

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 Works Orders issued by the University to the Contractor for the supply of the Services.
- (b) "Contractor" means the successful Tenderer who has been awarded the Contract by the University.
- (c) "Services" means the work which the Contractor is required to perform under the Contract.
- (d) "Parties" refer to the University and the Contractor.
- (e) "Person" includes a corporation or an unincorporated association.
- (f) "Tenderer" means a person or his permitted assigns offering to supply the Services.
- (g) "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.

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 perform the Services in accordance with the Contract.

3 PERFORMANCE

3.1 The Contractor shall perform the Services by the Performance Date 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 re-performing deficient Services under Clause 4. The Performance Date shall mean the delivery date of the Services requested by the University ordered under the Contract.

4 RE-PERFORMANCE OF DEFICIENT SERVICES

4.1 The Contractor shall at his own cost and when notified in writing by the University, re-perform the Services that are found on delivery to be deficient, incomplete, unsatisfactory or in any way not in accordance with the Contract, failing which the

University shall have the right to perform the Services 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 Services ordered under the Contract, as above provided, 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 Services so performed provided that no payment shall be considered as evidence of the quality of any Services or the University's acceptance of the Services to be in accordance with the Contract to which such payments relates.
- 5.2 The payments under this clause shall not prejudice the University's right to reject deficient Services or the Contractor's responsibility to re-perform deficient Services.
- 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 OR REWARDS

- 7.1 The University may terminate the Contract and to 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 PERFORMANCE

- 8.1 If there is delay in the performance of the Services under the Contract due to any of the following circumstances, namely, acts of God, force majeure, riots and civil commotion, strikes, lock-outs or other causes or perils beyond the Contractor's control, then in any such case the Contractor shall for the duration of any such circumstance aforesaid, be relieved of his obligation to perform such Services thereby

affected but the provisions of the Contract shall remain in full force in regard to any Services not affected by such circumstances aforesaid.

8.2 Subject to Clause 8.1, if the Contractor fails to 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 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 based on the Requirement Specifications - Section B as liquidated damages for every day of delay and incidence of non-compliance (including Sundays and Public Holidays) until the Services are performed and non-compliance rectified.

Provided that the recovery of such increased costs aforesaid shall be limited to such Services as is purchased or obtained, not exceeding the scope 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 ASSIGNMENT, TRANSFER AND SUB-CONTRACTING

9.1 The Contractor shall not assign, transfer or sub-contract any portion of the Contract without the express written consent of the University.

10 APPLICABLE LAW

10.1 This Contract shall be governed by the laws of Singapore and Parties agree to submit to the exclusive jurisdiction of the Singapore Courts.

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 Services performed and accepted by the University. 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 RIGHTS OF THE UNIVERSITY IN THE EVENT OF DEFAULT BY THE CONTRACTOR

12.1 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 therefore in damages or compensation. The said termination shall take effect from the date of the notice of termination.

- 12.2 In addition to Clause 12.1 above, the University shall have the right to terminate the Contract by giving fourteen (14) days written notice to the Contractor if the Contractor commits an act of bankruptcy or become insolvent or compounds with or makes any assignment for the benefit of his creditors. Upon termination of the Contract by the University under this clause, the University shall have the absolute right to have the work carried out by any means such as engaging other Contractors to complete those parts of the Services unperformed by the Contractor, and all costs so incurred, shall be payable by the Contractor.
- 12.3 In the event of termination under this Clause, the University shall have the right to purchase from other sources all the Services which remains unperformed at the time of termination or similar Services, and all increased costs reasonably incurred by the University shall be recoverable from the Contractor.
- 12.4 Upon termination of Contract, the University may withhold payment of any monies payable to the Contractor until the Services are performed and the damages payable to the University arising from such termination are quantified and ascertained by the University (such quantification and ascertainment to be made within a reasonable time) and if the aggregate amount of such damages and all monies paid to the Contractor under this Contract exceeds the Contract Price, such excess amount shall constitute a debt payable to the University by the Contractor.
- 12.5 Upon termination of Contract, the Contractor shall remove from the site (if any), when required by the University, any temporary structures, plants, tools, goods, materials and equipment brought thereon by or for the Contractor and if the Contractor fails to do so within the time stipulated in the said notice for such removal, the University shall be entitled to store, remove, sell or otherwise deal with or dispose of the same and the Contractor shall be liable to and shall indemnify the University for or against any costs, expenses and liabilities whatsoever incurred by the University in so dealing with or disposing the same. The Contractor shall not be entitled to make any claims whatsoever against the University for any action taken by the University in accordance with the provisions of this Clause.

13 VARIATION OF CONTRACT

- 13.1 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.

14 TAXES, FEES AND DUTIES

- 14.1 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.
- 14.2 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.
- 14.3 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 (2000 ed.).
- 14.4 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 (2000 ed.).

15 GOVERNMENT REGULATIONS

- 15.1 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.

16 INDEMNITY

16.1 Injury to Person

The Contractor shall be liable for and shall indemnify the University against all claims, demands, actions, proceedings, damages, costs, losses and expenses of any nature whatsoever, arising under any statute or at common law, in respect to personal injury to, or death or any person, arising out of, or in the course of, or caused by the execution of the work in this Contract or from the acts, omissions or defaults of the employees, agents or sub-contractors of the Contractor in relation to anything in connection with the execution of the work in this Contract.

16.2 Damage to Property

The Contractor shall be liable for and shall indemnify the University against all claims, demands, actions, proceedings, damages, costs, losses and expenses of any nature in respect of any loss or damage howsoever to any property, real or personal arising out of, or in the course of, or caused by the execution of the work in this Contract or from the acts, omissions or defaults of the employees, agents or sub-contractors of the Contractor in relation to anything in connection with the execution of the work in this Contract.

- 16.3 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 by the gross negligence or willful default of the University, its officers or agents.

17 **ARBITRATION**

- 17.1 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.

18 **CONSORTIUM**

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

Joint and Several Responsibility

- 18.2 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

- 18.3 Any introduction of, or changes to, Consortium membership must be approved in writing by the University.
- 18.4 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

18.5 If any member of the Consortium withdraws from the Consortium, goes into liquidation, is wound up or ceases 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)-FOR PERIOD CONTRACT

A1. WORKS ORDERS

- A1.1 All orders for Services to be supplied under the Contract shall be given from time to time, in writing, by the University on the appropriate order form (hereinafter referred to as "the Works Order"). All such Works Orders shall clearly state the details and nature of the Services to be supplied and shall also state the amount, calculated at the rates in the Contract that shall become due to the Contractor on the satisfactory completion of all the Services specified on such Works Order. On satisfactory completion of such supply the Contractor shall submit his bill to the University who shall certify the same for payment to the Contractor at the time and in the manner hereinafter provided.
- A1.2 On receipt of any Works Order the Contractor shall commence performance of the Services referred to therein and complete the same as soon as promised in his tender or otherwise as expeditiously as possible.

A2. SUPPLY OF SERVICES AS AND WHEN REQUIRED BY THE UNIVERSITY

- A2.1 Where the University has entered into a Contract with the Contractor for the supply of Services as and when required by the University during the period of time specified in the Contract, the Contract shall be deemed to be a Period Contract for the duration of the period of time specified. Where the Contractor receives, during the period of time specified in the Contract, any Works Order for specific Services specified in the Contract, the Contractor shall proceed to perform the Services in accordance with the Contract.

A3. SECURITY DEPOSIT

- A3.1 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 Contract Price. 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.
- A3.2 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 performance of all Services under the Contract. In the case of a Period Contract, the performance of the Services under the Period Contract shall refer to the performance to be made pursuant to a Works Order raised on the last date of the Period Contract for the Service with the longest delivery lead time. 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.

- A3.3 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.
- A3.4 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.

A4. OPTION TO EXTEND

- A4.1 The extension is subject to satisfactory performance and solely on the discretion of the University.
- A4.2 The Contractor grants the University the option to extend the Contract for a further period as stated in the Invitation Letter to Tender and Letter of Acceptance. This option shall be exercisable by written notice given by the University to the Contractor. Unless otherwise specifically agreed between the Parties, any purchase made during the extended period shall be subject to the same terms and conditions (inclusive of any amendments), and the Services purchased shall form part of the Services defined in this Contract.
- A4.3 In the event that the Contract is extended pursuant to Clause A4.2, the Contractor shall furnish a fresh Security Deposit, and all the provisions in Clause A4.2 shall apply with the necessary modifications

A5. COMMENCEMENT AND DURATION OF CONTRACT

- A5.1 This Contract shall commence on and remain in force for the period as stated in the Letter of Acceptance.

A6. MINIMUM QUANTITY

- A6.1 *Not Applicable.*

A7. ADVANCE PAYMENT

A7.1 *Not Applicable.*

A7.2 *Not Applicable.*

A7.3 *Not Applicable.*

A8. REPLACEMENT OF PERSONNEL

A8.1 The Contractor shall replace its personnel within fourteen (14) days from the date of written notice from the University that the said personnel is either:-

- (a) technically incompetent in carrying out the Services and all efforts by the Contractor have failed to resolve the issue within the said period; or
- (b) the conduct of the said personnel is found to be detrimental to the national security.

A9. CONFIDENTIALITY AND SECURITY

A9.1 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.

A9.2 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.

A9.3 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.

A10. WARRANTY

A10.1 *Not Applicable.*

A10.2 *Not Applicable.*

A11. OWNERSHIP OF INTELLECTUAL PROPERTY - *Not Applicable*

A12. INSURANCE

A12.1 Before commencement of the Works, the Contractor shall, at his own expense, insure against all loss or damage from whatever causes arising from which he is responsible under the Conditions of Contract and the Specifications. Such insurance shall be effected with an Insurance Company approved by the University and shall be insured and maintained throughout the Contract Period.

A12.2 Not applicable.

A12.3 Not applicable.

A12.4 All insurance policies (including receipts) so taken up shall be deposited with the University.

A12.5 The Contractor shall from time to time deliver to the University the receipts of the payments of premiums towards all insurance policies.

A12.6 Failure to Insure

If the Contractor fails to effect and keep in force the insurance policies referred to, the University shall have the right to effect and keep in force any insurance and recover the amount so paid by the University from the Contractor by way of deductions from any money or monies due to the Contractor.

A13. NOTICES

Any notices under this Contract required to be served upon the Contractor shall be sufficiently served if delivered to the Contractor personally or sent addressed to the Contractor by hand or registered post to the Contractor's address and any notice required to be served upon the University shall be sufficiently served if delivered personally to the Chief Development & Facilities Management Officer at Office of Development & Facilities Management, Block N2.1, Level B2, 76 Nanyang Drive, Singapore 637331 or sent addressed to him by registered post. A notice sent by registered post shall be deemed to be given at the time in due course of post if would be expected to be delivered to the address to which it is sent.