 am (addressee's time) on the following Business Day.

(b) A party may notify the other party of a change to its address or the person to whom the notice or communication shall be marked for the attention, for the purposes of this Clause 32.16, provided that such notification shall only be effective on:

(1) the date specified in the notice as the date on which the change is to take place; or

(2) if no date is specified or the date specified is less than 10 Business Days after the date on which notice is given, the date following 10 Business Days after notice of any change has been given.

32.17. Waiver

(a) Any waiver of any right arising from a breach of this Agreement or of any power arising upon default under this Agreement or upon the occurrence of a Default shall be in writing and signed by the party granting the waiver.

(b) Any failure or delay in exercise, or partial exercise, of:

(1) a right arising from a breach of this Agreement or the occurrence of a Default; or

(2) a power created or arising upon default under this Agreement or upon the occurrence of a Default, shall not result in a waiver of that right or power.

(c) A party is not entitled to rely on a delay in the exercise or non-exercise of a right or power arising from a breach of this Agreement or on a default under this Agreement or on the occurrence of a Default as constituting a waiver of that right or power.

(d) A party may not rely on any conduct of another party as a defence to the exercise of a right or power by that other party.

(e) This Clause may not itself be waived except by writing.

32.18. No Relief by Appointment

The appointment of the EPC Contractor or the O&M Contractor does not relieve the Concession Company of any of its liabilities or obligations under this Agreement.

32.19. Statutory Powers

The powers conferred on the Principal Agency by or under any Law are in addition to the powers conferred on the Principal Agency by this Agreement, except to the extent inconsistent with the provisions of this Agreement. Nothing contained in or implied by this Agreement has the effect of constraining the Principal Agency or placing any fetter on its statutory rights, duties, powers and functions, including those contained or referred to in any Law.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their respective duly authorised representatives as of the date first written above:

[*Insert name of the Principal Agency*]

By:
Name:
Title:

witnessed by:

_____
Name:
Title:

[*Insert name of Concession Company*]

By:
Name:
Title:

witnessed by:

_____
Name:
Title: