

NTU Terms and Conditions

1. DEFINITIONS

“**Contract**” means the legally binding contract arising from University’s acceptance of the Contractor’s Quote, such contract comprising, in order of ascending precedence: (a) the ITQ; (b) the Quote; (c) these NTU Terms and Conditions; and (d) the Letter of Acceptance. Where any Purchase Order (as defined below) is issued under the Contract, the same shall form part of the Contract.

“**Invitation to Quote**” or “**ITQ**” means a written invitation by University to quote for certain goods and/or services as specified in said invitation.

“**Letter of Acceptance**” or “**LoA**” means the document issued by University to the Contractor confirming University’s acceptance of the Contractor’s Quote.

“**Purchase Order**” means the document issued by University to the Contractor which details the items which University agrees to purchase at the price as agreed between University and the Contractor in the Contract.

“**Quote**” means the quotation submitted by an individual or entity in response to an ITQ.

“**Contractor**” means the individual or entity who is issued with the LoA or a Purchase Order, as the case may be, under this Contract.

“**University**” or “**NTU**” means Nanyang Technological University, (Company Registration Number 200604393R), located at 50 Nanyang Avenue, Singapore 639798 and includes all its autonomous institutes, colleges, schools, divisions, departments, research centers, subsidiaries and related corporations (as defined in the Companies Act (Cap. 50), and any officer authorized by the University to act on its behalf.

2. THE CONTRACT

2.1 By submitting a Quote in response to the University’s written request to do so, or submitting a Quote in response to an ITQ, as applicable, the Contractor unconditionally accepts these Terms and Conditions. The University’s acceptance of the Contractor’s Quote through issuing a Letter of Acceptance to the Contractor shall create a legally binding contract to supply the goods or services offered in the Quote under these Terms and Conditions.

2.2 The Contractor acknowledges and accepts that these Terms and Conditions take precedence and supersede any other terms and conditions referred to, offered, or relied on by the Contractor at any stage in any dealings between the Contractor and the University. Without prejudice to the foregoing, the Contractor further acknowledges and agrees that the University will not be bound by any terms or conditions endorsed upon, delivered with, or contained in, the Quote, specifications or any other documents of the Contractor, regardless of whenever the same is introduced in the course of dealings between the Contractor and the University in respect of the Contract, unless the University specifically states so in writing that it agrees to any such terms.

3. ACCEPTANCE AND AWARD

The University reserves the right to accept or reject all or any part of a Quote and to award the Quote in any manner deemed in the best interest of the University.

4. ALTERATION OF QUOTE

No Quote shall be altered or amended after the closing date of the ITQ unless otherwise agreed to in writing by the University.

5. APPLICABLE LAW

The Contract shall be governed by the laws of Singapore and parties agree to submit to the jurisdiction of the Singapore Courts. A person who is not a party to the Contract shall have no right under the Contracts (Rights of Third Parties) Act 2001 to enforce any of its terms.

6. ASSIGNMENT, TRANSFER AND SUBCONTRACTING

The Contractor shall not assign, transfer or subcontract the Contract, in whole or in part, without the University's prior written consent. The University may, without the Contractor's consent, transfer or assign the Contract to any of its affiliates. All rights and obligations shall inure to the benefit of and be binding on any permitted transferee, assignee or successor of each party.

7. CODE OF CONDUCT

The Contractor represents and warrants that it complies at all times with the University's [Code of Conduct \(https://www.ntu.edu.sg/research/research-integrity-ethics/The-University-Code-of-Conduct\)](https://www.ntu.edu.sg/research/research-integrity-ethics/The-University-Code-of-Conduct), which may be amended from time to time. The University may audit the Contractor's conformance to it.

8. CONFORMANCE WITH LAW

The Contractor warrants that its performance of the Contract, including the supply of the goods or services, will be in accordance with all applicable laws. The Contractor shall at its own cost and expenses obtain and maintain all licences, permits, certifications and regulatory authorisations without any restriction or qualification whatsoever so as to enable the Contractor to fulfil all its obligations under the Contract.

9. DELIVERY

Delivery or performance of any goods or services must be made by the date, time and place as stated in the Contract. Incoterms 2020 or the then prevailing Incoterms in force at the date of the Contract shall apply. If not stipulated in the Contract, the price and rates shall be deemed to be on a Delivered Duty Paid ("DDP") basis. The University may reject any goods or services not delivered or performed on the date, time and place stated.

10. FORCE MAJEURE

A party is not liable for a failure to perform any of its obligations if: (a) that the failure was due to war, riot, revolution, act of piracy, act of sabotage, violent storm, cyclone, earthquake, tidal

wave and floods which are not seasonally expected; (b) it could not reasonably be expected to have foreseen its effect upon its ability to perform at the time of the conclusion of the Contract; and (c) it could not reasonably have avoided or overcome it. The affected party shall promptly notify the other party of any such event. If the affected party is the Contractor and such event lasts longer than ten (10) days, the University may, without any penalty, liability or further obligation, terminate the Contract.

11 INDEMNITY

The Contractor shall fully indemnify the University, its directors, officers and affiliates from and against any and all claims, losses, damages, liabilities, suits, judgments and expenses in connection with, either directly or indirectly, the goods or services, or the use or incorporation of it, or the performance or non-performance of the Contract, or from any act or omission by the Contractor, its employees and representatives.

12. INTELLECTUAL PROPERTY RIGHTS

12.1 The Contractor warrants that the goods or services do not infringe any and all intellectual and industrial property rights, including any and all rights in relation to inventions, patents, copyrights, registered and unregistered trademarks (including service marks), registered and unregistered designs, circuit layouts and know-how (“**Intellectual Property**”).

12.2 The Contractor shall indemnify the University, its directors, officers and affiliates from and against any and all claims that such goods or services infringes third party Intellectual Property rights including any costs, charges and expenses in respect thereof. The Contractor grants the University and its affiliates a non-exclusive, worldwide, perpetual and royalty free license to use, reproduce, modify, adapt, integrate or develop the Intellectual Property in connection with the purchase purpose contemplated by NTU of the goods or services.

13. MISCELLANEOUS

13.1 Any notice, waiver, request, consent or approval required or permitted to be given in connection with the Contract shall be in writing and be deemed to have been duly given or made when it is delivered by hand or by prepaid registered post or electronic mail to the intended recipient at its address set forth in the Contract or to any other business address furnished in writing by the intended recipient to the sender. A notice sent by electronic mail shall be deemed not to have been received if the sender receives, within 24 hours of sending such electronic mail, a notification that such electronic mail has not been successfully delivered.

13.2 The Contractor acknowledges that each task or specific activity may not be listed out in the Contract, accordingly confirms that any incidental, consequential or ancillary tasks, services or activities required to be performed for successful delivery and completion of the goods or services shall be deemed to be included in the Quote. The Contractor shall not be entitled to any additional charges or payment for any such tasks, services or activities.

13.3 Failure by the University to insist on performance of a term or condition of the Contract, or to exercise any right or remedy, is not a waiver of any other term, condition or breach. If any enforceable term, provision, undertaking or restriction contained in the Contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, in whole or in part, the

remainder of the terms, provisions, undertakings and restrictions contained herein will remain in full force and effect and will in no way be affected, impaired or invalidated.

13.4 The rights and remedies of the parties under this Contract are cumulative and are in addition and without prejudice to any rights or remedies a Party may have at law or in equity. Further, no exercise by a Party of any one right or remedy under this Contract shall operate so as to hinder or prevent the exercise by it of any other such right or remedy under this Contract, or any other right existing at law or in equity.

13.5 References to “or” shall include a reference to “and” if the context permits or requires.

14. PAYMENT TERMS

14.1 E-Invoices issued via eProcurement System are highly recommended. Unless otherwise specified in writing, payment shall be made after thirty (30) days of the receipt of proper E-invoice from the Contractor and complete and proper delivery of the goods or services.

14.2 All charges including additional charges such as shipping, installation or other costs must be fully itemized in the Quote. Charges not specified at the time of the Quote will be deemed to be included within the Quote.

14.3 All duties and taxes, if any, imposed in Singapore or elsewhere on any supply of goods or services including all corporate and personal income taxes, customs fees, duties, fines, levies, assessments and other taxes payable by the Contractor or its personnel in carrying out its obligations under the Contract shall be borne by the Contractor, with the exception of GST pursuant to the Goods and Services Tax Act 1993 (“**GST Act**”) (“**Taxes**”). All rates and prices quoted shall be exclusive of GST chargeable on the supply of the goods or services. If the Contractor is a taxable person under the GST Act, the University will pay the Contractor, in addition to the rates and prices proposed, the GST chargeable on the supply of goods or services provided pursuant to the Contract. Any invoice or other request for payment of monies due to the Contractor under the Contract shall, if it is a taxable person for the purpose of the GST Act, 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 GST Act.

14.4 If the University receives a request from the tax authorities or otherwise decides to pay on behalf of the Contractor or the Contractor's personnel, or to withhold payments due to the Contractor in order that the University may subsequently so pay, any of the abovementioned Taxes, the Contractor agrees to bear all such withholding tax and that the University is entitled to deduct such withholding tax from payment due to the Contractor and forward the balance to the Contractor without any obligation to gross up such payment or pay the Contractor any amount so withheld.

14.5 All bank charges imposed by the Contractor’s receiving bank for any payment made by University to the Contractor under the Contract shall be borne by the Contractor.

14.6 Acceptance of the goods or services or any payments made by the University shall not prejudice the University’s right thereafter to contest any invoice or challenge or reject any goods or services that does not conform to the Contract. The University may withhold, deduct or set off the price of any non-conforming goods or services and any other sums due to the Contractor from the University against any payment due from the University to the Contractor under this Contract or any other agreement between the University and the Contractor.

15. PERSONAL DATA PROTECTION

15.1 For the purposes of this Contract, the Contractor shall collect, use, disclose and/or process Personal Data of individuals in full compliance with the PDPA and with any directions issued by the University relating thereto.

“**PDPA**” shall mean Singapore’s Personal Data Protection Act 2012 including all subsidiary legislation enacted thereunder, whether now or in the future.

“**Personal Data**” shall mean 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 University or the Contractor is likely to have access.

15.2 Without prejudice to the generality of **Clause 15** in connection with Personal Data in the Contractor’s possession or under its control or to which the Contractor may have access in connection with this Contract, 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) collect, use and disclose the Personal Data only for purpose(s) as notified to the individual for which consent has been obtained in accordance with sub-section (a) above;
- (c) institute all reasonable security arrangements, including where appropriate, physical, administrative, procedural and information and communications technology measures to protect the Personal Data in connection with this Contract against loss, and/or unauthorised or unlawful access, use, modification, disclosure or other misuse;
- (d) give the University notice in writing without undue delay, and in any event within twenty-four (24) hours, should it be aware of any actual or suspected loss and/or unauthorised or unlawful access, collection, use, disclosure, dissemination, copying, modification, disposal or misuse of Personal Data, including any complaint in respect of Personal Data provided under this Contract;
- (e) limit disclosure of the Personal Data to its employees on a need-to-know basis;
- (f) securely destroy the Personal Data where it is no longer required, or upon being required by the University, except where retention is necessary for legal or business purposes;
- (g) transfer Personal Data outside Singapore only as permitted by applicable laws and subject to prior authorization in writing by the University and such other conditions as may be imposed by the University; and
- (h) not send any specified (marketing) message (as defined in the PDPA) except where such scope has been specifically contracted by the University to do so on its behalf under this Contract or otherwise authorized in writing by the University.

- 15.3 The Contractor acknowledges that Personal Data is also confidential information, and is subject to all confidentiality obligations at law and under this Contract.
- 15.4 If the supply of the goods and services under the Contract requires the processing of Personal Data by the Contractor as a data intermediary (as defined in the PDPA), the Contractor agrees to process such Personal Data in accordance with the terms set out in the University's Data Intermediary Clause at **Annex I**.
- 15.5 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.
- 15.6 Notwithstanding anything to the contrary in this Contract, the Contractor undertakes to indemnify and at all times hereafter to keep the University indemnified against any and all losses, damages, actions, proceedings, costs, claims, fines, demands, liabilities (including full legal costs on a solicitor and own client basis) which may be suffered or incurred by the University or asserted against the University 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 its activities in relation to Personal Data or in respect of any breach of any of this **Clause 15**.
- 15.7 The obligations under this **Clause 15** and if applicable, the Data Intermediary Clause shall survive the expiration or termination of this Contract for any reason.

16. PROPRIETARY INFORMATION

All information, proposals, applications, briefs, brochures, samples or other documentation submitted by the Contractor for its Quote will become the University's property. The Contractor shall keep such information, proposals, applications, briefs, brochures, samples or other documentation confidential and shall not, without the University's prior written consent, disclose it to any third party, except as needed for the performance of the Contract. The Contractor shall remain responsible for any breach of confidentiality obligations by its employees and representatives. 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 University's prior written consent.

17. TITLE AND RISK

The Contractor warrants that upon the earlier of payment for, or delivery of, the goods, the Contractor shall convey to the University good and marketable title to the goods free of any liens or encumbrances of any kind whatsoever. Risk of loss passes upon the University's acceptance of the conforming goods. Title to, and risk of loss for, the services passes to the University upon proper completion of the services free of any liens or encumbrances of any kind whatsoever.

18. TERMINATION

- 18.1 If the Contractor fails to perform in accordance with the Contract, or is in breach of it, or becomes insolvent or otherwise unable to pay its debts, and without prejudice to any other rights or remedies the University may have under the Contract or otherwise, the University shall have the right, at its option, to:
- (a) require the Contractor to promptly cure such breach by delivering conforming goods, or promptly re-perform the services, at no additional charge or expense to the University;
 - (b) source the goods or services from a third party contractor, with the Contractor to bear the difference between the price paid or payable by the University for the goods or services and the price paid or payable by the University to that third party contractor;
 - (c) demand the Contractor refund the price paid for the goods or services; or
 - (d) terminate the Contract and recover all damages, losses, costs and expenses in connection with the breach.

The Contractor agrees to comply with any such option exercised by the University.

- 18.2 The University may terminate the Contract, in whole or in part, at any time and for any reason, by a written notice to the Contractor. Upon receipt of such notice, the Contractor will, unless otherwise directed:
- (a) immediately discontinue all work and the placing of all orders for materials, facilities and supplies in connection with the performance of the Contract; and
 - (b) terminate all subcontracts in so far as such orders or subcontracts are chargeable to the Contract.
- 18.3 The University shall have no liability to the Contractor beyond payment of any balance owed for goods purchased hereunder and properly delivered, or services performed and accepted by the University, prior to the Contractor's receipt of the termination notice. In particular, the University shall not be liable for any payment to the Contractor if termination is due to the Contractor's breach.
- 18.4 The University shall, in no event, have any liability to compensate the Contractor for any loss of profit, loss of revenue, loss of business, or any indirect, special, punitive or consequential losses or damages whatsoever.

19. WARRANTY

The Contractor warrants that all goods supplied to the University under the Contract are free from defects in material, workmanship and design, suitable for the purposes intended or implied, and in compliance with all specifications. The Contractor warrants that all services are performed in accordance with the best industry practices by qualified personnel trained and experienced in the appropriate fields and in compliance with the specifications.

ANNEX I DATA INTERMEDIARY CLAUSE

Definitions

1.1 In this Contract:

"Data Protection Legislation" means (i) the PDPA and (ii) all applicable laws and regulations relating to data protection, processing of personal data and privacy.

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

"personal data" means any 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 Contractor has or is likely to have access.

"Contractor" means the individual or entity who submits a Quote in response to an ITQ.

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

"University PD" means personal data that the Contractor processes on behalf of the University in performing the Contractor's services to the University under the Contract.

Compliance with Data Protection Legislation

1.2 The Contractor shall comply with all its obligations under the Data Protection Legislation at its own cost.

Process, Use and Disclosure

1.3 The Contractor shall only collect, process, use or disclose University PD:

- (a) strictly for the purposes of fulfilling its obligations and providing the services required under the Contract;
- (b) strictly in compliance with the Data Protection Legislation;
- (c) with the University's prior written consent; or
- (d) when required by law or an order of court, but shall notify the University as soon as practicable before complying with such law or order of court at its own costs.

Transfer of personal data outside Singapore

1.4 The Contractor shall not transfer University PD to a place outside Singapore nor permit any Subcontractors to do so, except with the University's prior written consent. If the University provides consent, the Contractor shall provide a written undertaking to the University that the

University PD transferred outside Singapore will be protected at a standard that is comparable to that under the PDPA. If the Contractor transfers University PD to any third party overseas, the Contractor shall procure the same written undertaking from such third party. Further and subject to the aforesaid, where the University PD is to be transferred outside of Singapore, the Contractor shall take any such additional measures as are necessary to ensure that the personal data is transferred in accordance with the requirements of the PDPA.

Security measures

- 1.5 The Contractor shall protect University PD in the Contractor's control or possession by making reasonable security arrangements, including where appropriate, physical, administrative, procedural and information, and communications technology measures to prevent:
- (a) unauthorised or accidental access, collection, use, disclosure, copying, modification, disposal or destruction of University PD, or other similar risks; and
 - (b) the loss of any storage medium or device on which personal data is stored.

For the purposes of the Contract, "reasonable security arrangements" include arrangements set out in other parts of or form part of the Contract (which shall not be varied without the University's prior written consent).

- 1.6 The Contractor shall only permit its authorised personnel to access University PD on a need to know basis.

Access to Personal Data

- 1.7 The Contractor shall provide the University with access to University PD that the Contractor has in its possession or control, as soon as practicable upon the University's written request. Without prejudice to the foregoing, the Contractor shall ensure that upon the request of the University, the Contractor shall promptly provide information about how an individual's personal data, that is comprised as part of University PD, has been processed by the Contractor and for what purposes, within a year before the date of the request.

Accuracy and Correction of Personal Data

- 1.8 The Contractor shall take steps to correct any errors in the University PD, as soon as practicable upon the University's written request.

Retention of Personal Data

- 1.9 The Contractor shall not retain University PD (or any documents or records containing University PD, electronic or otherwise) for any period of time longer than is necessary to serve the purposes of the Contract.
- 1.10 The Contractor shall, upon the request of the University:

- (a) return to the University, all University PD; or
- (b) delete all University PD in its possession,

and, after returning or deleting all University PD, provide the University with written confirmation that it no longer possesses any University PD. Where applicable, the Contractor shall also instruct all third parties to whom it has disclosed University PD for the purposes of the Contract to return to the Contractor or delete, such University PD.

Subcontracting

1.11 The Contractor shall have no right to sub-contract any part of the services that it is providing the University under this Contract except in accordance with clause 1.11A. The Contractor warrants and undertakes that:

- (a) any and all of the 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 Contract “Subcontractors” means subcontractors which have been approved by the University 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 University in writing, prior to their engagement); and
- (b) it shall ensure that its employees and Subcontractors who are performing the services strictly comply with all of the Contractor’s obligations under this Contract.

1.11A The Contractor shall not subcontract any part of the services that it is providing the University under this Contract without the prior written consent of the University (if consent is given by the University, the University may impose additional terms on the Contractor at the University’s discretion). If University consents to the subcontracting by the Contractor, the Contractor shall not be relieved of any of its obligations under this Contract 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 Contract;
- (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; and
- (c) as and when requested from time to time by the University, the Contractor shall provide University with all information regarding the University PD in the possession or under the control of the Subcontractors.

Notification of Breach

1.12 _The Contractor shall immediately (in any event, no later than 24 (twenty-four) hours) notify the University when the Contractor becomes aware or suspects a breach of any of its obligations in Clauses 1.3 to 1.11A of this Annex, which notice shall include information on the nature and the scope of failure or breach (including the type and volume of the personal data involved, the cause or suspected cause of the failure or breach, the names and contact details of the individuals who are affected or are suspected to have been affected by the failure or breach) and the Contractor shall assist the University, at no charge to the University, in dealing with such breach as determined by the University at the University's sole discretion.

Indemnity

1.13 _The Contractor shall indemnify the University and its officers, employees and agents, against all actions, claims, demands, losses, damages, statutory penalties, expenses and cost (including legal costs on an indemnity basis), in respect of:

- (a) the Contractor's breach of Clauses 1.3 to 1.12 of this Annex; or
- (b) any act, omission or negligence of the Contractor or its subcontractor that causes or results in the University and/or any of its related corporations to be in breach of the Data Protection Legislation.