

## CONDITIONS OF CONTRACT

### 1 DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In the Contract (as hereinafter defined) the following words and expressions shall have the meanings hereby assigned to them except where the context otherwise requires:

- (a) "Appendix" means the appendix to these Conditions.
- (b) "Claimed Amount" means the whole or part of any payment claimed by the Contractor in a Payment Claim pursuant to Clause 32.1(1).
- (c) "Conditions" means the Standard Conditions and Particular Conditions (if any) of Contract for Construction Work contained in the Contract specified in the Appendix.
- (d) "Contract" means the Conditions and Appendix, the Specifications, Drawings, Schedule of Rates (if any), Bills of Quantities (if any), the Tender, Letter of Acceptance, Agreement and such other letters and documents as the parties may expressly identify in writing and agree as forming part of the contract.
- (e) "Contract Sum" means the lump sum set out in the Letter of Acceptance, and shall be fixed subject only to adjustments expressly provided for in the Conditions.
- (f) "Contractor" means the person or firm or corporation whose Tender has been accepted by the University and includes the Contractor's legal personal representatives and any person to whom the rights or liabilities of the Contractor have been assigned or transferred with agreement in writing of the University under Clause 30.1.
- (g) "Construction Equipment" means all equipment, apparatus and things of whatsoever nature required for the execution and completion of both the Temporary Works and the Permanent Works and the remedying of any defects therein, but does not include Plant, materials, goods or work or other things intended to be part of the Works.
- (h) "Contractor's Representative" means the person duly appointed pursuant to Clause 11.2 of the Conditions.
- (i) "Date of Practical Completion" means the date stated in a certificate issued pursuant to Clause 17.1 or Clause 17.3.
- (j) "Defect" means any part of the Works not executed provided or completed in accordance with the Contract. For the avoidance of doubt and without limiting the generality of the expression the term shall be taken to include any item of Plant, material, goods or work incorporated or used in the Works which does not or may not conform to the relevant quality standards or pass the tests prescribed in or to be inferred from the Contract.

- (k) "Defects Liability Period" means the Defects Liability Period set out in the Appendix hereof, calculated from:
- (a) the Date of Practical Completion of the Works certified by the University in accordance with Clause 17; or
  - (b) in the event of more than one Notice of Practical Completion having been issued by the University under Clause 17, the respective Dates of Practical Completion so certified.
- (l) "Drawings" means the drawings referred to in the Contract including such drawings which have been prepared by the Contractor and accepted by the University pursuant to Clause 6.2 and such other drawings as may from time to time be issued or accepted in writing by the University.
- (m) "University" means Nanyang Technological University (Company Registration Number 200604393R) located at 50 Nanyang Avenue, Singapore 639798 and includes any officer, firm or corporation authorised by the University to act on its behalf, and as specified in the Appendix.
- (n) Not in use.
- (o) Not in use.
- (p) "Letter of Acceptance" means the formal acceptance by the University of the Tender.
- (q) "Loss and Expense" means:
- (i) the direct relevant costs of labour, Plant, materials, or goods actually incurred; and
  - (ii) costs of an overhead nature actually and necessarily incurred on the Site but in either case only in so far they would not otherwise have been incurred and which were not and should not have been provided for by the Contractor; and
  - (iii) 10% of any such costs, such 10% to be inclusive of and in lieu of any profits, head office or other administrative overheads, financing charges (including foreign exchange losses) and any other costs, loss or expense of whatsoever nature and howsoever arising.
- (r) Not in use.
- (s) "Payment Claim" means a claim for payment made by the Contractor pursuant to Clause 32.1(1).
- (t) "Payment Certificate" means a certificate issued by the University pursuant to Clause 32.2(1) or Clause 32.5(1)(a) in response to a Payment Claim or Final Payment Claim made by the Contractor.
- (u) "Permanent Works" means the works of a permanent nature (including Plant) to be executed in accordance with the Contract.

- (v) "Plant" means machinery, apparatus and the like intended to form or forming part of the Permanent Works.
- (w) Not in use.
- (x) "Rates" means those in the Schedule of Rates or the rates and prices contained in Breakdown Costs of Works or Schedule of Tender Price, whichever is applicable, including any modifications or additions thereto agreed in writing by the University and the Contractor.
- (y) "Response Amount" means the amount that the University proposes to pay to the Contractor in the Payment Certificate issued pursuant to Clause 32.2(1).
- (z) "Site" means the lands and other places on, in, under, over or through which the Works are to be executed or carried out or any other lands or places provided by the University for the purposes of the Contract.
- (aa) "Specifications" means all specifications contained in the Contract including any modifications or additions thereto as may from time to time be issued or approved in writing by the University.
- (ab) Not in use.
- (ac) Not in use.
- (ad) "Tender" means the Contractor's offer to the University to design (to the extent provided for by the Contract), execute and complete the Works for a lump sum as accepted by the Letter of Acceptance.
- (ae) "Temporary Works" means all works of a temporary nature of every kind (other than Construction Equipment) required or provided in or about the execution of the Works and the remedying of any defects therein.
- (af) "Time for Completion" means time or times for the completion of the Works or any phase or part of the Works set out in the Letter of Acceptance or Appendix subject to such extension or extensions of time (if any) as the Contractor may be allowed under the Contract.
- (ag) "Works" means the Temporary Works and the Permanent Works, and where the context requires, a phase or part of the Works.

## 1.2 **Singular and Plural**

Words importing the singular also include the plural and vice versa where the context requires.

## 1.3 Not in use.

#### 1.4 **Joint and Several Liabilities**

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

## 2 **INSTRUCTIONS BY THE UNIVERSITY**

2.1 Not in use.

2.2 Not in use

2.3 Not in use

2.4 Not in use

#### 2.5 **Instructions by the University**

Instructions given by the University shall be in writing. Provided that if for any reason the University considers it necessary to give any such instruction orally, the Contractor shall comply with such instruction. Confirmation in writing of such oral instruction given by the University, whether before or after the carrying out of the instruction, shall be deemed to be an instruction within the meaning of this Clause. Provided further that if the Contractor, within 7 days, confirms in writing to the University any oral instruction of the University and such confirmation is not contradicted in writing within 7 days by the University, it shall be deemed to be an instruction of the University.

#### 2.6 **Failure to Comply with the University's Instructions**

If the Contractor, after receipt of an instruction from the University, fails to comply with it within 7 days (or within such period as may be stipulated in the instruction):

- (a) the University may employ and pay other persons to do whatever may be necessary to give effect thereto and may recover the amount of any cost, loss, expense or damage incurred or suffered in connection therewith;
- (b) the amount of any other loss or damage suffered or incurred by the University as a result of the Contractor's default shall be recoverable from the Contractor.

#### 2.7 **Urgent Repairs**

If by reason of any accident or failure or other event occurring to or in connection with the Works, either during the execution of the Works or during the Defects Liability Period, any remedial or other work shall in the opinion of the University be urgently necessary and the Contractor is unable or unwilling at once to do such remedial or other work, the University may authorise the carrying out of such remedial or other work by a person other than the Contractor. If the remedial or other work so authorised by the University is work which in the opinion of the University the Contractor was liable to do or for which he was otherwise responsible under the Contract, the amount of any cost, loss, expense or damage incurred in carrying out the same shall be recoverable by the University from the Contractor.

2.8 Not in use.

### **3 CONTRACT DOCUMENTS**

#### **3.1 Contract Documents to be Taken as Mutually Explanatory**

The several documents forming the Contract are to be taken as mutually explanatory of one another but in the event of any conflict or inconsistency between the Conditions and the other documents forming the Contract, the Conditions shall be given precedence. Within the Conditions, the Particular Conditions, if any, shall be given precedence.

3.2 Not in use.

3.3 Not in use.

#### **3.4 Need for Further Drawings etc.**

The Contractor shall give adequate notice in writing to the University:

- (a) of any further drawing, specification or other information which the University is required to provide under the Contract;
- (b) of any drawing, specification, instruction or other information which is required by any specific time, whenever the planning or execution of the Works is likely to be delayed or disrupted by its lack, and whether or not the need for it is shown on any programme accepted by the University under Clause 9.

The notice shall also state the consequences in terms of delay to the progress or completion of the Works or any part of the Works and any financial consequences should the University not comply with any of the requirements of the notice. The University shall on receipt of the notice comply with its requirements, provided that it is given in sufficient time for the University reasonably to prepare and issue the information required.

#### **3.5 Further Supplementary Drawings etc. and Instructions**

The University shall issue to the Contractor, from time to time, such further or revised drawings, specifications or instructions as may in his opinion be necessary for the purposes of the execution and completion of the Works. The Contractor shall carry out and be bound by the same.

#### **3.6 Delay and Time**

If:

- (a) the Contractor shall have duly given notice pursuant to Clause 3.4 and if the University shall not have complied with any of its requirements; or
- (b) the University shall not have issued any further or revised drawing specification or instruction as required by Clause 3.5,

and if thereby the progress or completion of the Works or any part of the Works has been materially affected then, subject to compliance by the Contractor with Clauses 14, 23 and 32, the University may grant an extension of time pursuant to Clause 14 and may certify pursuant to Clause 32 such sum as may be reasonable in respect of any Loss and Expense incurred by the Contractor.

## **4 GENERAL OBLIGATIONS OF THE CONTRACTOR**

### **4.1 Contractor's General Responsibilities**

The Contractor shall, with due care and diligence, design (to the extent provided for by the Contract), execute and complete the Works and remedy any defects in the Works in accordance with the provisions of the Contract and to the satisfaction of the University. The Contractor shall provide all superintendence, labour, Plant, Construction Equipment, materials, goods and all other things, whether of a temporary or permanent nature required in and for such design, execution, completion of the Works and remedying of any Defect. Nothing in this Clause shall affect the Contractor's responsibilities under common law to complete the Works.

### **4.2 Site Operations and Methods of Construction**

The Contractor shall take full responsibility for the adequacy, stability and safety of all Site operations and methods of construction. Provided that the Contractor shall not be responsible (except as stated hereunder or as may be otherwise agreed in writing between the University and the Contractor) for the design of the Permanent Works or for the design of any Temporary Works not prepared by the Contractor or by any sub-contractor or supplier.

### **4.3 Contractor's Responsibility for Subcontractors**

Save as otherwise expressly provided in the Contract, the Contractor shall make good any damage, loss or injury suffered by the University by reason of any breach of contract, repudiation, default or failure, whether total or partial, on the part of any subcontractor or supplier whether nominated or privately engaged by the Contractor, and shall indemnify the University against all and any loss, expense, costs, damages, liability or claim arising therefrom.

### **4.4 Responsibility for Identifying Ambiguities, Discrepancies, etc**

- (1) The Contractor shall forthwith notify the University in writing of any ambiguity, discrepancy, conflict, inconsistency or omission in or between any of the Contract documents that may at any time be found. The University insofar as it may affect the execution or completion of the Works shall then explain and adjust it and may issue to the Contractor an instruction so as to resolve the ambiguity, discrepancy, conflict, inconsistency or omission. If, in the opinion of the Contractor, compliance with any such instruction is likely to or has involved the Contractor in any Loss and Expense which could not have been reasonably foreseen by an experienced contractor (assuming a diligent perusal of the documents submitted prior to Contract), the Contractor shall forthwith notify the University in writing and subject to compliance by the Contractor with Clauses 14, 23 and 32, the University may grant an extension of time pursuant to Clause 14 and may certify pursuant to Clause 32 such sum as may be reasonable in respect of such Loss and Expense.

- (2) In the event that instructions issued by the University to resolve such ambiguity, discrepancy, conflict, inconsistency or omission result in a reduction in the Contract Sum, such reduction shall be determined in accordance with Clause 20 and the University shall be entitled to reduce any valuation of the Works made under Clause 32 accordingly.
- (3) Nothing in Clause 4.4(1) or the Contract shall entitle the Contractor to an extension of time or Loss and Expense or any other compensation or remedy whatsoever (whether pursuant to the Contract or as damages or otherwise in law) for any ambiguity, discrepancy, conflict, inconsistency or omission in any of the documents which could have been found prior to the date of the Letter of Acceptance and the Contractor shall be deemed to have found it and to have entered into the Contract with full knowledge of it and of any resolution of it.

#### 4.5 Security Deposit

- (1) Within 14 days of the Letter of Acceptance, the Contractor shall deposit with the University an amount specified in the Appendix and by way of security for the due performance of and observance by the Contractor of his obligations under the Contract.
- (2) The Contractor may, in lieu of the cash deposit in Clause 4.5(1) and for the same purposes, provide a guarantee for an equivalent amount from a bank or insurer approved by the University and in the prescribed form.
- (3) The term "Security Deposit" shall hereafter refer to:
  - (i) the cash deposited under Clause 4.5(1); or
  - (ii) the cash proceeds of any or all demands on the guarantee provided pursuant to Clause 4.5(2).

The University may utilise the Security Deposit to make good any loss or damage sustained or likely to be sustained as a result of any breach of contract whatsoever by the Contractor, including any liquidated damages. If the amount of the Security Deposit utilised by the University to make good any such loss or damage is found to be greater than the amount of loss or damage actually sustained by the University, then the University shall pay the balance of the amount utilised by the University without the addition of interest to the Contractor or to the bank or insurer, as the case may be, upon issue of the Final Completion Certificate. Where the Security Deposit is made in cash, the University shall pay to the Contractor the unutilised amount without interest upon the issue of the Final Completion Certificate.

- (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.
- (5) The Security Deposit shall remain in full force and effect from the date for commencement of the Works until one hundred and twenty (120) days after the date of expiry of the Defects Liability Period provided always that the expiry date of the Security Deposit shall be automatically extended for successive periods of 120 days unless the University gives a 90 days' written notice prior to the expiry of the Security Deposit of his intention not to extend

the Security Deposit.

#### **4.6 Sufficiency of Tender**

The Contractor shall be deemed to have satisfied himself before submitting the Tender as to the correctness and sufficiency of the Tender which shall be deemed to cover all his obligations under the Contract and all matters and things necessary for the proper construction and completion of the Works.

#### **4.7 Patents, Trademarks, Copyrights, etc**

The Contractor shall defend, indemnify and save harmless the University from and against all claims and proceedings for or on account of infringements of any patent rights, design, trademark name or copyright or other protected rights in respect of any Construction Equipment, Plant, materials, goods or design (submitted by the Contractor pursuant to his obligations under the Contract) used for or in connection with or for incorporation in the Works and from or against all loss, expense, costs or damages whatsoever in respect of such claims or proceedings or in relation thereto, except where such infringement results from compliance with the design or Specifications provided by the University.

### **5 NOT IN USE**

## **6 PERMANENT WORKS DESIGNED BY THE CONTRACTOR**

### **6.1 Contractor's Design Responsibility**

Where the Contract expressly provides that the whole or any part of the Permanent Works shall be designed by the Contractor, he shall be fully responsible for the suitability, adequacy, integrity, durability and practicality of the design as set out in the Drawings, Specifications, manuals, calculations and other information submitted for the acceptance of the University under Clauses 6.2 and 6.3, including any subsequent amendment of such design.

### **6.2 Submission of Documents Prior to Commencement**

Where the Contract expressly provides that the whole or any part of the Permanent Works shall be designed by the Contractor, the Contractor shall not proceed with the execution of the same until he has submitted to the University such Drawings, Specifications, manuals, calculations and other information as shall be necessary to demonstrate the suitability, adequacy, integrity, durability and practicality of such design and the University has issued his acceptance in writing of such design. Acceptance by the University of such submission shall not relieve or in any way limit the responsibility of the Contractor under Clause 6.1.

### **6.3 Submission of Documents after Completion**

Upon the Date of Practical Completion (or the latest Date of Practical Completion if there is more than one Date of Practical Completion), the Contractor shall submit for the acceptance of the University operation and maintenance manuals together with Drawings of the Permanent Works designed by the Contractor as completed in sufficient detail to enable the University to operate, maintain, dismantle, reassemble and adjust the Permanent Works incorporating such



design.

#### **6.4 Amendment and Modification of Accepted Design**

The University may instruct the Contractor at any time, before, during or after the execution or completion of the Works to amend or modify the design provided by the Contractor in respect of any deficiency of any kind or nature discovered by the University and to carry out such work as is necessary to give effect to such amended or modified design in accordance with the University's instruction. All work necessary (including re-design work) or variations required as a result of such an instruction and their costs shall be the entire responsibility of and shall be borne by the Contractor.

### **7 NOTICES AND FEES**

#### **7.1 Generally**

The Contractor shall comply with and give notices required by any law, regulation or by-law, or by any public authority or public service company, relating to the Works or, in the case of a public authority or public service Company, with whose systems the same are or will be connected. The Contractor shall pay and indemnify the University against any fees or charges imposed by law, regulation or by-law, or by any public authority or public service company in respect of the Works.

#### **7.2 Variations Arising from Compliance**

The Contractor shall, before making any variation from the Drawings and Specifications necessitated by the compliance with Clause 7.1, give to the University notice in writing specifying and giving the reasons for such variation and applying for instructions in reference thereto. Provided that if the Contractor does not receive instructions from the University within 7 days from the date of the receipt of his application by the University, he shall proceed with the Works conforming to the law, regulation, bylaw or requirements of the public authority or public service company in question. Any variation necessitated as aforesaid which could not have been reasonably foreseen by an experienced contractor at the time of submission of the Tender (and if it is not required by or in consequence of any deficiency or fault in the design of any part of the Works for which the Contractor is responsible under the Contract) shall be deemed a variation under Clause 19 and dealt with as such.

#### **7.3 Cost of Compliance**

The Contractor shall be wholly responsible for compliance with the requirements of any law, regulation, by-law or public authority as stipulated in Clause 7.1 notwithstanding that such written law is enforced by the University or that such public authority is, or is part of, the University. The University shall be deemed not to be responsible or liable for:

- (a) any costs imposed by any requirements of any law, regulation, by-law or public authority;  
or
- (b) any default or delay by any public authority in the enforcement or implementation of any law, regulation or by-law.

## **8 SETTING OUT**

### **8.1 Accurate Setting Out**

The Contractor shall be responsible for:

- (a) the accurate setting out of the Works in relation to the original points, lines and levels of reference given by the University in writing;
- (b) the correctness of the position, levels, dimensions and alignment of all parts of the Works; and
- (c) the provision of all necessary instruments, equipment, apparatus and labour in connection with the foregoing responsibilities.

### **8.2 Errors in Setting Out**

If at any time during the execution of the Works, any error appears in the positions, levels, dimensions or alignment of any part of the Works, the Contractor, on being required so to do by the University shall, at his own cost, rectify such error to the satisfaction of the University.

## **9 PROGRAMME FOR THE WORKS**

### **9.1 Programme to be Furnished**

- (1) The Contractor shall, before commencement of works or such other time as the University may reasonably require, submit to the University a programme for the Works in the form and in compliance with the requirements specified in the Contract or otherwise required in writing by the University. The Contractor shall, whenever required by the University, furnish him with such further particulars and information as the University may reasonably require for the purpose of determining the acceptability of the programme for the Works.
- (2) Within 14 days of receiving the programme and any other further particulars and information required in relation to it, the University shall notify the Contractor if it is acceptable or unacceptable. If the Contractor is not so notified, the programme shall be deemed to be acceptable.
- (3) If the programme is not acceptable to the University, he shall notify the Contractor of his reasons for rejecting and the Contractor shall within 3 days of receiving such notification submit a programme acceptable to him. Subject to Clause 31.1, the University shall within a further 7 days of the submission of such further programme notify the Contractor whether such further programme is accepted or acceptable. If the Contractor is not so notified, such further programme shall be deemed to be accepted. If it is not acceptable, then the same procedure as set out above shall apply.

## 9.2 **Revision of Programme**

Should it appear to the University at any time that the actual progress of the Works does not conform with the programme accepted under Clause 9.1, the University may instruct in writing the Contractor to supply additional particulars or to submit a revised or modified programme (or both) in order to show and to ensure completion of the Works within the Time for Completion. The Contractor shall comply with such an instruction within 7 days or such other period as the University may specify in the instruction.

## 9.3 **Acceptance of Programme**

The acceptance by the University of the programme or of any revised or modified programme shall not relieve the Contractor of any of his obligations to execute and complete the Works in accordance with the Contract and by the Time for Completion, and such acceptance shall not be construed as the grant of an extension of time under Clause 14 or as a waiver of or fetter on the exercise by the University of his powers under Clause 15 or by the University under Clause 31.

## 9.4 **Failure to submit Adequate Programme**

In the event that the Contractor fails to comply with Clauses 9.1 and/or 9.2, without prejudice to any other rights and remedies which may be available to the University, the University shall have the power to certify that ten percent (10%) of all moneys that may be due to the Contractor as interim payments be retained by the University, in addition to such other retentions as may be allowed under the terms of this Contract, until such time that the University is satisfied that the Contractor has complied with the requirement of Clauses 9.1 and/or 9.2. The amount retained by the University shall only be released to the Contractor, without interest, upon a certificate by the University that it may be paid.

# 10 **QUALITY IN CONSTRUCTION**

## 10.1 **Plant, Materials, Goods and Workmanship**

All Plant, materials, goods and workmanship shall be:

- (a) of the respective kinds described in the Contract and in accordance with the instructions of the University; and
- (b) subjected from time to time to such tests as the University may by instruction require at the place of manufacture, fabrication or preparation, or on the Site or at such other place or places as may be specified in the Contract, or at all or any of such places.

## 10.2 **Contractor to Provide Everything Necessary for Testing**

The Contractor shall provide everything necessary as are required for examining, measuring and testing any Plant, materials goods or workmanship and shall supply samples of materials, before incorporation in the Works, for testing as may be selected and required by the University.

### 10.3 **Cost of Samples**

Save as otherwise expressly provided in the Contract, samples shall be supplied by the Contractor at his own cost.

### 10.4 **Cost of Test**

The cost of making any test required by the University shall be borne by the Contractor if the need for such a test is provided in the Contract (unless the Contract provides otherwise) or if the test is in the opinion of the University required in consequence of some prior failure or breach of contract or other default of the Contractor. The cost of making any test which is not so required shall be borne by the Contractor only if the test shows that the relevant Plant, materials, goods or workmanship were not in accordance with the Contract or did not meet the University's instructions or satisfaction. If the test shows otherwise, then subject to compliance by the Contractor with Clauses 14, 23 and 32, the University may grant an extension of time pursuant to Clause 14 and may certify pursuant to Clause 32 the cost of the test and/or for any Loss and Expense which the Contractor may have incurred as a result of such test. The cost of the test shall be valued in accordance with Clause 20 as if it were a variation ordered under Clause 19 but shall not otherwise be construed as variation to the Works for the purpose of Clause 19 or 20.

### 10.5 **Examination and Measurement of Works before Covering Up**

No Works shall be covered up or put out of view without the approval of the University and the Contractor shall afford full opportunity for the University to examine and measure any of the Works which is about to be covered up or put out of view. The Contractor shall give due notice to the University whenever any such Works are ready or about to be ready for examination and the University shall without unreasonable delay, unless he considers it unnecessary and advises the Contractor in writing accordingly, attend for the purpose of examining and measuring such Works. If the Contractor shall fail and/or neglect to comply with the provisions of this Clause:

- (a) the University may require the Contractor to uncover any part or parts of the Works or to do all such things as are necessary for the University to inspect the Works as constructed and the cost of such requirements as directed by the University shall be borne by the Contractor whether or not such part or parts uncovered are found to be executed in accordance with the Contract and the Contractor shall not be entitled to any extension of time for any delay thereby caused; and
- (b) the additional cost of any measures or requirements carried out by or directed by the University shall be borne by the Contractor.

### 10.6 **Uncovering and Making Openings**

The Contractor shall uncover any part or parts of the Works or make openings in or through the same as the University may from time to time instruct in writing and shall reinstate and make good such part or parts to the satisfaction of the University. If any such part or parts have been covered up or put out of view after compliance with the requirements of Clause 10.5 and are found to be executed in accordance with the Contract, then subject to compliance by the Contractor with Clauses 14, 23 and 32 the University may grant an extension of time pursuant to Clause 14, and may certify pursuant to Clause 32 such sum as may be reasonable to cover

the costs of uncovering, making openings in or through, reinstating and making good the same and any Loss and Expense but in any other case all such costs and any Loss and Expense shall be borne by the Contractor and the Contractor shall also not be entitled to any extension of time for any delay caused by such instruction.

