

CONDITIONS OF CONTRACT

1 DEFINITIONS

1.1 In these Conditions unless the context otherwise requires:-

- (a) “Contract” includes the Instructions to Tenderers, the Contractor's tender, Conditions of Contract, the specifications and samples, Letter of Acceptance, and any Purchase Orders issued by the University to the Contractor for the supply of the Goods and any annexes between the University and the contractor
- (b) “Contractor” means the successful Tenderer who has been awarded the Contract by the University.
- (c) “UFE” means University Furnished Equipment and shall refer to the items which the University provides or is required to provide for this Contract.
- (d) “Goods” means all goods, including technical documentation, parts or units thereof, which the Contractor is required to supply under the Contract.
- (e) “Parties” refer to the University and the Contractor.
- (f) “Person” includes a corporation or an unincorporated association.
- (g) “Services” means the work which the Contractor is required to perform under the Contract.
- (h) “Tenderer” means a person or his permitted assigns offering to supply the Goods, and shall be deemed to include two or more persons if appropriate.
- (i) “University” means Nanyang Technological University (Company Registration Number 200604393R) located at 50 Nanyang Avenue, Singapore 639798 and includes any officer authorized by the University to act on its behalf.
- (j) “Acceptance Tests” means the tests to be conducted on the System pursuant to Clause 22.
- (k) “System” means High-Performance Liquid Chromatography system.

1.2 Words importing the singular include the plural and vice versa.

1.3 The headings are for convenience only and not for the purpose of interpretation.

2. SCOPE OF CONTRACT

2.1 The Contractor shall carry out and complete the supply of all items of Goods and Services in accordance with the Contract. Unless otherwise stated in the Contract, all Goods shall be new and unused.

3. DELIVERY AND PERFORMANCE

- 3.1 The Contractor shall deliver the Goods and/or perform the Services at the place(s) and in the manner specified in the Contract. The Contractor shall obtain a receipt therefore from the University. The issue of such receipt shall in no way relieve the Contractor from his responsibility for replacing defective or damaged Goods under Clause 4 hereof or re-performing deficient Services.

4 REMOVAL AND REPLACEMENT

- 4.1 The Contractor shall at his own cost and when notified in writing by the University, remove and replace the Goods that are found on delivery to be damaged, defective or in any way inferior to approved samples, or not in accordance with the Contract, failing which the University shall have the right to purchase replacements elsewhere or to make good any damage in any manner it deems necessary and all costs thereby incurred shall be recoverable from the Contractor by deduction from any money due to the Contractor under the Contract.

5 PAYMENT

- 5.1 Within thirty (30) days of delivery of the Goods / Services ordered under the Contract, and upon presentation by the Contractor of his bills and the University's receipt aforesaid the University will make payment to the Contractor of the full value of all Goods / Services so performed provided that no payment shall be considered as evidence of the quality of any Goods / Services or the University's acceptance of the Goods / Services to be in accordance with the Contract to which such payments relates.
- 5.2 Where delivery is by consignments, payment will be made within 30 days after delivery of each consignment and the receipt of the above documents.
- 5.3 Without limiting the University's right under the Contract, the amount of any payment or debt owed by the Contractor to the University under the Contract may be deducted by the University from any monies payable by the University to the Contractor pursuant to this Contract.

6 RIGHTS OF THIRD PARTIES

- 6.1 A person who is not a party to this Contract shall have no right under the Contracts (*Rights of Third Parties*) Act to enforce any of its terms.

7 GIFTS, INDUCEMENTS AND REWARDS

- 7.1 The University may terminate the Contract and recover from the Contractor the amount of any loss resulting from such termination, if the Contractor shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of the Contract with the University or for showing or forbearing to show favour to any person in relation to any Contract with the University, or

if the like acts shall have been done by any person employed by the Contractor or acting on his behalf (whether with or without the knowledge of the Contractor) or if in relation to any Contract with the University the Contractor or any person employed by him or acting on his behalf shall have committed any offence under Chapter IX of the *Penal Code* or *Prevention of Corruption Act* or shall have abetted or attempted to commit such an offence or shall have given any fee or reward the receipt of which is an offence under Chapter IX of the *Penal Code* or the *Prevention of Corruption Act*.

8 DELAY IN DELIVERY AND PERFORMANCE

8.1 Subject to Clause 14, if the Contractor fails to deliver any item of Goods and/or complete the performance of Services by the date specified in the Contract, the University shall have the right –

- (a) to cancel all or any such items of Goods and/or Services from the Contract without compensation and obtain them from other sources and all increased costs thereby incurred shall be deducted from any moneys due or to become due to the Contractor or shall be recoverable as damages; or
- (b) to deduct from any moneys due or to become due to the Contractor or require the Contractor to pay, a sum calculated at the rate of Singapore Dollars \$180 per day (including Sundays and Public Holidays), as liquidated damages for every day of delay until the Goods are delivered and/or the Services are performed.

Provided that the recovery of such increased costs aforesaid shall be limited to the quantity of such Goods and/or Services as is purchased or obtained, not exceeding the quantity stated in the Contract, from other sources after the Contractor's failure as aforesaid but within three months of the expiry of the Contract.

9 SUB-CONTRACTING AND ASSIGNING

9.1 The Contractor shall not sub-contract or assign the Contract without the written consent of the University.

10 APPLICABLE LAW

10.1 The Contract shall be deemed to be made in Singapore and shall be subject to, governed by and interpreted in accordance with the Laws of the Republic of Singapore for every purpose.

