

ANNEX A: THE AGREEMENT ON THE USE OF THE FUNDS

THIS AGREEMENT (“**Agreement**”) is entered into on «Date_of_Approval_Letter».

BETWEEN

- (1) **Tote Board** (UEN No. T08GB0058D), with its registered address at 210 Middle Road, #06-01, Singapore 188994 (“**TB**”);

AND

- (2) «**Organisation**» («Organisation_UEN_No»), with its registered address at Block «Block_No», «Street», «Building_Name», Singapore «Postal_Code» (“**Organisation**”),

(each a “**Party**” and collectively, the “**Parties**”).

WHEREAS:

- A. **TB** agrees to provide and **Organisation** accepts support for «Project_Title», at «Funding_Formula_» on the terms and conditions as set out herein.

IT IS HEREBY AGREED AS FOLLOWS:

1. INTERPRETATION

In this Agreement, the following words and expressions shall have the following meanings, except where the context otherwise requires:

1.1 Definitions:

- (a) “**Authorised Representative**” (“**AR**”) means such named representative of the Highest Authority or such equivalent of **Organisation** as approved by **TB**.
- (b) “**Confidential Information**” means any and all information that is disclosed by one Party (“**Disclosing Party**”) to the other Party (“**Receiving Party**”) which, if disclosed in tangible or written form, is marked at the time of disclosure with the words “Confidential” or “Proprietary” or other words of similar import, and if disclosed in intangible form, orally or visually, is described at the time of disclosure as confidential and subsequently confirmed in writing as confidential within thirty (30) days after its disclosure, but shall not include any information which:
- (i) is publicly available prior to the date of disclosure under this Agreement or becomes publicly available thereafter through no wrongful act or omission of the Receiving Party;
 - (ii) was already in the possession or control of Receiving Party prior to the time of disclosure by Disclosing Party, as evidenced by written records;
 - (iii) is lawfully obtained without confidentiality obligations by Receiving Party from a third party under no obligation of confidentiality in respect of such information;
 - (iv) is developed by Receiving Party independently of any Confidential Information of Disclosing Party, as evidenced by written records;
 - (v) was disclosed by Receiving Party with Disclosing Party’s prior written approval;
 - (vi) the Receiving Party is obligated to produce pursuant to an order of a court of competent jurisdiction or by law, provided that the Receiving Party, if not legally prohibited from so doing, promptly notifies the Disclosing Party and cooperates reasonably with efforts to contest or limit the scope of such order or legal requirement to disclose.

- (c) “**Conflict of Interest**” means situations or circumstances where an individual’s personal or professional interests interfere or may potentially interfere with the performance of his/her assigned duties and responsibilities.
- (d) “**Funds**” means the funding (or part thereof) provided by **TB** pursuant to this Agreement.
- (e) “**Fund Account**” means any bank account containing monies from the Funds.
- (f) “**FY**” means financial year, which refers to a period of 12 calendar months from «Start_Date» of a particular year to «End_Date» of the following year.
- (g) “**Highest Authority**” (“**HA**”) means the individual within **Organisation** who resides at the top of **Organisation**’s corporate hierarchy / chain-of-command, with overall management and executive control of **Organisation**, as well as power and authority to act on behalf of **Organisation**.
- (h) “**KPIs**” means key performance indicators.
- (i) “**Period**” refers to «Start_Date» to «End_Date» of each «CY_or_FY».
- (j) “**Project**” means «Project_Title» («CMS_Case_No»), which **TB** has agreed to support with the Funds under the terms and conditions of this Agreement.
- (k) “**Related Party**” or “**Related Parties**” exist when one party has the ability to exercise, directly or indirectly, control or joint control or otherwise has significant influence over the other party(s). Two or more parties are also related when they are subject to common control or joint or common significant influence by another party(s). Related parties also include management and immediate family members. For the purposes of this definition, control is defined as owning more than fifty percent (50%) of the voting equity of a party or having otherwise the power to govern the financial and the operating policies or to appoint the management of an organisation.
- (l) “**Related Party Transactions**” means transactions that involve a transfer of economic resources or obligations between related parties or the provision of services by one party to a related party, regardless of whether any consideration is exchanged. The parties to the transaction are related prior to the transaction. When the relation arises as a result of the transaction, the transaction is not one between related parties.
- (m) “**Representatives**” means a Party’s directors, officers, employees, servants, contractors, subcontractors, agents, consultants, and professional advisers.
- (n) “**Term**” means the period of support/funding from «CY_or_FY»«Period_of_Support_From» to «CY_or_FY»«Period_of_Support_to».
- (o) “**Working Day**” means a day other than a Saturday, Sunday or a gazetted public holiday in Singapore.

1.2 All headings or sub-headings are for convenience only and shall not be deemed part of these terms and conditions.

2. USE OF THE FUNDS

2.1 The Funds are extended to **Organisation** for use in the Project at «Funding_Formula_» from («CY_or_FY»«Period_of_Support_From» to «CY_or_FY»«Period_of_Support_to»).

2.2 If, for any reason, **Organisation** wishes to change the scope and/or objectives of the Project, **Organisation** shall inform **TB** in writing within thirty (30) Working Days of its forming such intention to do so, failing which **TB** shall assume that there has been no change in the information or projections provided in **Organisation**’s application. No change of the scope and/or objectives of the Project shall be made without the prior written approval of **TB**.

- 2.3 **Organisation** is expected to achieve the KPIs. Any changes to the KPIs must be submitted to **TB** for approval before implementing these new KPIs.
- 2.4 No part of the Funds shall be used for any purposes not stated herein, including without limitation:
- (a) debt/loan repayments;
 - (b) investments or speculative activities/transactions of any nature or type;
 - (c) religious, political, and/or ideological activities;
 - (d) commercial purposes; and
 - (e) in relation to projects that primarily benefit (i) specific individuals (regardless of nationality or where they are based); and (ii) beneficiaries who are foreigners not based in Singapore.
- 2.5 **TB** reserves the right to withdraw, withhold or reduce the amount of any funds approved but not yet disbursed if:
- (a) funds which have already been disbursed are not applied according to the purpose and/or spirit for which the application was made;
 - (b) the KPIs listed are not met;
 - (c) any information provided by **Organisation** turns out to be inaccurate or untrue; or
 - (d) there is any non-disclosure of any material information.

Notwithstanding the above, nothing herein shall prevent **TB** from requiring **Organisation** to immediately repay any of the Funds released to **Organisation** irrespective of whether **Organisation** has used such funds.

- 2.6 **TB** shall not be liable for any commitments entered into by **Organisation** in the expectation of the receipt of funds from **TB**.

3. RELEASE OF FUNDS

- 3.1 **TB** shall release the Funds directly to **Organisation** only upon receiving from **Organisation** in good order the necessary documents related to the Project at the appropriate stage.

[The details of how the funds would be released is determined after the funding for the Project has been approved.]

- 3.2 The Funds to **Organisation** shall only be remitted through GIRO. There is no need to send an official or tax deductible receipt to **TB**.

4. REPORTS

- 4.1 Within nine (9) months after the end of each «CY_or_FY», **Organisation** shall submit or ensure the submission of the following documents, if not, **TB** reserves the right to withdraw, withhold, or reduce the amount of any Funds approved, or otherwise claw back any Funds that have been released to **Organisation**:
- (a) An annual project report, signed by the HA of the **Organisation** or his/her equivalent, or his/her AR detailing:
 - (i) the actual performance of KPIs; and
 - (ii) any other related information, including a write-up of the Project and photos pertaining thereto.

- (b) An audited Statement of Accounts (Special Purpose Audit or Statutory Audit for Grants pertaining to Annual Operating Expenditure) in respect of the funding, which should include contributions by the **Organisation** and any other contributions received for the purpose of the Project, together with the auditor's report. The audit shall be performed by a Certified Public Accountant and its report shall provide the Board with the requisite reasonable assurance.

In the event that errors, deviations, or any material internal controls weaknesses are found, the auditor shall report accordingly and provide details and opinion in the main audit report.

For the avoidance of doubt, all costs and expenses incurred in relation to or in connection with the audit, unless included in the budget, shall be borne solely by **Organisation** or such other company that is being audited.

- 4.2 Photocopied audited Statement of Accounts must be certified true copies bearing the original signature of the HA or his/her equivalent, or his/her AR.
- 4.3 **Organisation** shall allow and shall ensure that its agents, partners, or such other third party that may receive or handle the Funds allow **TB** and its agent and employees at all reasonable times on reasonable notice to have access to and to inspect or audit its accounts, records and other documents relating to the financial, procedural, operational and/or processing activities and transactions, and any other matters directly or indirectly arising from or in connection with the Funds and the compliance with this Agreement.

5. BALANCE OF MONIES UNDER THE FUNDS

- 5.1 At the end of each «CY_or_FY», Parties may suggest and mutually accept any further refinements to the disbursement and administration of the Funds to ensure the effective management of the Funds.
- 5.2 In the event that there are any unused Funds (including any interest that may have accrued in the Fund Account) at the end of the Term, **Organisation** shall return and/or ensure the return of all such monies to **TB** within twelve (12) months from the end of the Term. Parties may decide to extend the Term based on Parties' mutual agreement. If so, the unused Funds (including any interest that may have accrued in the Fund Account) shall be carried over for use in accordance with the terms of this Agreement (unless agreed otherwise by the Parties) during the period of extension.

6. TERM AND TERMINATION

- 6.1 This Agreement shall become effective on «Date_of_Approval_Letter» and shall continue in full force and effect for the Term, unless terminated in accordance with this Clause 6 or extended by written agreement.
- 6.2 Notwithstanding Clause 6.1, **TB** may at its sole and absolute discretion terminate this Agreement without cause or reason at any time by giving ninety (90) days' prior written notice ("**Prior Notice**") to **Organisation**. **TB** shall not be liable to **Organisation** for any damages, losses or compensation arising out of or in connection with termination pursuant to this Clause 6.2.
- 6.3 Upon issuance of the Prior Notice by **TB** and receipt of the Prior Notice by **Organisation**:
 - (a) **Organisation** shall immediately stop disbursing or utilising the Funds in any manner except for any purpose approved by **TB** in the Notice and/or ensure the stopping of the foregoing; and
 - (b) **Organisation** shall return and/or ensure the return of all unused Funds (including any interest that may have accrued in the Fund Account) to **TB** by the date stipulated in the Notice.
- 6.4 **TB** may terminate this Agreement by written notice ("**Immediate Notice**") with immediate effect if:
 - (a) the Project is cancelled;
 - (b) **Organisation** has in **TB**'s sole opinion under-performed significantly;

- (c) **Organisation** has in **TB**'s sole opinion failed to comply with any terms and conditions of this Agreement;
- (d) **Organisation** goes into liquidation, receivership, judicial management or is insolvent;
- (e) **Organisation** faces any investigation or litigation that is in **TB**'s sole opinion adverse or damaging to **TB**'s reputation; or
- (f) there is in **TB**'s sole opinion evidence of misuse of the Funds or provision of false or misleading information or non-disclosure of material information.

6.5 Upon issuance of the Immediate Notice by **TB** and receipt of the Immediate Notice by **Organisation**:

- (a) The Funds to **Organisation** shall cease immediately; and
- (b) **Organisation** must immediately repay and/or ensure repayment to **TB** all the Funds (including any interest that has been earned on the same) that have been released to **Organisation** upon written demand by the **TB**.

6.6 The termination of this Agreement shall be without prejudice to any existing rights or claims that either Party may have against the other and shall not relieve either Party from fulfilling its obligations accrued prior to termination.

6.7 Without prejudice to the foregoing, **TB** and **Organisation** agree to work out the transition and handover arrangements, including but not limited to communications, fund diversion and return arrangements for the Funds, arising from the termination of this Agreement, to ensure a smooth and proper handover of the Fund Account.

7. NOTICES

7.1 All notices under this Agreement shall be in writing and shall be delivered by e-mail, facsimile transmission, hand, pre-paid registered post or courier to the following persons at the addresses below, or such other persons or at such other addresses as a Party may notify in writing to the other Party from time to time:

TB

Designation: : Chief Executive
 Address : 210 Middle Road #06-01 Singapore 188994
 Phone : 6216 8900
 Email : grants@toteboard.gov.sg

Organisation

Designation : «Designation_of_HA»
 Address : Block «Block_No», «Street», «Building_Name», Singapore «Postal_Code»
 Phone : «Tel_of_HA»
 Email : «Email_of_HA»

8. ACKNOWLEDGEMENT

8.1 **Organisation** shall publicise or make public statements about the award of the Funds only upon request by **TB** or otherwise after prior written consent is obtained from **TB**. In both cases, **Organisation** shall seek approval and provide publicity materials for review and clearance by **TB** at least fifteen (15) Working Days prior to its intended publication date.

8.2 The forms of acknowledgement shall include, but shall not be limited to:

- (a) Name and/or corporate logo of **TB**, and/or any other marks, devices or insignias as **TB** may in its sole discretion decide:

- (i) in marketing collaterals such as websites, banners, brochures, backdrops, or promotional materials used for events/programmes; or
 - (ii) on plaques for capital funding or funding towards operational costs;
 - (b) Mentions of **TB**'s contributions and/or other description of **TB** as **TB** may in its sole discretion decide, in media releases, factsheets and speeches of invited guests.
- 8.3 **Organisation** shall submit to **TB** for clearance all forms of acknowledgement at least fifteen (15) Working Days prior to its intended publication date.

