

**NON-DISCLOSURE AGREEMENT** ("this Agreement")

Date:

To:

SATS Airport Services Pte Ltd

In consideration of **SATS Airport Pte Ltd** (**Company Registration No.** 198500561R), a company incorporated under the laws of [the Republic of Singapore] and having its registered office at **20 Airport Boulevard, Singapore 819659** (and which shall include its successors and assigns) (the "Disclosing Party") agreeing to make available Confidential Information (as defined below) to \_\_\_\_\_ [*name of the Receiving Party*] (**Company Registration No.** \_\_\_\_\_), a company incorporated under the laws of [Singapore] and having its registered office at \_\_\_\_\_ [*registered office address*] ("Receiving Party"), in connection with **Closed Tender No. CT2011K021** – Tender for Preventive(PM) and Corrective (CM) Maintenance Services for Cold-room Systems at Coolport and Airfreight Terminal 3, 5 and 6 for a period of three years (With an option for 2 more years extension for **the "Project"**), the Receiving Party hereby agrees and undertakes as follows:

**1. Definitions**

The following words and expressions shall bear the following meanings unless the context otherwise requires:

"Associate" means, in relation to any company, any other company which is its related corporation (as defined in the Companies Act (Cap 50) of Singapore) or its associated company, and "Associates" means any two or more of them.

"Confidential Information" means any and/or all information (including information of a commercial, technical, legal or financial nature) that has been or is hereafter provided to the Receiving Party or its Representatives by or on behalf of the Disclosing Party or any of its Associates, including by their respective Representatives, in the course of, for the purpose of and/or in relation to the Project; which contains, amongst other matters, any trade secrets, know-how, show-how, patents research, development or technical information, confidential and/or proprietary product or information, any information or matter comprising or containing part of the intellectual property rights of the Disclosing Party or any other person, business plans, operations or systems, financial and trading positions, details of customers, suppliers, debtors or creditors, information relating to the officers, directors or employees of the Disclosing Party and/or any of its Associates, marketing information, brochures, rates and rate tables, and/or contracts of any nature; regardless of form, format or media, including, without limitation, written or oral information reduced to tangible form or information in electronic form, whether or not marked 'confidential' or the like or expressed to be disclosed as confidential information; and "Confidential Information" also includes information communicated or obtained through meetings, documents, correspondence or inspection of tangible items, whether or not marked 'confidential' or the like or expressed to be disclosed as confidential information.

"person" includes individual, firm, corporation, association, trust or entity, incorporated or unincorporated.

"Representative" in relation to any party means any director, officer, employee, servant, agent, consultant, advisor (financial, legal or otherwise), auditor or insurer of that party and any of its Associates, and "Representatives" means any two or more of them.

## 2. Confidentiality Undertakings

2.1 The Receiving Party understands and agrees that all Confidential Information is of a strictly secret and confidential nature. The Receiving Party shall keep confidential and shall not disclose to any person:

- (i) any Confidential Information;
- (ii) that discussions are taking place between the Disclosing Party and the Receiving Party concerning the Project nor the status, terms, conditions or other facts concerning such discussions nor the contents of any term sheet or memorandum of understanding or memorandum of agreement that has been signed or is in the course of being prepared, discussed or finalised; and/or
- (iii) the identity of the Disclosing Party, whether by name or by any identifiable description, in connection with the Disclosing Party's actual or potential participation in the Project;

except with the prior written consent of the Disclosing Party or as otherwise permitted by the terms and conditions of this Agreement. The Receiving Party shall make use of the Confidential Information solely for the purposes of the Project or as otherwise provided in this Agreement, and (in any event and without limiting the generality of the foregoing) shall not use in any manner whatsoever, whether directly or indirectly, any of the Confidential Information for its own benefit or the benefit of any person or third party other than the Disclosing Party.

2.2 Without prejudice to the generality of the foregoing, the Receiving Party shall not copy, reproduce, distribute or part with possession of any of the Confidential Information and shall prevent unauthorised use or reproduction of the Confidential Information.

2.3 The Receiving Party may disclose the Confidential Information to such of its Representatives only on a strict "need to know" basis and solely to the extent necessary to carry out the purposes of the Project. The Receiving Party shall be liable to ensure that each of its Representatives to whom any Confidential Information is disclosed complies with the terms of this Agreement as if he or she was a party hereto, and enters into a legally binding written undertaking to this effect with the Receiving Party (or at the Disclosing Party's request, with the Disclosing Party) prior to any disclosure of Confidential Information to him or her.

2.4 The Receiving Party shall keep the Confidential Information separate from all other documents and information the Receiving Party may hold and the Receiving Party shall ensure that proper and secure storage is provided for the Confidential Information and shall keep a record of the Confidential Information provided to the Receiving Party and/or its Representatives and of the location of the Confidential Information and of any person holding it.

2.5 The Receiving Party undertakes to protect and retain Confidential Information that consists of personal data in accordance with the provisions of the Personal Data Protection Act 2012 (No 26 of 2012 of Singapore). For the purposes of this clause, "Personal Data" means all data which is defined to be "personal data" under the Personal Data Protection Act 2012 (No. 26 of 2012 of Singapore) and includes all information which identifies or which relates to an individual, whether true or not, in any form, disclosed, furnished or made available directly or indirectly to the Receiving Party and/or its Representatives by or on behalf of the Disclosing Party or otherwise received or obtained by Receiving Party and/or its Representatives pursuant to, by virtue of, or in the course of the Project (whether before or after the execution date of this Agreement).

## 3. Exceptions

Notwithstanding the foregoing, the Receiving Party shall not be liable for the disclosure of Confidential Information to the extent it is:

- (a) in the public domain or it enters the public domain other than as a result of its breach of this Agreement or the breach by any of its Representatives of the written undertaking referred to in Clause [2.3] above;
- (b) lawfully received by or known to the Receiving Party on a non-confidential basis prior to disclosure as referred to in this Agreement, as evidenced by the written records of the Receiving Party and which was not acquired, directly or indirectly, from the Disclosing Party or any of its Representatives;
- (c) developed by the Receiving Party or any of its Representatives independently of, and without reference to or reliance on, the Confidential Information; and/or
- (d) compelled to be disclosed by the Receiving Party pursuant to any applicable law or legally enforceable judgment or order of court or a requirement of stock exchange, government body or regulatory authority having supervision over it, provided however that the Receiving Party shall:
  - (i) promptly notify the Disclosing Party of the full details of such requirement and provide a copy of the proposed disclosure to the Disclosing Party as soon as possible and in any event before such disclosure in sufficient time in order that the Disclosing Party may make a contemporaneous announcement or public statement of its own of or relating to such disclosure, apply to court or the relevant authorities to prevent such disclosure, and/or take such other steps as it may reasonably deem necessary;
  - (ii) use its best efforts to secure confidential treatment of the Confidential Information; and
  - (iii) not effect any disclosure which is more extensive than that required by the said law, judgment or order.

#### **4. Return of Confidential Information**

All Confidential Information in tangible form disclosed by the Disclosing Party to the Receiving Party (including all copies or reproductions thereof in any media and all documents into which any Confidential Information has been incorporated) will be returned and delivered up to the Disclosing Party or destroyed by the Receiving Party, immediately upon request by the Disclosing Party. The Receiving Party will produce promptly upon the Disclosing Party's request a certificate signed by any of its directors or its chief executive officer or equivalent, confirming that this has been completed.

#### **5. Remedies**

- 5.1 The Receiving Party irrevocably undertakes to keep the Disclosing Party, and the Disclosing Party's Associates and their respective Representatives (collectively, the "DP Associates/Representatives") fully and effectively indemnified against any and all losses, costs, damages, claims, demands, actions, proceedings, liabilities and expenses whatsoever (including but not limited to all legal costs on a full indemnity basis) that the Disclosing Party and/or any of the DP Associates/Representatives may incur or suffer in connection with or arising from any breach of this Agreement and/or any default by the Receiving Party of its obligations under this Agreement. The provisions of this clause confer a benefit on the DP Associates/Representatives which may be enforced by any of the DP Associates/Representatives in its own right.
- 5.2 Without prejudice to Clause [5.1] and any other rights or remedies that the Disclosing Party may have, the Receiving Party agrees and acknowledges that money damages may not be a sufficient remedy for any breach of this Agreement by the Receiving Party

and that the Disclosing Party shall be entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach thereof.

- 5.3. The rights, powers and remedies provided in this Agreement are cumulative and are additional to and do not exclude the rights or remedies provided at law and in equity independently of this Agreement.
- 5.4 No failure or delay by the Disclosing Party in exercising any, right, power or privilege under this Agreement shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any further exercise thereof or the exercise of any right, power or privilege hereunder or otherwise.