11 SUSPENSION OR TERMINATION

11.1 The University shall, after giving seven (7) days prior written notice to the Contractor, have the right to suspend or terminate the Contract if the University is affected by any state of war, Act of God or other circumstances seriously disrupting public safety, peace or good order of the Republic of Singapore. Neither party shall be liable to the other by reason of such suspension or termination save that the University shall pay the Contractor the price of the Goods delivered and/or the Services performed and accepted by the University and in the

event of termination, costs for works-in-progress (but not including anticipated profits) which have been incurred prior to the termination. The University shall have title to such Goods delivered and accepted and any materials paid for. The Contractor shall refund the balance of any payments or deposits made after deducting any outstanding sums owing by the University to the Contractor by reason of this Clause.

12 WARRANTY

12.1 The Warranty Period shall commence on the date of receipt of the Goods or date of acceptance of Services in Singapore. The length of the Warranty Period shall be twelve (12) months or such period as agreed in writing.

12.2 Where during the Warranty Period, any Goods is found to be:-

- (a) Defective in design, materials or workmanship; or
- (b) Not in accordance with the Contract or any specifications incorporated therein by reference or otherwise; or
- (c) Having been installed, operated, stored and maintained in accordance with the written instructions of the Contractor, fails to function properly or fails to meet any performance guarantees set forth in the Contract or specifications published by the Contractor as applicable to the Goods;

then unless it is shown that the foregoing is caused solely by improper use or mishandling by the University, the Contractor shall, at its own expense (including transportation costs), at the written notification of the University, replace, rectify or completely repair the same, within 14 days, which shall commence from the receipt by the Contractor of the damaged or defective Goods and end upon the receipt of the replaced, rectified or repaired Goods by the University. The Contractor may, in lieu thereof, elect to replace the damaged or defective Goods. Any replacement Goods shall be subject to the same acceptance tests as the Goods it replaces and any repaired Goods shall be subject to such parts of the said acceptance tests as are necessary to ascertain that the repaired Goods is acceptable. The Warranty Period for the replacement or repaired Goods shall be extended by a period equivalent to the period commencing from the date of the said notification to the date of acceptance of the repaired/replaced Goods by the University in Singapore. In the event that the Warranty Period (after such extension) outstanding at the date of such acceptance is less than one month, the Warranty Period shall be extended by a further period of one month.

12.3 If any Service performed is found during the Warranty Period to be deficient, the Contractor shall at the written notification of the University, re-perform the same, at the expense of the Contractor within 14 days, which shall commence from the said notification and end upon the completion of the re-performed Service. The Warranty Period for the re-performed Service shall be extended by a period equivalent to the period commencing from the date of the said notification to the date of completion of the re-performed Service. In the event that the Warranty Period (after such extension) outstanding at the date of such completion is less than one month, the Warranty Period shall be extended by a further period of one month.

13 TITLE AND RISK

- 13.1 Title to the Goods shall pass from the Contractor to the University upon successful completion of the Acceptance Test (or upon delivery if there is no Acceptance Test). The risk of loss or damage to the Documentation shall pass upon delivery. However, the risk of loss or damage to the Goods shall only pass from the Contractor to the University after the receipt of the Goods by the University in Singapore.
- 13.2 Risk of loss or damage to the Goods shall be borne by the Contractor from the time the Goods are received by the Contractor for the purpose of modification, replacement, repair or rectification until the completed Goods are delivered to the University.
- 13.3 Title to UFE and all other property at any time furnished by the University to the Contractor for the performance of this Contract shall at all times remain with the University.
- 13.4 Risk of loss or damage to the UFE and all other property at any time furnished by the University to the Contractor shall vest in the Contractor from the moment the Contractor takes delivery of the UFE or such other property until such time as the UFE or such other property is delivered to the University.

14 FORCE MAJEURE

- 14.1 Force Majeure means:-

- (a) Act of God;
- (b) war, act of foreign enemies;
- (c) riot, civil commotion;
- (d) strike, lockout, other labour disturbance (including those involving the Contractor's employees); or
- (e) any other circumstances beyond the control of the Contractor or which, in the absence of this Clause, will operate to frustrate this Contract.

- 14.2 Where the Contractor is prevented from or delayed in performing any of its obligations under this Contract ("the Affected Obligation") by a Force Majeure event, this Contract shall not be frustrated but, if:-

- (a) the said Force Majeure event is beyond the reasonable expectation of the Parties and the Contractor cannot reasonably be expected to have avoided or overcome it or its effect; and
- (b) the Contractor has notified the University in writing within seven (7) days;

the Contractor shall be given such extension of time in respect of the performance of the Affected Obligation(s) as may be reasonable having regard to the duration of the Force Majeure event, the effect of the Force Majeure event on the Contractor's operations and the

Contractor's duty to mitigate the consequences of any delay caused by the Force Majeure event. The Contractor's duty in respect of all other obligations under this Contract shall remain unaffected by any such extension of time.

- 14.3 If the extensions of time granted under this Clause exceeds a period of thirty (30) days in the aggregate, the University may terminate this Contract by giving seven (7) days' prior written notice to the Contractor without being liable therefore in damages or compensation.