9. LIMITATION OF LIABILITY & INDEMNITY

- 9.1 Subject to prevailing laws, in no event shall **TB** or any of its employees, officers, directors or subcontractors be liable, and **Organisation** hereby unequivocally waives all rights against **TB** for any damages, costs or expenses, whether special, indirect, incidental, consequential, exemplary or punitive damages, arising from any act or omission in the performance of this Agreement, regardless of the form of action, including in contract or tort (including negligence) from which such damages, costs or expenses may arise, save where such damages, costs or expenses arise due to the gross negligence or willful default of **TB**.
- 9.2 Without prejudice to any other rights or remedies which **TB** may have under law, **Organisation** shall be liable for and shall to the fullest extent permitted by the applicable laws indemnify and hold harmless **TB** against:
- (a) all claims, demands, losses, damages, penalties, expenses and liabilities of any kind which **TB** may suffer or incur in respect of or in connection with the funding or arising, directly or indirectly, out of the act, default or omission of the **Organisation**, its officers, employees and agents, or out of any breach of the obligations hereunder on the **Organisation**'s part to be performed under this Agreement.

10. CONFIDENTIALITY

- 10.1 Unless expressly agreed upon in writing, Parties agree that all Confidential Information communicated in connection with this Agreement shall be kept confidential by the Parties. Each Party agrees to make Confidential Information available only to those of its affiliates, employees, and professional/legal advisors ("**Authorised Personnel**") who require access to it in the performance of this Agreement, and to inform such Authorised Personnel of the confidential nature of such information and their obligation to protect such confidentiality, and ensure that such other Authorised Personnel shall also observe and be bound by the confidentiality provisions of this Agreement. Each Party shall exert reasonable efforts, no less than the protection given to its own Confidential Information, to maintain such information in confidence. This obligation of confidentiality shall continue to survive for the Term or earlier termination of this Agreement.
- 10.2 **Organisation** shall consult **TB** and obtain **TB**'s prior written consent before making any media or other public statement about **TB** and/or this Agreement or anything that relates to this Agreement and the contents thereof.

11. DISPUTE RESOLUTION

- 11.1 In the event of any difference or dispute arising between the Parties relating to the validity, interpretation, construction or performance of this Agreement, the Parties shall use their best endeavours to settle amicably such difference or dispute by mutual consultation and negotiation and shall thereafter abide by the agreed course of action.

12. GOVERNING LAW

- 12.1 The construction, validity and performance of this Agreement shall be governed in all respects by the Laws of the Republic of Singapore and the Parties hereby submit to the jurisdiction of the courts of the Republic of Singapore.

13. MISCELLANEOUS

- 13.1 Amendments. This Agreement may be varied and/or amended by **TB** from time to time in **TB's** sole and absolute discretion. Any such variation or amendment shall take effect upon the expiry of seven (7) days after written notice is given by **TB** to **Organisation**.
- 13.2 No waiver. No exercise or failure to exercise, or delay in exercising any right power or remedy vested in any Party under or pursuant to this contract shall constitute a waiver by that Party of that or any other right, power or remedy.
- 13.3 Delegation of Authority within Organisation. If the HA wishes to delegate his/her authority, the delegation must be made to an **Organisation** personnel who is a Director and/or of a higher ranking. **TB** must be formally notified in writing. It will only be formalised when **TB** approves and acknowledges in writing.
- 13.4 Successors-In-Title. This Agreement shall be binding on the successors and assignees of **TB** and **Organisation** but nothing herein shall permit any assignment of any part of the Funds to another party without the prior written approval of **TB**.
- 13.5 Third Parties' Rights. Unless otherwise expressly provided herein, a person who is not a party to this Agreement shall have no rights under the Contracts (Rights of Third Parties) Act (Cap. 53B) to enforce any term of this Agreement.
- 13.6 Exclusion of Trust and Agency. Nothing in this Agreement creates any relationship of trust or agency between **TB** and **Organisation**.
- 13.7 No Liability. **TB** is entitled to withdraw, withhold or reduce the amount of any funds disbursed or approved, as the case may be, to **Organisation** at any time and shall not be liable to **Organisation** for any damages, costs or expenses that may arise as a result of such withdrawal, withholding, or reduction.
- 13.8 Appeal. **Organisation** may submit an appeal in connection with any decision by **TB** in respect of the funding or the Project to grants@toteboard.gov.sg.

14. ENTIRE UNDERSTANDING

- 14.1 Unless otherwise stated in this Agreement, this Agreement (including its annexes) embodies the entire understanding between the Parties in respect of the matters set out in this Agreement, and any prior or contemporaneous representations, either oral or written, are hereby superseded.