## **6. No Representation or Warranty**

- 6.1 The Disclosing Party makes no representation or warranty whatsoever as to the accuracy, completeness, sufficiency or suitability of the Confidential Information. Accordingly, the Receiving Party acknowledges that the Disclosing Party accepts no liability or responsibility whatsoever and howsoever arising in connection with the Confidential Information (including but not limited to any errors or omissions in the Confidential Information). This Agreement shall create no obligation whatsoever on the Disclosing Party to disclose any Confidential Information, or any particular kind or quantity thereof.
- 6.2 The Receiving Party shall be responsible for making its own judgment, assessment and decision on the Confidential Information and on the Project or as to the reasonableness of any assumptions which may be contained in it. The Receiving Party shall, in the execution of any agreements relating to the Project, acknowledge that the Receiving Party has not relied on, or been induced by any representation or warranty in the Confidential Information to enter into the agreements, except where expressly specified therein.

## **7. No Joint Venture, Partnership, Etc.**

The Disclosing Party agrees that this Agreement is not intended to constitute, create, give effect to or otherwise recognize a joint venture, partnership or formal business relationship or entity of any kind. Any exchange of Confidential Information under this Agreement shall not be deemed to constitute any offer, acceptance or promise of any contract or amendment to any contract between the Disclosing Party and the Receiving Party. The Receiving Party shall have no authority whatsoever to bind the Disclosing Party in any context.

## **8. Exclusive Property**

The Receiving Party acknowledges that the Confidential Information is the exclusive property of and will remain the exclusive property of the Disclosing Party. The provision of the Confidential Information to the Receiving Party shall not be deemed to confer upon the Receiving Party or any of its Representatives any rights whatsoever (whether by licence or otherwise, and whether by way of patent(s), patent applications, copyrights or other intellectual property rights or otherwise) over or with respect to the Confidential Information or any part thereof.

## **9. Duration**

- 9.1 The obligations of the Receiving Party under or pursuant to this Agreement shall continue in force for a period of 24 months from the date of this Agreement regardless of whether the Project is completed, aborted, suspended or otherwise.
- 9.2 For the avoidance of doubt, where the Receiving Party enters into any definitive binding contract in relation to the Project (or any part thereof), the provisions of this Clause [9] shall not affect the Receiving Party's confidentiality obligations (if any) under the aforesaid contract.

**10. No Assignment**

The Receiving Party shall not assign, transfer or novate this Agreement or any of its benefits, rights and/or obligations under this Agreement in part or in whole to any other person or third party, without the prior written consent of the Disclosing Party.

**11. Entire Agreement**

The Receiving Party acknowledges that this Agreement contains the entire understanding between the Disclosing Party and the Receiving Party with respect to the safeguarding of the Confidential Information and supersedes all prior communications and understandings with respect thereto. No waiver, alteration, modification or amendment hereto shall be binding or effective for any purpose whatsoever unless and until reduced to writing and executed by authorized representatives of the Disclosing Party and the Receiving Party.

**12. Severability**

The Receiving Party agrees that each provision (or part thereof) of this Agreement shall be construed separately and independently from any other provision(s). Accordingly, if any provision of this Agreement is found to be illegal, unenforceable or invalid in any jurisdiction, such provision shall be ineffective to the extent of such illegality, unenforceability or invalidity in such jurisdiction, without affecting the remaining provisions of this Agreement, nor shall such illegality, unenforceability or invalidity affect the legality, enforceability or validity of any and all of the provisions of this Agreement in any other jurisdiction.

**13. Governing Law & Jurisdiction**

This Agreement shall be governed by and construed in all respects in accordance with the laws of Singapore and the Receiving Party irrevocably submits to the non-exclusive jurisdiction of the Singapore courts.

**14. Contracts (Rights of Third Parties) Act (Cap. 53B)**

- 14.1 Save as otherwise provided in Clause [5.1] a person who is not a party to this Agreement shall have no right to enforce any of the terms of this Agreement under the Contracts (Rights of Third Parties) Act (Cap. 53B) of Singapore.
- 14.2 Notwithstanding any term of this Agreement, the consent of any third party is not required for any variation (including any release or compromise of any liability) or termination of this Agreement.

Signed By

.....

Name:

Designation:

For and on behalf of

**[Name of Receiving Party]**

Witnessed by:

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Witness' name: