

CONDITIONS OF CONTRACT

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CONDITIONS OF CONTRACT

1. DEFINITIONS

1.1 In this Conditions of Contract, unless the context otherwise requires:

- (a) "Acceptance Test" means the test to be conducted on the Goods pursuant to Clause 13 (if applicable).
- (b) "Conditions" or "Conditions of Contract" means these terms and conditions in this Conditions of Contract and any Annexes attached hereto.
- (c) "Contract" means the contract between NUS and the successful Tenderer formed upon the issuance of the Letter of Acceptance which shall include all the documents comprising the Invitation to Tender and any other documents that the parties expressly agree in writing shall constitute part of the Contract, and all these documents taken together shall be deemed to form one contract and be complementary to one another.
- (d) "Contract Materials" means any information, materials or products discovered, created or developed in the course of or resulting from the Contractor's supply of the Goods and/or Services.
- (e) "Contract Price" or "Contract Sum" means the total sum as set out in the Letter of Acceptance and payable by NUS for the Goods supplied and/or Services rendered.
- (f) "Contractor" means the successful Tenderer.
- (g) "Contractor Materials" means any and all data, designs, concepts, drawings, ideas, images and any other information and materials existing prior to this Contract and used by the Contractor to enable it to supply the Goods and/or Services.
- (h) "Force Majeure Event" means events or circumstances which are beyond the reasonable control of a Party which shall include without limitation act of God, acts of civil or military authority, civil disturbance, wars, strikes, fires, pandemic breakouts and other catastrophes.
- (i) "Goods" means all goods, including technical documentation (with up-to-date versions) and Contract Materials, parts or units thereof, which the Contractor is required to supply under the Contract and as described more specifically in the Requirement Specifications.
- (j) "Intellectual Property Rights" means all intellectual and/or industrial property rights of whatever nature and kind anywhere in the world, whether registrable or otherwise, including without limitation, patent rights, copyright, design rights, trade marks and other rights under the general law such as in passing off, unfair competition, trade secrets and confidentiality, including all rights, title and interests related thereto and goodwill associated therewith.
- (k) "Invitation to Tender" or "Tender" means the invitation to participate in this tender and comprises all tender documents provided to the Tenderer inclusive of the Covering Letter, Instructions to Tenderer, Conditions of Contract, Requirement Specifications, Evaluation Criteria, Particulars of Tenderer Form, Form of Tender, Schedule to Form of Tender and any other documents and forms enclosed.
- (l) "Letter of Acceptance" means the letter issued by NUS accepting the tender or part of the tender in the manner as set out in the Instructions to Tenderers.
- (m) "NUS" or "University" means the National University of Singapore and includes any officer authorised by the National University of Singapore to act on its behalf.

- (n) "NUS Materials" means any and all data, designs, concepts, drawings, ideas, images and any other information and materials provided to the Contractor by NUS or its agents under or pursuant to this Contract.
- (o) "Parties" refer to NUS and the Contractor.
- (p) "Requirement Specifications" means the specifications as set out in Part 2 of the Invitation To Tender and any subsequent amendments or additions thereto.
- (q) "Services" means the work which the Contractor is required to perform under the Contract and as described more specifically in the Requirement Specifications.
- (r) "Tenderer" means a person, firm or company or each member of a Consortium (in each case including their respective permitted assigns) tendering to provide the Goods and/or Services.
- (s) "Warranty Period" means the period set out in Clause 15.1.

- 1.2 Words importing the singular include the plural and vice versa.
- 1.3 The headings are for convenience only and shall not be used for the purpose of interpretation.
- 1.4 Unless otherwise provided, any reference to any statute or legislation shall be deemed to be a reference to such statute or legislation as amended from time to time and be deemed to include any subsidiary legislation made thereunder.
- 1.5 All references herein to clauses, unless otherwise expressly stated, are references to clauses numbered in these Conditions.
- 1.6 In the event of any inconsistency or contradiction between these Conditions and the Contractor's tender submission, these Conditions shall prevail.

2. SCOPE OF CONTRACT

- 2.1 The Contractor shall supply the Goods and/or perform the Services in accordance with the Contract.
- 2.2 Unless otherwise stated in the Requirement Specifications, all Goods shall be new and unused.

3. CONTRACT PERIOD/ DELIVERY OR PERFORMANCE DATES

- 3.1 *Where specified as being applicable in item 1 of Annex A, the provisions of this Clause 3.1 shall apply.*

Contract Period

This Contract shall commence on the date stated in **item 1 of Annex A** and shall remain in force for the period stated in **item 1 of Annex A**.

- 3.2 *Where specified as being applicable in item 2 of Annex A, the provisions of this Clause 3.2 shall apply.*

Delivery or Performance Dates

The delivery of the Goods and/or performance of the Services shall be as specified in **item 2 of Annex A**.

3.3 Time is of the essence in this Contract.

3.4 Subject to any provision to the contrary in the Contract, INCOTERMS 2010 as published by the International Chamber of Commerce shall be deemed to be incorporated in and shall form an integral part of the Contract. In the event that the INCOTERM chosen for this Contract is CPT or CIP to a destination other than an airport or a seaport, the Contractor shall provide NUS with the contact details of its inland freight forwarder in the country of destination. Otherwise if not stated, the INCOTERM shall be DDP (NUS designated site).

4. OPTION TO EXTEND

Where specified as being applicable in item 3(a) and (b) of Annex A, the provisions of this Clause 4.1 shall apply.

4.1 The Contractor grants NUS the option to extend the Contract for the further period/s stated in **item 3(a) of Annex A** and by the date/s stated in **item 3(b) of Annex A**. Unless otherwise specifically agreed between the Parties, the Goods and/or Services provided during the extended period/s shall be subject to the same Conditions (inclusive of any amendments). In the event that the Contract is extended pursuant to the provisions of this Clause, the Contractor shall furnish a fresh Security Deposit within twenty-one (21) days of the written notice of extension from NUS, and all the provisions in Clause 8 shall apply with the necessary modifications.

5. DELAY IN DELIVERY AND PERFORMANCE

5.1 Subject to Clause 23, if the Contractor fails to complete the delivery of the Goods and/or performance of the Services by the date/s specified in the Contract, NUS shall have the right –

(a) *Where specified as being applicable in item 4 of Annex A, the provisions of this Clause 5.1(a) shall apply.*

to require the Contractor to pay to NUS a sum, calculated at the rate(s) stipulated in **item 4 of Annex A** (including Sundays and Public Holidays), as liquidated damages for every day of delay until the required Goods are delivered and/or Services are performed or up to the date that NUS gives notice of cancellation; and/or

(b) to cancel 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 recoverable by NUS from the Contractor.

6. PAYMENT

6.1 NUS shall make payment to the Contractor in accordance with the payment milestones stipulated in **item 5 of Annex A** within thirty (30) days of successful delivery of the Goods and/or performance of the Services and upon presentation by the Contractor of his invoice and the documents specified by NUS to be provided for such payment milestone.

6.2 Any charges or expenses imposed by the Contractor's bank in relation to such payment shall be borne by the Contractor.

6.3 No payment shall be considered as evidence of the quality of any Goods and/or Services to which such payments relates. The payments under this Clause shall not prejudice NUS's right to reject defective Goods and/or deficient Services or relieve the Contractor from his responsibility for replacing defective Goods or rectifying deficient Services.

7. TAXES, FEES AND DUTIES

- 7.1 The Contractor shall be responsible for all corporate and personal income taxes, customs fees, duties, fines, levies, assessments and other taxes payable under any applicable laws (hereinafter referred to as "the taxes") by the Contractor or its agents/ employees in carrying out its obligation under the Contract.
- 7.2 If NUS receives a request from the tax authorities to pay the taxes on behalf of the Contractor and/or the Contractor's agents/ employees, or to withhold payments from the Contractor in order that NUS may subsequently so pay the taxes, the Contractor hereby authorises NUS to comply with the terms of the said request.
- 7.3 If the Contractor is a taxable person for the purpose of the Goods and Services Tax Act (Cap. 117A), NUS shall pay to the Contractor a sum equal to the Singapore Goods and Services Tax chargeable on the supply to NUS of any Goods and/or Services by the Contractor in accordance with the Contract. For clarification, "Goods and Services Tax" shall refer to tax as defined in the Goods and Services Tax Act (Cap. 117A).
- 7.4 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 Goods and Services Tax Act (Cap. 117A).

8. SECURITY DEPOSIT

Where specified as being applicable in item 6 of Annex A, the provisions of this Clause 8 shall apply.

- 8.1 For the due and faithful performance of the Contract, the Contractor shall within twenty-one (21) days of the date of Contract, lodge with NUS a Security Deposit for the sum stipulated in **item 6 of Annex A**. The Security Deposit shall either be in the form of cash or, in lieu of cash, a Banker's Guarantee strictly in compliance with the format enclosed in the Contract issued by a licensed bank or insurance company registered with the Monetary Authority of Singapore. The Banker's Guarantee 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.
- 8.2 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, installation, testing, commissioning and handover of all the Goods and/or performance of all Services under the Contract or until three (3) months after the end of the Contract Period. In the event the delivery or performance 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.
- 8.3 In the event of any default or breach of any of the obligations by the Contractor under the Contract, NUS may at its sole discretion draw on the Security Deposit to satisfy any liquidated or other damages as may become due to NUS under the Contract if NUS 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 twenty-one (21) 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.
- 8.4 The provisions of this Clause shall not affect the rights and remedies expressly reserved herein to NUS or bar NUS from claiming loss, expense, costs or damages incurred or sustained or

likely to be sustained by NUS as a result of any breach of contract of whatsoever nature by the Contractor.

9. ADVANCE PAYMENT

Where specified as being applicable in item 7 of Annex A, the provisions of this Clause 9 shall apply.

- 9.1 As a condition precedent to any Advance Payment to be made by NUS, the Contractor shall prior to or at the time such Advance Payment is being made produce to NUS an irrevocable Banker's Guarantee (in the format and under the Conditions set out in the Contract) from a licensed bank or insurance company registered with the Monetary Authority of Singapore covering the full amount of the Advance Payment (exclusive of the GST component) as stipulated in **item 7 of Annex A**. 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.
- 9.2 The Banker's Guarantee shall be effective until one (1) month after the delivery, installation, testing, commissioning and handover of all Goods and/or the performance of all Services under the Contract. The Contractor shall extend the Banker's Guarantee in the event that delivery or performance is not completed as scheduled. All charges incurred by the Contractor in obtaining, maintaining and extending the Banker's Guarantee, unless caused solely by the default of NUS, shall be borne by the Contractor.
- 9.3 The Banker's Guarantee shall be exerciseable by NUS:
- (a) to obtain repayment to NUS of any Advance Payment made by NUS to the Contractor (including any GST component) less any amount for Goods delivered and/or Services performed which have been accepted by NUS; and
 - (b) to pay any other monies owing to NUS by the Contractor under or pursuant to the Contract.

10. WORKS ORDERS OR PURCHASE ORDERS

Where specified as being applicable in item 8 of Annex A, the provisions of this Clause 10 shall apply.

- 10.1 All orders for Goods and/or Services set out in the Schedule of Rates to be supplied shall be given from time to time, in writing, by NUS on the appropriate order form (hereinafter referred to as the "Works Order" or "Purchase Order"). All such Works Order or Purchase Order shall clearly state the details and nature of the Goods and/or Services to be supplied and shall also state the amount, calculated at the rates in the Schedule of Rates as set out in **item 8 of Annex A**, that shall become due to the Contractor on the satisfactory completion of the delivery of the Goods and/or performance of the Services specified in such Works Order or Purchase Order. On satisfactory completion of such supply, the Contractor shall submit his invoice and supporting documents to NUS who shall verify and certify the same for payment to the Contractor.
- 10.2 On receipt of any Works Order or Purchase Orders, the Contractor shall commence delivery of the Goods and/or performance of the Services referred to therein and complete the same as soon as promised in the Contract or otherwise as expeditiously as possible.

Schedule of Rates

- 10.3 The rates so set against each and every item in the Schedule of Rates shall include:
- (a) transportation, supply, delivery, installation, testing, commissioning, all labour and materials, establishment charges, supervision, overheads, profits, use of tools, plants,

insurances, working after office hours and during Sundays and Public Holidays and any other incidental or consequential expenses; and

- (b) obtaining of permits, giving of notices, any fees and the like payable to the relevant authorities in connection with supply of the Goods and/or Services, preparing and submitting drawings for approval if required and complying with all requirements of the relevant authorities including new requirements being introduced during the Contract Period.

- 10.4 All rates shown against every item in the Schedule of Rates are fixed and no amendments whatsoever shall be made to such rates during the Contract Period. The Contractor shall be deemed to have made a close study of the Schedule of Rates, and duly understood their implication in the Contract.

11. PERMITS AND LICENCES

- 11.1 The Contractor shall, at its own costs, obtain and maintain all licences and authorisations, including export licences and permits and other governmental authorisations or certifications, required without any restrictions or qualifications whatsoever so as to enable the Contractor to fulfill all its obligations under the Contract.
- 11.2 The Contractor shall indicate clearly in his tender whether there is any requirement to be performed by NUS in connection with the Contract in order for the Contractor to satisfy or comply with the export control laws of any country, including, without limitation, for NUS to furnish end-user certificates or statements or enter into any separate agreement with the Contractor.

12. TITLE AND RISK

- 12.1 Title to the Goods shall pass from the Contractor to NUS upon delivery of the Goods. Title in all reports, drawings, designs, manuals and related documents shall pass to NUS as soon as they are prepared by the Contractor.
- 12.2 Notwithstanding the earlier passing of title, risk in the Goods shall not pass to NUS until the Goods are properly and completely delivered, accepted, successfully tested, commissioned and handed over to NUS. Until such time, the Contractor is responsible for any loss or damage to the Goods howsoever arising.
- 12.3 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 Goods are delivered back to NUS and have passed the Acceptance Test (if applicable).

13. ACCEPTANCE TESTS

Where specified as being applicable in item 9(a) and (b) of Annex A, the provisions of this Clause 13 shall apply.

- 13.1 The Contractor shall conduct all tests in accordance with the Acceptance Test Plan and Procedures that has been approved and accepted by NUS to verify and demonstrate that the Goods meet the specifications as set out in the Requirement Specifications.
- 13.2 The Contractor shall notify NUS of the date the Acceptance Test will be conducted no later than the period set out in **item 9(a) of Annex A**.
- 13.3 NUS shall have the right to attend and scrutinise each Acceptance Test, provided that where no representative is appointed by NUS to attend the Acceptance Test, the Contractor shall have

the right to proceed with the Acceptance Test in the absence of the authorised representative of NUS.

- 13.4 The Contractor shall provide all necessary labour, facilities and equipment required and bear all costs for the performance of the Acceptance Test.
- 13.5 Upon the satisfactory completion of each Acceptance Test, the Contractor shall issue an Acceptance Test Certificate which shall be signed by NUS and the Contractor respectively, provided that where no authorised representative is appointed by NUS to attend the Acceptance Test, the Acceptance Test Certificate shall be signed by the Contractor only. The result of the Acceptance Test shall be properly documented by the Contractor and the Acceptance Test Certificate shall be submitted to NUS within the period set out in **item 9(b) of Annex A**.
- 13.6 NUS shall not be under any obligation to accept the delivery of the Goods which have not satisfactorily passed the Acceptance Test 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 test shall be repeated together with any other tests deemed necessary to confirm that the said deficiencies have been rectified. In any event, the affected Goods shall not be delivered to NUS before correction of the deficiencies.

14. INSPECTION OF GOODS

- 14.1 Where inspection of any of the Goods, whether completed or in the course of production, is required by NUS, the Contractor shall give NUS full and free access to the Contractor's works or premises and shall provide NUS with all reasonable facilities for such purpose.

15. WARRANTY

Where specified as being applicable in item 10(a),(b) and (c) of Annex A, the provisions of this Clause 15 shall apply.

- 15.1 The Warranty Period shall be for the minimum period stated in **item 10(a) of Annex A**.
- 15.2 Where during the Warranty Period, any Goods:
- (a) are found to be defective in design, materials or workmanship or not in accordance with the approved sample or the Contract; or
 - (b) having been installed, operated, stored and maintained in accordance with the written instructions of the Contractor, fail to function properly or fail to meet any performance guarantees or specifications published by the Contractor as applicable to the Goods;

the Contractor shall, at its own cost and expense (including transportation costs), at the written notification of NUS, replace, rectify or completely repair the same, within the timeframe stated in **item 10(b) of Annex A** which shall commence from the said notification and end upon the receipt by NUS of the replaced, rectified or repaired Goods as the case may be, which shall be subject to the same Acceptance Test as the Goods that was replaced, rectified or repaired.

The Warranty Period for the replaced, rectified or repaired Goods shall be extended by a period equivalent to the period commencing from the date of the said receipt by the Contractor of the damaged or defective Goods to the date of acceptance of the replaced, rectified or repaired Goods by NUS. 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.

- 15.3 If any of the Services performed is found during the Warranty Period to be deficient, the Contractor shall, at its own cost and expense (including transportation costs), at the written notification of NUS, re-perform the same, within the timeframe stated in **item 10(c) of Annex A**, which shall commence from the said notification and end upon the acceptance of the re-performed Services. The Warranty Period for the re-performed Services 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 re-performed Services. 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.
- 15.4 In the event of any failure by the Contractor to comply with these warranty obligations, NUS shall have the right to obtain suitable replacements or re-performance from other sources or to make good any damage, defect or deficiency in any manner it deems necessary. All costs and expense thereby incurred by NUS shall be recoverable from the Contractor.

16. REPLACEMENT OF PERSONNEL

- 16.1 The Contractor shall replace its personnel within fourteen (14) days from the date of written notice from NUS that the said personnel is either:
- (a) technically incompetent or negligent in carrying out the Services; or
 - (b) conducting himself, in the opinion of NUS, in an undesirable or unacceptable manner.

17. INTELLECTUAL PROPERTY

17.1 Ownership of Intellectual Property

Where applicable,

- (a) NUS shall retain all Intellectual Property Rights in any and all NUS Materials and the Contractor is granted a non-transferable, non-exclusive and royalty-free license to use the NUS Materials for the sole purpose of performing its obligations under this Contract and shall not use the NUS Materials or reproduce the Contract Materials under this Contract for any third party.
- (b) The Contractor shall retain all Intellectual Property Rights in any and all Contractor Materials provided that the Contractor shall grant NUS a perpetual, non-transferable, non-exclusive and royalty-free license to use the Contractor Materials for the purpose of receiving and using the Goods and/or Services and Contract Materials.
- (c) All Intellectual Property Rights in any Contract Materials shall vest in and be the sole and exclusive property of NUS. The Contractor shall assign (and hereby assign without the need for further consideration) to NUS any and all such Intellectual Property Rights in the Contract Materials as may reside with the Contractor and shall take such additional actions as may be requested by NUS to perfect NUS's rights in the Contract Materials. The Contractor shall upon request and without cost to NUS promptly execute all such documents as may be necessary to effectuate the vesting in, or transfer to, NUS of such rights.

17.2 Infringement of Intellectual Property

- (a) The Contractor warrants and represents that the Goods and/or Services and any other materials and information, as applicable, provided by the Contractor under this Contract do not infringe any Intellectual Property Rights of any third party and that the Contractor owns or has obtained all the necessary authorisations and permissions to grant the rights contemplated under this Contract to NUS.

- (b) In the event that a third party claims that NUS's use of the Goods and/or Services and any other materials and information, as applicable, provided by the Contractor under this Contract infringes its Intellectual Property Rights, the Contractor shall fully indemnify and keep NUS indemnified against all costs, charges, expenses, claims, demands and liabilities of whatsoever nature arising out of or in connection with such claim and shall, at NUS's option and at the Contractor's expense, either :-
- (i) do all such acts and things either to render the Goods and/or Services and/or the infringing parts non-infringing without detracting from the overall performance of anything supplied hereunder (and in which event the Contractor shall compensate NUS for the amount of any direct loss and/or damage sustained or incurred by NUS during such modification or replacement); or
 - (ii) obtain a licence from such third party granting NUS the right to continue using the Goods and/or Services and/or the infringing part thereof.

And if either of the above cannot be accomplished on reasonable terms, the Contractor shall immediately remove the Goods or the infringing part thereof from NUS's premises and/or cease the provision of such Services or the infringing part thereof and refund NUS the payments already made by NUS under this Contract for the Goods and/or Services or the infringing part thereof. Provided that should NUS be unable to use the Goods or receive the benefit of the Services in the manner contemplated under this Contract following removal of an infringing part thereof NUS shall have the right to cancel the Contract immediately and the Contractor shall refund in full the payments made by NUS in respect of the whole of the Goods and/or Services.

- 17.3 The Contractor shall not be liable under this Clause 17 in the event that any third party claim of infringement of Intellectual Property Rights:
- (a) is due solely to the Contractor's use of any NUS Materials; or
 - (b) results from the modification of the Goods and/or Services by NUS without the prior written consent of the Contractor.
- 17.4 In the event of any actions being contemplated or instituted by a third party against NUS or the Contractor for an alleged infringement of Intellectual Property Rights or other statutory or common law rights, NUS reserves the right to cancel immediately the Contract and return any Goods already delivered and the Contractor shall compensate NUS with the Contract Price or any part thereof already remitted. In such event NUS reserves its right to purchase the Goods and/or Services from other sources without prejudice to all or any of NUS's rights against the Contractor as contained in this Contract or under law.
- 17.5 All royalties and fees claimable by or payable to any person, firm, corporation or government for or in connection with any copyright, invention, patent or software used or required to be used in respect of the Goods and/or Services or any part thereof in the performance of the Contract or supplied under the Contract shall be deemed to be included in the Contract Price.

18. RESTRICTIVE OR DISABLING MECHANISMS/ MALWARE

- 18.1 The Contractor warrants that the Contractor shall not install and that the Goods provided by the Contractor to NUS shall not contain any limiting or disabling mechanisms which may prevent or restrict NUS's use of the Goods and/or Services. The Contractor warrants that all magnetic or other storage media and all software and other materials supplied shall not contain any virus, Trojan Horse, worm, logic bomb or other software routine or hardware components designed to permit unauthorised access, disable, erase, or otherwise harm software, hardware or data, or to perform any such actions.

19. CONFIDENTIALITY

- 19.1 Except with the written consent of NUS, the Contractor shall not disclose the Contract or any provisions thereof, any purchases made in this Contract or any information issued or furnished by or on behalf of NUS in connection with the Contract to any person.
- 19.2 In addition to the foregoing, the Contractor shall not make use of any information obtained directly or indirectly from NUS 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 NUS.
- 19.3 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 NUS.

20. PERSONAL DATA

- 20.1 The Contractor shall comply with the Personal Data Protection Act 2012 ("PDPA") and all subsidiary legislation related thereto (collectively "Data Protection Legislation") with regard to any and all personal data (as defined in the PDPA) that it receives from NUS.
- 20.2 The Contractor agrees that when dealing with personal data received from NUS, it shall:
- (a) only use personal data in accordance with the purposes for which NUS disclosed the personal data, in accordance with the instructions of NUS or as is necessary for NUS to fulfill its obligations under the Data Protection Legislation;
 - (b) take appropriate technical and organisational measures to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access and against all other unlawful forms of processing. Such measures shall ensure a level of security appropriate to the risks represented by the processing and the nature of the data to be protected, having regard to the state of the art and the cost of implementation;
 - (c) give NUS notice in writing as soon as reasonably practicable should it be aware of, or reasonably suspect, that any of the events referred to in Clause 20.2(b) has occurred and shall promptly take all steps necessary to remedy the event and prevent its re-occurrence;
 - (d) not retain personal data for any longer than is necessary for the purposes for which NUS disclosed the personal data;
 - (e) limit disclosure of such personal data to its employees on a need to know basis and only for the purposes of processing for which such personal data was disclosed by NUS;
 - (f) not to disclose or transfer any personal data received from NUS to any third party without the prior written approval of NUS, and upon such additional terms and conditions which NUS may impose on it for such disclosure or transfer; and
 - (g) where the personal data is to be transferred to another country, to not do so unless the consent of the individual whose personal data is to be transferred to another country has been obtained except where an exception to such consent under the PDPA applies. Further, where the personal data is to be transferred to another country, to take any such additional measures as are necessary to secure that personal data is transferred in accordance with the requirements of the Data Protection Legislation.

- 20.3 Notwithstanding anything to the contrary, the Contractor undertakes to indemnify and at all times hereafter to keep NUS indemnified against any and all losses, damages, actions, proceedings, costs, claims, demands, liabilities (including full legal costs on a solicitor and client basis) which may be suffered or incurred by NUS or asserted against NUS by any person, party or entity whatsoever, in respect of any matter or event whatsoever arising out of, in the course of, by reason of or in respect of any breach by the Contractor of any of the provisions in this Clause.

21. COMPLIANCE WITH UNIVERSITY REGULATIONS

- 21.1 Where any Services are required to be carried out on or Goods are required to be delivered onto NUS sites or premises, the Contractor shall abide by, and shall ensure that all his employees, consultants, sub-contractors, suppliers and agents abide by all prevailing regulations, rules, procedures, policies, directions, guidelines and codes of conduct of NUS, including without limitation those relating to the management, administration, safety and security of NUS sites and premises.

22. TERMINATION

- 22.1 NUS may terminate this Contract with immediate effect by giving notice in writing to the Contractor on any one of the following grounds:

- (a) If the Contractor wholly suspends the supply of the Goods and/or Services without justification or fails to proceed with due diligence or expedition and fails to remedy the same within seven (7) days of receipt of written notice from NUS on the suspension or failure;
- (b) If the Contractor defaults in his performance or is in material breach of any of the terms of this Contract and in the case of a default or breach capable of remedy fails to remedy such default or breach within twenty-one (21) days of receipt of written notice from NUS on the default or breach;
- (c) If the Contractor becomes bankrupt or insolvent or makes a composition with creditors or if, being a company, a winding-up order of any kind is made in respect of the Contractor, and/or if a receiver or manager (including judicial manager) is appointed over the Contractor's undertaking or assets or possession of or execution on any part of such undertaking or assets is taken or levied by creditors;
- (d) If any of the Contractor's licences or permits related to the Contract is revoked or suspended;
- (e) If any irregularity or fraud relating to the Contract is discovered to have been committed by the Contractor or if the Contractor breaches any of the applicable laws, regulations and rules governing procurement by NUS, including but not limited to the Government Procurement Act (Cap. 120); and
- (f) If the Contractor does not comply with or is in breach of any requirement under any law and regulation.

- 22.2 Upon termination under Clause 22.1,

- (a) NUS may engage other contractors to continue with the performance of the Contract and the Contractor shall be liable to NUS for all damages and additional costs incurred thereby; and
- (b) NUS may withhold payment of any monies payable to the Contractor until the damages and costs payable to NUS arising from such termination are quantified and ascertained by NUS (such quantification and ascertainment to be made within a reasonable time).

- 22.3 The termination or expiry of this Contract will not prejudice or affect any right of action or remedy which has accrued prior to the date of termination or may thereafter accrue to either Party.

23. FORCE MAJEURE

- 23.1 Neither Party shall be liable for any failure or delay to perform its obligations under the Contract if the failure results from any Force Majeure Event provided always that whenever possible the affected Party shall resume that obligation as soon as the Force Majeure Event occasioning the failure cease or abates. For the avoidance of doubt, the Parties shall continue to perform their respective obligations under the Contract which are not affected by the Force Majeure Event.
- 23.2 If any Force Majeure Event continues for a period exceeding 7 days, NUS may at any time thereafter give notice to the Contractor to terminate the Contract with immediate effect without being liable to the Contractor in damages or compensation.

24. GIFTS, INDUCEMENTS OR REWARDS

- 24.1 NUS may immediately 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 NUS or for showing or forbearing to show favour to any person in relation to any contract with NUS, 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 NUS 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 (Cap. 224) or Prevention of Corruption Act (Cap. 241) 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 (Cap. 224) or the Prevention of Corruption Act (Cap. 241).

25. INDEMNITIES

- 25.1 The Contractor shall indemnify and keep NUS indemnified against all claims, demands, actions, judgments, damages, costs and expenses for:-
- (a) personal injury or death arising directly or indirectly from the Goods supplied and/or Services performed by the Contractor;
 - (b) loss or damage to property arising directly or indirectly from the Contractor's performance of its obligations under the Contract; and
 - (c) loss or damage suffered by any workman or employee employed or engaged by the Contractor in connection with the performance of its obligations under the Contract;

save and except in the event caused by the gross negligence or willful default of NUS or its employees.

- 25.2 In the event of any of the aforementioned claim or action brought against NUS arising out of the Contractor's performance of its obligations under the Contract, the Contractor shall, if required by NUS, at its own expense conduct all negotiations for the settlement of the same, and any litigation that may arise therefrom. The conduct by the Contractor of such negotiations or litigation shall be conditional upon the Contractor having first given to NUS such reasonable security as shall from time to time be required by NUS to cover the amount ascertained or estimated by NUS as compensation, damages, expenses and/or costs for which NUS may become liable. NUS shall, at the request of the Contractor, afford all reasonable assistance for

any such purpose subject to the Contractor putting NUS in funds to cover any expenses incurred or to be incurred in so doing.

26. LIMITATION OF LIABILITY

- 26.1 Subject to Clause 26.2, neither the Contractor nor NUS shall be under any liability whatsoever to the other for any loss of profit, indirect loss and/or expense, incidental or consequential damages suffered arising out of a breach by the Contractor or NUS of this Contract.
- 26.2 Nothing in this Clause shall exclude or in any way limit the Contractor's liability for:
- (a) fraud or willful misconduct;
 - (b) breach of its warranty or confidentiality obligations under this Contract;
 - (c) its indemnity obligations under this Contract;
 - (d) death or personal injury caused by its negligence; or
 - (e) any other liability to the extent such liability may not be excluded or limited as a matter of law.

27. INSURANCE

Where specified as being applicable in item 11 of Annex A, the provisions of this Clause 27 shall apply.

- 27.1 Without limiting the liability of the Contractor under this Contract or at common law, prior to the commencement of the delivery of the Goods and/or the performance of the Services and for the duration of the Contract, the Contractor, shall at his own cost and expense effect and maintain the types of insurance for such limit as set out in **item 11 of Annex A** to cover against any damage, loss or injury which may occur to any property (including that of NUS) or to any person (including the Contractor and NUS or any of its employee or agent) in connection with the performance of its obligations under the Contract.
- 27.2 All insurance requirements under this Clause shall be effected with insurers licensed by the Monetary Authority of Singapore or approved by NUS.
- 27.3 The Contractor shall upon demand by NUS produce for NUS's inspection and make a copy for NUS's retention the relevant insurance policy, premium receipt and/or current certificate of insurance. In default by the Contractor to do so, NUS may itself insure against any or all of the aforesaid risks and recover the costs thereof from the Contractor.
- 27.4 Nothing in this Clause shall be construed to affect or detract from in any way any rights which NUS may have against the Contractor in the event of any loss or damage suffered by NUS arising from any breach of this Contract by the Contractor.

28. CONSORTIUM

- 28.1 As used in these Conditions of Contract, "Consortium" means an unincorporated joint venture through the medium of a consortium or a partnership.

Joint and Several Responsibility

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

Addition of members to Consortium

- 28.3 Any introduction of, or changes to, Consortium membership must be approved in writing by NUS.

- 28.4 Should additional member(s) be added to the Consortium at any time with the approval of NUS, he or they shall be deemed to be included in the expression "the Contractor".

Withdrawal from Consortium

- 28.5 In the event that any member of the Consortium withdraws from the Consortium or is adjudicated a bankrupt by a duly constituted judicial tribunal, or goes into liquidation in accordance with the laws of the country of incorporation, then the surviving member(s) of the Consortium shall be obliged to carry out and complete the Contract.

29. SET-OFF

- 29.1 Any amount owing by the Contractor to NUS whether under the Contract or otherwise may be set-off by NUS against any monies payable by NUS to the Contractor.

30. INTEREST

- 30.1 The Contractor shall pay interest compounded monthly on any amount due to NUS at the Development Bank of Singapore's prevailing prime rate from the date the payment becomes due until the date of payment.

31. CUMULATIVE REMEDIES

- 31.1 The rights of NUS specified under this Contract shall be in addition to such other rights and remedies as NUS may have or be entitled to against the Contractor at law or in equity.

32. JOINT & SEVERAL LIABILITY

- 32.1 If the Contractor is a joint venture or partnership, the individual companies or partners comprising the Contractor shall be deemed jointly and severally liable to NUS under this Contract.

33. VARIATION OF CONTRACT

- 33.1 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 NUS.

34. SUB-CONTRACTING AND ASSIGNING

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

35. SEVERABILITY

- 35.1 If any part of this Contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

36. WAIVER

- 36.1 Neither the failure nor delay by NUS to exercise any right or remedy under this Contract or to insist upon strict compliance by the Contractor with any of its obligation shall constitute a waiver of any of NUS's right or remedy under this Contract.
- 36.2 No waiver of any breach of any terms of this Contract shall be deemed to be a waiver of any other or of any subsequent breach.

37. STATUS OF PARTIES

- 37.1 Nothing in this Contract shall create, or be deemed to create, a partnership or the relationship of principal and agent or employer and employee between the Parties.

38. RIGHTS OF THIRD PARTIES

- 38.1 A person who is not a Party to this Contract shall have no right under the Contracts (Rights of Third Parties) Act (Cap. 53B) to enforce any of its terms.

39. ENTIRE AGREEMENT

- 39.1 This Contract contains the entire and whole agreement between the Parties relating to the subject matter of the Contract.

40. GOVERNING LAW

- 40.1 The Contract (including its formation) and all its subsequent variations shall be subject to, governed by and interpreted in accordance with the laws of the Republic of Singapore for every purpose.

41. MEDIATION

- 41.1 Notwithstanding anything in this Contract, in the event of any dispute or claim arising out of or relating to this Contract, 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.
- 41.2 A Party who receives a notice for mediation from the other Party shall consent and participate in the mediation process in accordance with Clause 41.1.
- 41.3 Failure to comply with Clause 41.1 or 41.2 shall be deemed to be a breach of contract.

42. ARBITRATION

- 42.1 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 in this Clause.

43. SUPPLEMENTARY CLAUSES

Where specified as being applicable in item 12 of Annex A, the provisions of this Clause 43 shall apply.

- 43.1 This Conditions of Contract is subject to the supplementary clauses as set out in **Annex B**.
- 43.2 In the event of inconsistency between the provisions in **Annex B** and Clauses 1 to 42, then the provisions in **Annex B** shall prevail.

Annex A

Item	Description	Clause in Conditions of Contract	Applicable or Not Applicable	Details to be provided where applicable
1	Contract Commencement Date and Contract Period	3.1	Applicable	From the date of Letter of Acceptance to the expiry of the Warranty Period
2	Delivery or Performance Dates	3.2	Applicable	See Annex A-1
3(a)	Option Period	4	Not Applicable	
(b)	Option Exercise Expiry Date	4	Not Applicable	
4	Delay in Delivery and Performance – Liquidated Damages	5.1(a)	Applicable	0.1% of Contract Price per day or part thereof
5	Payment	6	Applicable	See Annex A-1
6	Security Deposit	8	Not Applicable	
7	Advance Payment Banker's Guarantee	9	Not Applicable	
8	Works Orders or Purchase Orders	10	Not Applicable	
9(a)	Acceptance Test – Notification Period	13	Applicable	At least 14 days prior to the conduct of the Acceptance Test
(b)	Acceptance Test - Result Period	13	Applicable	Within 7 days after successful completion of the Acceptance Test
10(a)	Warranty Period	15	Applicable	Refer to Requirement Specifications (Section C.11)
10(b)	Warranty – Goods Rectification Turnaround Time	15	Applicable	Within 14 days from the date of written notification from NUS

10(c)	Warranty – Services Re- performance Turnaround Time	15	Applicable	Within 7 days from the date of written notification from NUS
11	Insurance	27	Not Applicable	
12	Supplementary Clauses	43	Not Applicable	

Annex A-1

Delivery/ Performance and Payment Milestones**a) Supply, Delivery, Installation and Commissioning of a High-Throughput Separation LC system for Mass Spectrometry Analysis**

Timeline	Description	Percentage of Contract Price
Within two (2) months from date of award	Successful Completion of Factory Acceptance Test (FAT) and Delivery of all Goods and accessories to: Cancer Science Institute of Singapore National University of Singapore Level 13, MD6 Centre for Translational Medicine NUS Yong Loo Lin School of Medicine 14 Medical Drive Singapore 117599	0%
Within one (1) month from date of delivery	Completion of Installation, Site Acceptance Test (SAT), Commissioning, Handover and Training.	100%

a) Comprehensive Maintenance Contract (Option)

Payment shall be made on an annual basis at the end of each year of maintenance contract.