

**IN THE MATTER OF AN ARBITRATION UNDER
THE ARBITRATION RULES OF THE SINGAPORE INTERNATIONAL ARBITRATION
CENTRE (5TH EDITION, 1 APRIL 2013) (“SIAC RULES 2013”)**

SIAC ARBITRATION NO. 083 OF 2016

BETWEEN

GEO MILLENIUM SYSTEM PTE LTD

...CLAIMANT

AND

NCS PTE LTD

...RESPONDENT

RESPONSE TO NOTICE OF ARBITRATION

6 MAY 2016

1. Preliminary

- 1.1 We act for NCS Pte Ltd ("**NCS**") in this arbitration reference.
- 1.2 We refer to the Notice of Arbitration dated 31 March 2016 filed by Geo Millenium System Pte Ltd ("**GMS**") (the "**Notice**").
- 1.3 NCS submits this Response to the Notice pursuant to Rule 4 of the SIAC Rules 2013 (the "**Response**").

2. Details of the Respondent

- 2.1 NCS is a company organised and existing under the laws of Singapore. NCS's contact details are as follows:

NCS Pte Ltd
5 Ang Mo Kio Street
62 NCS Hub
Singapore 569141

Tel: +65 6570 4040
Fax: +65 6484 4068

- 2.2 We request that all communications and correspondence intended for NCS in this arbitration be directed to its counsel, Allen & Gledhill LLP, using the contact details set out below:

Allen & Gledhill LLP
One Marina Boulevard #28-00
Singapore 018989

Attn: Vincent Leow
Vivekananda N.
Hoh Jian Yong

Tel: +65 6890 7807
+65 6890 7154
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Fax: +65 6302 3248
+65 6302 3306

Email: vincent.leow@allenandgledhill.com
vivek.n@allenandgledhill.com

hoh.jianyong@allenandgledhill.com

3. Matters that the Respondent does not propose to dispute

3.1 The Respondent agrees that:

- 3.1.1 The Teaming Agreement for ContractTR150 dated 5 February 2015 (the “**Teaming Agreement**”) was signed by NCS and GMS.
- 3.1.2 An arbitration agreement is contained in clause 13 of the Teaming Agreement (the “**Arbitration Agreement**”).
- 3.1.3 The law governing the Teaming Agreement is Singapore law excluding its conflict of laws principles and the United Nations Convention for the International Sale of Goods, pursuant to its clause 14. *[To discuss]*
- 3.1.4 Pursuant to the Arbitration Agreement, a sole arbitrator tribunal is to be appointed.
- 3.1.5 The seat of the arbitration pursuant to the Arbitration Agreement is Singapore.
- 3.1.6 The language of the arbitration pursuant to the Arbitration Agreement is English.
- 3.1.7 Rule 1.2 of the SIAC Rules 2013 provides that: “*These Rules shall come into force on 1 April 2013 and, unless the parties have agreed otherwise, shall apply to any arbitration which is commenced on or after that date.*” The parties have not agreed otherwise in the Arbitration Agreement, and accordingly the applicable rules to this arbitration are the SIAC Rules 2013.

4. Pre-conditions to commencement of arbitration not satisfied by GMS

- 4.1 As GMS recognises in the Teaming Agreement and in the Notice, a mandatory obligation was incumbent upon both parties to the Teaming Agreement to resolve any dispute arising out of or in connection with the Teaming Agreement by way of the mechanism described in clause 13 of the Teaming Agreement (the “**Pre-Arbitration Mechanism**”).
- 4.2 The Pre-Arbitration Mechanism requires that any dispute arising out of or in connection with the Teaming Agreement, including any question regarding its existence, validity or termination, be referred:

- 4.2.1** in the first instance, to the parties' authorised contacts listed in Annex A to the Teaming Agreement *i.e.* to the following persons:
- 4.2.1.1** on behalf of GMS, to Mr Tissa De Silva, Senior Manager and Mr Loo Cheng Koon, Senior Manager; and
- 4.2.1.2** on behalf of NCS, to Mr Eddie Lim Sing Loong, Account Director and the Head of the Legal Department of NCS.
- 4.2.2** If the dispute was not resolved by the said authorised contacts of the parties within a maximum period of 14 days, the dispute was to be referred in the second instance to the Chief Executive Officer of NCS and the Chief Executive Officer of GMS, and if no such person existed, to any corporate officer of the parties who had like authority and responsibilities.
- 4.2.3** If the persons at 4.2.2 above were unable to resolve the dispute within a maximum period of 30 days, the dispute may be referred to arbitration in accordance with the Arbitration Agreement.
- 4.3** NCS submits that the Pre-Arbitration Mechanism is a mandatory and enforceable mechanism that must be complied with by the parties prior to the commencement of any arbitration under the Arbitration Agreement.
- 4.4** To be clear, the dispute raised by GMS in the Notice and the claims and reliefs specified therein are centred on the Teaming Agreement. However, GMS has not raised a 'dispute' in relation to the Teaming Agreement at any point in time prior to the issuance of the Notice. Importantly, GMS has not raised any such dispute by complying with the mandatory Pre-Arbitration Mechanism.
- 4.5** It is important to note that as GMS alleges in the Notice, the contract for the ERP2 Project was awarded to NCS in February 2016. The contract was in fact awarded to NCS on 25 February 2016. Even if GMS had raised a 'dispute' with NCS on the day after the award of the contract, which it did not, the parties could not have complied with the Pre-Arbitration Mechanism by 31 March 2016, when GMS issued the Notice. It is therefore apparent that GMS has chosen to ignore the Pre-Arbitration Mechanism in filing the Notice.
- 4.6** Therefore, NCS will submit that GMS' Notice is premature, and in any event, that GMS has not complied with the Pre-Arbitration Mechanism agreed to by the parties in the Teaming Agreement.
- 4.7** This Response is issued without prejudice to NCS' objections to the commencement of this arbitration on the basis that such commencement is in breach of the Pre-Arbitration Mechanism.

- 4.8 Concurrent with the filing of this Response, the Respondent has also filed an objection to the commencement of this arbitration under Rule 25.1 of the SIAC Rules.

5. Appointment of arbitral tribunal

- 5.1 Contrary to what has been suggested by the Claimant in paragraph 18 of the Notice, no proposal has been received by the Respondent from the Claimant on candidates for appointment as sole arbitrator.

- 5.2 The Respondent submits that no arbitral tribunal ought to be appointed until such time that the Respondent's objection to the commencement of this arbitration on the basis that the Pre-Arbitration Mechanism has not been complied with by the Claimant, has been decided in accordance with the SIAC Rules.

6. Response to the Notice

- 6.1 The version of the facts narrated in the Notice obfuscates several important events and facts of the matter. NCS does not propose to set out a detailed and correct version of the facts at this stage, and reserves the right to do so at the appropriate stage in this arbitration. For the avoidance of any doubt, unless otherwise agreed or set out herein, NCS disagrees with the version of the facts set out in the Notice and reserves the right to address these in detail in its Statement of Defence, and thereafter.

- 6.2 NCS denies that it is under any obligation to enter into any definitive agreement with GMS as suggested in the Notice or at all. NCS further denies that it is in breach of the Teaming Agreement or is liable in damages to GMS as suggested in the Notice or at all.

- 6.3 NCS will demonstrate through the course of this arbitration that there are several issues with the manner in which GMS has construed the facts of the matter and interpreted the terms of the Teaming Agreement.

- 6.4 NCS reserves the right to file a detailed statement of defence with further and better particulars and documents to substantiate its contentions in respect of the Notice, at the appropriate stage.

7. Relief sought

- 7.1 In the circumstances outlined above, and for reasons to be developed during the course of this arbitration, NCS seeks in this arbitration, without limitation, the dismissal of each of GMS' claims in this arbitration reference.

7.2 In addition, NCS will also request the tribunal as and when constituted to order GMS to reimburse, and on that basis award to NCS:

7.2.1 all legal costs and expenses incurred by NCS in the preparation of, and conduct of this arbitration including costs expended towards legal counsel, witnesses, experts, consultants and NCS itself;

7.2.2 the costs of this arbitration as determined by SIAC *i.e.* the fees and expenses of the arbitral tribunal and SIAC; and

7.2.3 any other relief that it might find appropriate.

7.3 NCS reserves the right to file a detailed statement of defence with further and better particulars and documents to substantiate its defences against GMS, at the appropriate stage.

8. Miscellaneous matters

8.1 A copy of this Response along with its accompanying documents has been simultaneously served on GMS' counsel using their contact details as mentioned in the Notice, pursuant to Rule 4 of the SIAC Rules 2013.

8.2 NCS has also concurrently with the filing of this Response, filed an objection to the commencement of this arbitration under Rule 25.1 of the SIAC Rules, which we respectfully submit, must be decided first before any further steps in the conduct of this arbitration may be taken.

8.3 We look forward to hearing from SIAC.

6 May 2016

Respectfully submitted on behalf of the Respondent

ALLEN & GLEDHILL LLP
COUNSEL FOR THE RESPONDENT