15 RIGHTS OF THE UNIVERSITY IN THE EVENT OF DEFAULT BY THE CONTRACTOR

- 15.1 If the Contractor defaults in his performance of this Contract, the University may issue a notice of default to the Contractor informing the Contractor of its default. The Contractor shall, within thirty (30) days of the date of the notice of default, remedy the default. If the Contractor fails to do so, the Contractor shall be taken to have repudiated the Contract and the University shall have the right to terminate the Contract or cancel any part thereof by way of a notice of termination without the University being liable therefor in damages or compensation. The said termination shall take effect from the date of the notice of termination.

- 15.2 In the event of termination under Sub-Clause 15.1 above, the University shall have the right to purchase from other sources all the Goods and/or Services which remains undelivered or unperformed at the time of termination or similar Goods and/or Services and all increased costs reasonably incurred by the University shall be recoverable from the Contractor.

16 VARIATION OF CONTRACT

- 16.1 No variation whether oral or otherwise in the terms of this Contract shall apply thereto unless such variation shall have first been expressly accepted in writing by the Contractor and the authorised contract signatory of the University.

17 INTELLECTUAL PROPERTY RIGHTS

- 17.1 The Contractor warrants that the Goods do not infringe any copyrights, and all rights in relation to inventions, registered and unregistered trademarks (including service marks), registered and unregistered designs, circuit layouts, know how and any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields (hereinafter referred to as "Intellectual Property"). The Contractor shall indemnify the University and its officers or departments against all Intellectual Property infringement claims including any costs, charges and expenses in respect thereof.

18 TAXES, FEES AND DUTIES

- 18.1 The Contractor shall be responsible for all corporate and personal income taxes, customs fees, duties, fines, levies, assessments and other taxes payable under the laws of Singapore, by the Contractor or its employees, including the Contractor's resident engineers and inspectors (if applicable), in carrying out its obligation under the Contract.

- 18.2 If the University receives a request from the tax authorities to pay on behalf of the Contractor and/or the Contractor's employees, or to withhold payments from the Contractor in order that the University may subsequently so pay, any of the abovementioned taxes, fees, duties, fines, levies and assessments, the Contractor hereby authorises the University to comply with the terms of the said request.
- 18.3 The University shall pay to the Contractor a sum equal to the Singapore Goods and Services Tax chargeable on the supply to the University of any services by the Contractor in accordance with the Contract. For clarification, "Goods and Services Tax" shall refer to tax under the (Singapore) Goods and Services Tax Act, Cap. 117A (2005 ed.).
- 18.4 Any invoice or other request for payment of monies due to the Contractor under the Contract shall, if he is a taxable person for the purpose of the Singapore Goods and Services Tax, be in the same form and contain the same information as if it were a tax invoice for the purposes of the Regulations made under the (Singapore) *Goods and Services Tax Act*, Cap. 117A (2005 ed.).

19 GOVERNMENT REGULATIONS

- 19.1 The Contractor shall, at its own costs, obtain and maintain all licence and authorisations, including export licences and permits and other governmental authorisations or certification required without any restrictions or qualifications whatsoever so as to enable the Contractor to fulfil all its obligations under the Contract.

20 ALTERATION OF SPECIFICATIONS

- 20.1 Within thirty (30) days after receipt of any request from the University to alter the Specifications, the Contractor shall evaluate the requested alteration and inform the University of the effect of such alteration, if any, on the *[price]* *[Cost]*, design and/or performance of the Goods and/or Services and/or in the period required for delivery. If the University decides to accept the Contractor's proposal, the Parties shall execute a variation to the Contract in accordance with Clause 16.

21 OWNERSHIP OF INTELLECTUAL PROPERTY

- 21.1 Nothing in this Contract shall affect any person's right to own or licence Background IP.
- 21.2 All Foreground IP created by the Contractor, its subcontractor or supplier shall vest in the University. The Contractor shall, by way of present assignment of future IP, do all things necessary to ensure that all Foreground IP is assigned to the University absolutely. The Contractor shall do all such things and to sign and execute all such documents as may reasonably be required in order to perfect, protect or enforce any of the Foreground IP assigned and granted to the University.
- 21.3 The Contractor shall obtain for and grant to the University and its agent, free of any additional charge, a worldwide¹¹, perpetual, non-exclusive licence, to use all Background IP owned by or licensed to the Contractor, its subcontractor or supplier¹².
- 21.4 For the avoidance of doubt, any IP in any results, report, data or information generated or produced by the University or another person on behalf of the University as a result of this Contract shall be owned by the University.
- 21.5 If the Contractor, its subcontractor or supplier intends to sell or transfer their Background IP, the Contractor shall ensure that the purchaser of the Background IP and every successor in title to the interest in the Background IP has prior written notice of the licence that the Contractor, its subcontractor or supplier has granted to the University.
- 21.6 If any licence granted or obtained for Background IP under Clause 21.3 is registrable under any IP registration system in Singapore¹³, the Contractor shall:-
- (a) register the licence under the IP registration system in Singapore¹⁴; and
 - (b) deliver copies of documentary proof of such licence registration to the University as soon as possible.

¹¹ If it is unnecessary for the University to have a worldwide licence, replace "worldwide" with "Singapore". Providing for a worldwide licence unnecessarily may result in increased contract price.

¹² The licence only provides for the right to use the Background IP. The licence **does not** provide for a right to reproduce or to modify the Background IP. If you require these additional rights to the Background IP, you would need to expressly include for it in the licence (e.g. "... to use, reproduce and modify the Background IP owned by"). Please note that providing for unnecessary rights may result in increased contract price.

¹³ If the Foreground or Background IP is to be used in countries other than Singapore, the names of these countries should be listed in Clause A21.6. Please note that the University will bear unnecessary increased cost if unnecessary countries are listed in Clause A21.6.

¹⁴ If the Foreground or Background IP is to be used in countries other than Singapore, the names of these countries should be listed in Clause A21.6. Please note that the University will bear unnecessary increased cost if unnecessary countries are listed in Clause A21.6.

22 ACCEPTANCE TESTS

22.1 The Contractor shall conduct all tests in accordance to the Acceptance Test Plan and Procedures as set out in Annex A to verify and demonstrate that the Goods meet the Requirement Specifications.

22.2 The University shall have the right to attend and scrutinise each Acceptance Test.

PROVIDED that where no representative is appointed to attend the Acceptance Test(s), the Contractor shall have the right to proceed with the Acceptance Test(s) in the absence of the authorized representatives of the University.

22.3 Upon the satisfactory completion of each Acceptance Test, the Contractor shall issue an Acceptance Test Certificate which shall be signed by the University and the Contractor respectively.

PROVIDED that where no authorized representative is appointed to attend the Acceptance Test(s), the Acceptance Test Certificate(s) shall be issued under the hand of the Contractor only.

22.4 The Contractor shall notify the University about the Acceptance Test at least one (1) month prior to the conduct of the Acceptance Test.

22.5 The Contractor shall provide all necessary labour, facilities and equipment required and bear all costs for the performance of the Acceptance Tests.

22.6 All costs, charges and expenses relating to airfares, board and lodging and subsistence allowance of the University's representatives for any Acceptance Tests conducted outside Singapore shall be borne by the University except

(a) In the event that the Acceptance Tests are delayed beyond the contractual completion dates, the Contractor shall pay for the board and lodging and subsistence allowance for the University's representatives.

(b) In the event that the Acceptance Tests cannot be successfully completed by the contractual date or where the period of extension required for successful completion of the Acceptance Tests is not acceptable to the University, the University's representatives shall return to Singapore and the Contractor shall be obliged to pay for all the University's representatives' costs, charges and expenses relating to airfares, board and lodging and subsistence allowance for the subsequent trip to attend the Acceptance Tests.

The Contractor shall at no cost to the University provide administrative support such as office facilities and local transport to the University's representatives attending such tests. These administrative support shall be extended to any University's representatives stationed at the Contractor's premises for purposes pertaining to the Contract.

- 22.7 The University shall not be under any obligation to accept the delivery of the Goods which have not satisfactorily passed the Acceptance Tests under the Contract. In the event that any deficiency in the Goods become evident, such deficiencies shall be immediately corrected by the Contractor. The cost of the remedial or corrective action shall be borne by the Contractor. After such correction, the unsuccessful tests shall be repeated together with any other tests deemed necessary to confirm that the said deficiencies have been cleared and that previous tests have not been affected. In any event, the affected Goods shall not be delivered to the University before correction of the deficiencies.
- 22.8 The result of the Acceptance Tests shall be properly documented by the Contractor and submitted to the University within five (5) days after successful completion of the Acceptance Tests.

23 INDEMNIFICATION OF UNIVERSITY AGAINST CLAIMS BY CONTRACTOR'S EMPLOYEES

- 23.1 The Contractor shall indemnify, and keep indemnified, the University against all losses, claims, costs, damages, liability and expenses which the University may incur and which arise, directly or indirectly from the Contractor's breach of any of its obligations under the Contract, or any act or default on the part of the Contractor or his servants and/or agents or any other sub-contractors directly or indirectly employed by the Contractor or any person for whom the Contractor is responsible, including for the avoidance of doubt any act or default on the part of the Contractor or his servants and/or agents or any other sub-contractors directly or indirectly employed by the Contractor or any person for whom the Contractor is responsible, which constitutes a criminal offence, or fraud or deliberate wrong doing or recklessness.

Without prejudice to the generality of the foregoing, in the event of the University (including for this purpose every officer and department thereof) being held liable for damages arising out of any claim by any workman or employee employed by the Contractor in and for the performance of the Contract, the Contractor shall indemnify the University, its officers or departments against such claim and any costs, charges and expenses in respect thereof.

PROVIDED the same is not caused solely by the gross negligence or wilful default of the University, its officers or agents.

24 MEDIATION CLAUSE

- 24.1 Notwithstanding anything in this Contract, in the event of any dispute, claim, question or disagreement arising out of or relating to this Contract, or the breach thereof no Party shall proceed to any form of dispute resolution UNLESS the Parties have made reasonable efforts to resolve the same through mediation in accordance with the mediation rules of the Singapore Mediation Centre.
- 24.2 A Party who receives a notice for mediation from the other Party shall consent and participate in the mediation process in accordance with Clause 24.1.
- 24.3 Failure to comply with Clause 24.1 or 24.2 shall be deemed to be a breach of contract.

25 CONSORTIUM

- 25.1 As used in this Contract, “Consortium” means an unincorporated joint venture through the medium of a consortium or a partnership.

Joint and Several Responsibility

- 25.2 Each member of the Consortium shall be jointly and severally responsible to the University for the due performance of the Contract.

Addition of members to Consortium

- 25.3 Any introduction of, or changes to, Consortium membership must be approved in writing by the University.
- 25.4 Should additional member(s) be added to the Consortium at any time with the approval of the University, he or they shall be deemed to be included in the expression 'the Contractor'.

Withdrawal from Consortium

- 25.5 If any member of the Consortium withdraws from the Consortium, goes into liquidation, is wound up or cease to exist in accordance with the laws of the country of incorporation:-
- (i) this Contract shall continue and not be dissolved, and
 - (ii) the remaining member(s) of the Consortium shall be obliged to carry out and complete the Contract.

COMPENDIUM OF ADDITIONAL CLAUSES (COAC)

A1. INSPECTION OF GOODS IF REQUIRED BY THE UNIVERSITY- NOT APPLICABLE

A2. SECURITY DEPOSIT

- A2.1 For the due and faithful performance of the Contract, the Contractor shall within fourteen (14) days of the date of Contract, lodge with the University a Security Deposit equivalent to 5% of the total contract price if the total Contract Price is more than \$500,000. The Security Deposit shall either be in the form of cash, or in lieu of cash, a Performance Bond strictly in compliance with the format enclosed in the Contract issued by a bank or insurance company registered with the Monetary Authority of Singapore. The Performance Bond may also be issued by a licensed Finance Company registered with the Monetary Authority of Singapore if the Security Deposit does not exceed S\$300,000.
- A2.2 All charges incurred by the Contractor in obtaining and maintaining the Security Deposit shall be met by the Contractor. The Security Deposit shall be valid until three (3) months after the delivery of all the Goods and Services under the Contract. In the event the delivery is deferred for any reason, the Security Deposit shall be correspondingly extended by the Contractor at his own expense. At the end of the said three (3) months or extension, the Security Deposit (or any balance thereof remaining for the credit of the Contractor) shall be released and refunded without interest subject to any deduction as may be made therefrom.
- A2.3 In the event of any default or breach of any of the obligations by the Contractor under the Contract, the University may at its sole discretion draw on the Security Deposit or the Performance Bond to satisfy any liquidated or other damages as may become due to the University under the Contract if the University has, prior to drawing on the Security Deposit, notified the Contractor in writing of the default or breach and given the Contractor a minimum of thirty (30) days to rectify or remedy the default or breach or (if the default or breach cannot be fully rectified or remedied) to pay damages to the amount specified in the notice and the Contractor has failed to comply fully with the notice.
- A2.4 The provisions of this Clause shall not affect the rights and remedies expressly reserved herein to the University or bar the University from claiming loss, expense, costs or damages incurred or sustained or likely to be sustained by the University as a result of any breach of contract of whatsoever nature by the Contractor.

A3. OPTION TO PURCHASE

- A3.1 The Contractor grants the University the options to purchase the item(s) specified in Annex B of this Contract (“the Option to Purchase”). The Option to Purchase shall be exercisable by written notice given by the University to the Contractor before the date specified in Annex B of this Contract (Option Validity Period). If the University exercises the Option to Purchase, the item(s) supplied shall form part of the Goods defined in this contract and subject to the same terms and conditions (inclusive of any amendments).

A4. ADVANCE PAYMENT

- A4.1 As a condition precedent to any Advance Payment (including any progressive payment before delivery) to be made by the University, the Contractor shall prior to or at the time such Advance Payment is being made produce to the University an irrevocable Banker's Guarantee (in the format and under the conditions set out in the Contract) from a bank/insurance company registered with the Monetary Authority of Singapore covering the full amount of the Advance Payment **(exclusive of the GST component)**. The Banker's Guarantee may also be issued by a licensed Finance Company registered with the Monetary Authority of Singapore if the amount does not exceed S\$300,000.
- A4.2 The Banker's Guarantee shall be effective for the period stated in the Contract. The Contractor shall, extend the Banker's Guarantee in the event that delivery is not completed within the scheduled delivery unless the extension is caused solely by the default of the University. All charges incurred by the Contractor in obtaining and maintaining the Banker's Guarantee, unless caused solely by the default of the University shall be borne by the Contractor.
- A4.3 The Banker's Guarantee shall be exerciseable by the University:-
- (a) to obtain repayment to the University of all amounts paid by the University **(including any GST component)** less the amounts paid by the University for the Goods delivered and/or Services performed, accepted and retained by the University upon termination of the Contract. If the Contract is terminated due to the Contractor's default, the Contractor shall be liable for interest compounded monthly on the amount repayable by the Contractor at the DBS Bank Ltd prime rate prevailing at the time of the termination; and
 - (b) to pay any other monies owing to the University by the Contractor under or pursuant to the Contract.

A5. ARBITRATION

- A5.1 Any dispute arising out of or in connection with this Contract, including any question regarding its existence, validity or termination shall be referred to and finally resolved by arbitration in Singapore in the English language by a sole arbitrator in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules") for the time being in force which rules are deemed to be incorporated by reference into this Clause.

A6. ADEQUACY OF DESIGN – NOT APPLICABLE

A7. QUALITY ASSURANCE AND INSPECTION OF GOODS – NOT APPLICABLE

A8. CONFIDENTIALITY AND SECURITY

- A8.1 Except with the written consent of the University, the Contractor shall not disclose the Contract or any purchases made in this Contract or any provisions thereof or any information issued or furnished by or on behalf of the University in connection therewith to any person.
- A8.2 In addition to the foregoing, the Contractor shall not make use of any information obtained directly or indirectly from the University or compiled or generated by the Contractor in the course of this Contract which pertains to or is derived from such information, other than use for the purposes of this Contract, without the prior written consent of the University.
- A8.3 The Contractor shall not publish or release, nor shall it allow or suffer the publication or release of, any news item, article, publication, advertisement, prepared speech or any other information or material pertaining to any part of the obligations to be performed under the Contract in any media without the prior written consent of the University.

9 PERSONAL DATA PROTECTION

- A9.1 For the purposes of this Contract, the Contractor shall collect, use, disclose and process personal data of individuals in full compliance with the Personal Data Protection Act 2012 of Singapore and with any directions issued by the University relating thereto. In this respect, the Contractor agrees to:
- a) Collect, use and disclose personal data only with the consent of the individual to whom the personal data relates, except where the University has notified the Contractor in writing that such consent has been obtained;
 - b) Institute reasonable security arrangements to protect the personal data;
 - c) Give the University notice in writing as soon as reasonably practicable should it be aware of any unauthorized disclosure of personal data in its possession or under its control;
 - d) Limit disclosure of the personal data to its employees on a need-to-know basis;
 - e) Securely destroy the personal data where it is no longer required, or upon being required by the University;
 - f) Transfer personal data outside Singapore only as prescribed by Law; and
 - g) Not send any specified (marketing) message (as defined in the Personal Data Protection Act 2012) except where authorized in writing by the University.

If the supply of Goods and/or Services requires the processing of personal data by the Contractor as a data intermediary (as defined in the Personal Data Protection Act 2012), the Contractor agrees to process such personal data in accordance with the terms set out in the University's Data Intermediary Clause at Annex 1.

The Contractor shall not be relieved of any of its obligations under this Contract if the University permits the Contractor to subcontract any part of the processing of personal data.

For the purposes of this clause "personal data" shall mean data, whether true or not, about an individual who can (a) be identified from that data; or (b) from that data and other information to which the University or the Contractor has or is likely to have access.

DATA INTERMEDIARY CLAUSE

1. PERSONAL DATA

In this Agreement :

“Company” means Nanyang Technological University (Company Registration Number 200604393R) located at 50 Nanyang Avenue, Singapore 639798 and includes any officer authorized by the University to act on its behalf.

“Company PD” means personal data that the Contractor processes on behalf of the Company in performing the Contractor’s Personal Data Data Processing Services to the Company under this Agreement.

“Contractor” means “the successful Tenderer”

“data intermediary” means an organisation which processes personal data on behalf of another organisation.

“Do Not Call Registry” means the Do Not Call Registry that has been set up pursuant to the PDPA.

“marketing messages” are messages that are defined as ‘specified messages’ under Part IX of the PDPA.

“organisation” includes any individual, company, association or body of persons, corporate or unincorporated, whether or not :

- (a) formed or recognised under the law of Singapore; or
- (b) resident, or having an office or a place of business, in Singapore.

“PDPA” means Singapore’s Personal Data Protection Act including all subsidiary legislation enacted thereunder, whether now or in the future.

“personal data” means data, whether true or not, about an individual who can be identified :

- (a) from that data; or
- (b) from that data and other information to which the organisation has or is likely to have access.

“Personal Data Processing Services” means solely those services that are necessary to execute the work set out in the Requirement Specifications, whereby the Contractor is processing personal data on behalf of the Company.

“Process” or **“Processes”** or **“Processing”** shall have the meaning as defined in the PDPA.

“Related corporation” has the meaning ascribed to it in Section 6 of the Companies Act, Chapter 50 of Singapore (and **“related corporations”** shall be construed accordingly).

- 1.2 The Contractor undertakes to provide the Personal Data Processing Services to the Company in accordance to the terms of this Agreement.
- 1.3 Without prejudice to the Contractor’s other obligations under this Agreement, the Contractor’s engagement under this Agreement in relation to personal data processing is to only perform the Personal Data Processing Services for the Personal Data Service Purpose and not to contact any individual or party whatsoever to sell or promote the Company’s products or services (unless otherwise expressly specified in Personal Data Processing Services).
- 1.4 Without prejudice to the Contractor’s obligations under this Agreement including clauses [1.2 and 1.3], the Contractor undertakes and acknowledges that it shall be wholly responsible for any actions that it takes that exceeds the authority stated in clause [1.3] that has been given to the Contractor and that any actions or omissions that exceeds such authority is indeed outside of the ambit of this Agreement for which the Contractor shall remain wholly liable.
- 1.5 In performing the Contractor’s obligations and Personal Data Processing Services to the Company, under this Agreement, the Contractor shall :
 - (a) collect, use or disclose personal data strictly in compliance with the PDPA;
 - (b) provide personal data to the Company strictly in compliance with the PDPA;
 - (c) Comply with the instructions or directions of the Company as are necessary for the Company to fulfill its obligations under the Data Protection Legislation.
 - (d) take all appropriate and reasonable technical and organizational measures to ensure the security and the confidentiality and security of Company PD in the Contractor’s possession or under the Contractor’s control, against unlawful or unauthorized access, collection, use, disclosure, copying, modification, disposal or processing or accidental loss, alteration, destruction of, or damage to or similar risks to Company PD. If the Contractor is aware or suspects a breach of this sub-clause (d), the Contractor undertakes to promptly notify the Company of the nature and the scope

of failure and assist the Company, at no charge to the Company, in dealing with such breach as determined by the Company at the Company's sole discretion.

- 1.6 The Contractor shall only process Company PD strictly for the Personal Data Service Purpose.
- 1.7 The Contractor shall itself and shall ensure that its employees keep all Company PD strictly confidential and not disclose Company PD to any person or party, unless authorised under this Agreement.
- 1.8 In processing Company PD, the Contractor shall ensure that it puts in place measures to ensure the Company PD are accurate and complete for the purpose for which they are to be processed.
- 1.9 The Contractor shall cease to retain Company PD and documents containing Company PD, or remove the means by which Company PD can be associated with particular individuals, as soon as it is reasonable to assume that (i) the specified purposes are no longer being served by retention of the Company PD; and (ii) retention is no longer necessary for legal or business purposes.
- 1.10 The Contractor undertakes, upon the request of the Company at any time, to immediately delete or return to the Company (at the discretion of the Company), all Company PD, whether in their raw form or in any other form such as but not limited to being incorporated as part of a report or document, such that the Contractor no longer retains any Company PD whatsoever. Upon the request of the Company, the Contractor shall certify in writing on a certificate in such form and signed by a senior ranking officer of the Contractor, as dictated by the Company, that the aforesaid has been achieved. Notwithstanding the foregoing, the Contractor may retain Company Data for necessary legal or business reasons.
- 1.11 The Contractor shall have no right to sub-contract any part of the Personal Data Processing Services that it is providing the Company under this Agreement except in accordance with clause **1.11A**. The Contractor warrants and undertakes that :
 - (a) any and all of the Personal Data Processing Services shall only be performed by the Contractor and its employees and that of its Subcontractors (if any) and that it and its employees and Subcontractors shall perform all such services and obligations with the highest degree of professional skill, care and diligence that may be expected of a skilled, professional contractor, suitably qualified and experienced in the performance of such services (In this Agreement "**Subcontractors**" means subcontractors which have been approved by the Company pursuant to clause **[1.11A]**, as well as any subcontractor of any subcontractor and so on, all of which must have been approved by the Company in writing, prior to their engagement);
 - (b) it shall ensure that its employees and Subcontractors who are performing the Personal Data Processing Services strictly comply with all of the Contractor's

obligations under this Agreement. For the avoidance of doubt, any breach of any of the obligations under this Agreement by an employee and/or any Subcontractors shall be deemed to be a breach of this Agreement by the Contractor; and

- (c) the Contractor shall restrict access to the Company PD to only its employees and Subcontractors on a need to know basis and who are accessing and processing such Company PD for the Personal Data Services Purpose and to provide the Personal Data Processing Services. The Contractor shall ensure that its employees and Subcontractors who may receive or have access to any Company PD are aware of the obligations specified under this Agreement and agree to abide by the same.

1.11A The Contractor shall not subcontract any part of the Personal Data Processing Services that it is providing the Company under this Agreement without the prior written consent of the Company (if consent is given by the Company, the Company may impose additional terms on the Contractor at the Company's discretion). If Company consents to the subcontracting by the Contractor, the Contractor shall not be relieved of any of its obligations under this Agreement and such subcontracting shall be subject to the following :

- (a) before the Contractor engages any Subcontractor, the Contractor shall enter into a written agreement with its Subcontractor which shall contain terms no less strict than those as imposed on the Contractor under this Agreement and that correspond to the obligations the Contractor has vis-à-vis the Company under this Agreement. The said written agreement between the Contractor and the Subcontractor shall not contain any provision the performance of which would interfere with any obligation of the Contractor under this Agreement.
- (b) the Contractor shall be responsible for the acts and omissions of any and all Subcontractors as if it had carried out the acts or omissions itself. Any action or omission carried out by any Subcontractor, which if carried out or omitted by the Contractor would amount to a breach of this Agreement, would be deemed to be a breach by the Contractor of this Agreement; and
- (c) as and when requested from time to time by the Company, the Contractor shall provide Company with all information regarding the Company PD in the possession or under the control of the Subcontractors.

1.12 The Contractor acknowledges that the Company PD is the Company's property and the Company retains all rights, title and interest (including all intellectual property rights) which may, at any time, subsist in and to the Company PD.

1.13 The Contractor undertakes to and shall strictly and fully comply with :

- (a) the requirements of Part IX of the PDPA relating to the Do Not Call Registry and prohibitions relating to the sending of marketing messages and the making of marketing calls.

- 1.14 Without prejudice to the Contractor's obligations under this Agreement including clauses **[1.2 and 1.3]**, the Contractor acknowledges and represents that any marketing message or marketing call (whether by way of a voice call, SMS/MMS or fax or otherwise) that the Contractor makes to any individual and that is affected by Part IX of the PDPA, is carried out independently by the Contractor, independent of this Agreement and independent of the Personal Data Processing Services, without authorisation coming from the Company whatsoever. The Company is by this Agreement neither :
- (a) engaging the Contractor to send marketing messages and/or to make marketing calls (whether by way of a voice call, SMS/MMS or fax or otherwise) that falls within the ambit of Part IX of the PDPA to any individual; nor
 - (b) authorising the Contractor to do any of the same.
- 1.15 Without prejudice to the foregoing provisions, the Contractor shall put in place a system or process where the Contractor is able to monitor at any point in time where, how and what Company PD is being processed by the Contractor, and the Contractor shall ensure that :
- (a) upon the request of the Company, the Contractor shall promptly provide information about how an individual's personal data, that is comprised as part of Company PD, has been processed by the Contractor and for what purposes, within a year before the date of the request.; and
 - (b) the Contractor promptly provides the Company with all assistance and information to enable the Company and/or any of its related corporations, to be able to comply with its/their obligations under the PDPA including but not limited to when an individual seeks to exercise that individual's access or correction rights under the PDPA.
- 1.16 The Contractor shall not transfer any Company PD out of Singapore nor permit any Subcontractors to do so, except with the prior written consent of the Company and subject to such conditions as may be imposed by the Company. If the Contractor wishes to transfer any Company PD outside of Singapore or if any Subcontractor will be transferring any Company PD outside of Singapore, the Contractor must first obtain the Company's prior written consent. The Contractor acknowledges and warrants that the consent of the individual whose personal data is to be transferred out of Singapore must be obtained (except where an exception to such consent from the individual in question under the PDPA applies or where the Company informs the Contractor in writing that the Company has obtained such consent) prior to such transfer out. Further and subject to the aforesaid, where the Company PD is to be transferred outside of Singapore, the Contractor shall :
- (a) take any such additional measures as are necessary to ensure that the personal data is transferred in accordance with the requirements of the PDPA and to ensure that

the personal data will be protected to a standard comparable to that under the PDPA;
and

- (b) take any such additional measures as are necessary to ensure that the Contractor fulfils its obligations under this Agreement.

1.17 The Contractor represents, undertakes and warrants that :

- (a) for any personal data of individuals that the Contractor will be or may be disclosing or discloses to the Company for any purpose, that the Contractor would have prior to disclosing such personal data to the Company obtained consent from the individuals whose personal data are being disclosed, to :
 - (i) permit the Contractor to disclose the individuals' personal data to the Company for these purposes;
 - (ii) permit the Company to collect, use, disclose and/or process the individuals' personal data for these purposes; and/or
 - (iii) permit the Company and the Contractor to communicate with the individuals for these purposes, by various modes of communication including postal, email, voice call, SMS and/or fax;

The Contractor is not required to comply with paragraph 1.17 (a) if the Company has informed the Contractor in writing that it has obtained such consent from the individuals.

- (b) at the request of the Company, the Contractor will use such form(s) or document(s) provided by the Company in obtaining such consents from the individuals in question (for the avoidance of doubt, the Company is under no obligation to the Contractor to create any such form(s) or document(s)); and
- (c) for any personal data that the Contractor collects for the Company, that the Contractor shall only process such personal data solely for the Company and the purposes of the Company and not disclose such personal data to any other party.

1.18 The Contractor undertakes that, upon the Contractor and/or any of the Contractor's employees being given notice by any individual (The Contractor acknowledges that such notice to the Contractor can be by any means of communication including SMS/MMS (teletext messages), email, voice call, face to face, in writing) that the said individual wishes to or is withdrawing his/her consent for the Company and/or its related corporations to collect, use, disclose and/or process his/her personal data for any purpose(s) whatsoever, the Contractor shall :

- (a) notify the Company and/or such person designated by the Company, in writing of the individual's withdrawal of consent as soon as reasonably possible. The

Contractor shall ensure that the Contractor's written notification to the Company shall clearly (i) identify the individual; (ii) state the time of receipt of the notification by the individual and type of notice given by the individual; (iii) state the specific purposes for which the individual has withdrawn his/her consent; and (iv) state the reasons for withdrawing his/her consent (if any); and

- (b) immediately cease and procure that its employees immediately cease all processing of that individual's personal data in accordance to the withdrawal of consent.

1.19 The Company has a right at any time and from time to time, to seek information and documents from the Contractor, so as to enable the Company to ascertain whether the Contractor has complied with its obligations under this Agreement or whether there has been a breach of the PDPA. Upon any request from the Company, the Contractor shall provide the Company with all such information and documents as soon as reasonably possible.

1.20 Without prejudice to the foregoing sub-provisions, the Contractor shall ensure that it complies with the PDPA, and that the Contractor not do anything and not omit to do anything that will cause the Company and/or its related corporations to be in breach of any provision or requirement of the PDPA including regulations issued under the PDPA, whether now or in the future. The Contractor shall at the request of the Company, promptly do such things or execute such documents, as determined by the Company, in order to facilitate the Company's and/or its related corporations' compliance with the PDPA.

1.21 Notwithstanding anything to the contrary, the Contractor undertakes to indemnify and at all times hereafter to keep the Company and its related corporations (together with their respective officers, employees and agents) (each an "Injured Party") indemnified against any and all losses, damages, actions, proceedings, costs, claims, demands, liabilities (including full legal costs on a solicitor and own client basis) which may be suffered or incurred by the Injured Party or asserted against the Injured Party by any person or entity (including the Contractor and the Contractor's employees, agents) whatsoever, in respect of any matter or event whatsoever arising out of, in the course of, by reason of or in respect of:

- (a) any breach of any of the provisions in this Agreement; and/or
- (b) any action or omission by the Contractor and/or any of its employees that causes the Company and/or any of its related corporations to be in breach of the PDPA.