#### **10.7 Defects during the Progress of the Works**

If the University during the progress of the Works finds any Defect, he may instruct the Contractor in writing to do any or all of the following:

- (a) To demolish and reconstruct any work so that it is in accordance with the Contract.
- (b) To remove from or not to bring to the Site any materials or goods which in the opinion of the University are or may not be in accordance with the Contract and to replace such materials or goods with materials or goods which are in accordance with the Contract.
- (c) To remove from the Site any Plant which in the opinion of the University is not or may not be in accordance with the Contract and to provide Plant which is in accordance with the Contract by the provision of new or alternative or repaired Plant.

The University's instruction may specify the time or times within which the Contractor is to comply with the instruction. If the Contractor disputes the instruction of the University, he shall nevertheless comply with it but he may take action in accordance with and subject to Clauses 14, 23, 32 or 34. If the University or an arbitrator should decide that the University was not justified either wholly or in part in giving the instruction then provided that the Contractor shall have complied with Clauses 14, 23 and 32 the University may certify (or the arbitrator may award) any Loss and Expense incurred by the Contractor and may grant an extension of time pursuant to Clause 14.

#### **10.8 Default of Contractor in Compliance**

If the Contractor should fail or refuse to comply with an instruction of the University pursuant to Clause 10.7, the University shall be entitled without prejudice to any other rights and remedies to employ and pay others to carry out the subject-matter of the instruction and the amount of any loss, expense, costs or damages suffered or incurred by the University shall be recoverable from the Contractor.

### **11 ADMINISTRATION**

#### **11.1 Days and Hours of Working**

The Contractor shall note and comply with the days and hours of working specified in the Contract. Where any Works are required to be carried out outside the specified times and days in the Contract, the Contractor shall give written notice to the University prior to the commencement of such Works, except when such Works are rendered unavoidable or necessary for the saving of life or property or for the safety of the Works, in which case the Contractor shall inform the University at the earliest possible opportunity of the same. The University reserves the right to restrict or prohibit any Works which in the opinion of the University, may give rise to security problem or may result in disturbance to the surroundings.

## 11.2 Contractor's Representative

- (1) The Contractor shall appoint a competent and authorised person to represent him (hereinafter called the "Contractor's Representative") and shall notify in writing the University of the name of such person. The Contractor's Representative shall be constantly on the Site during normal working hours and shall give his whole time to the superintendence of the Works including the remedying of any Defects after the Date of Practical Completion. Any instructions given to him by the University shall be deemed to have been given to the Contractor.
- (2) The University shall be empowered to object to the appointment or employment or continued employment of any person appointed or employed as the Contractor's Representative and upon receipt from the University of a notice of objection in writing, the Contractor shall forthwith remove him from the Site provided always that the University shall not issue such a notice of objection unreasonably or vexatiously.

## 11.3 Removal of Workmen and Other Personnel

The Contractor shall use or employ in and about the execution of the Works only such persons as are careful, skilled and experienced in their respective vocations, trades and callings and the University shall be at liberty to object to and require the Contractor to remove immediately from the Works any such person employed by the Contractor in or about the execution of the Works who in the opinion of the University misconducts himself or is incompetent or negligent in the proper performance of his duties and whose continued presence is undesirable or unacceptable. Such persons shall not be again used or employed upon the Works without the prior written permission of the University.

## 11.4 Access for the University

The University and any person authorised by the University to examine or inspect the Works shall at all reasonable times have access to the Works and to the factories, workshops or other places where any Plant, materials, goods or work are being fabricated, prepared or stored for the Contract. The Contractor shall ensure that sub-contracts shall contain provisions entitling the University and any person authorised by the University to have such access.

# 12 COMMENCEMENT OF WORKS

## 12.1 Commencement of Works

The Contractor shall commence the Works:

- (a) on the date specified in the Letter of Acceptance; or
- (b) if no date is specified in the Letter of Acceptance, on the date specified in an instruction in writing to that effect from the University.

Thereafter the Contractor shall proceed with due diligence and expedition and without delay in accordance with the Contract and in accordance with the programme or any revised or modified programme accepted by the University pursuant to Clause 9. The Time for Completion shall run

from the date on which the Contractor is to commence the Works under this Clause.

12.2 Not in use.

12.3 Not in use.

#### 12.4 **Rights of Access etc**

The Contractor shall at his own expense be responsible for obtaining any rights of way or of access (including rights of over-sailing) that may be required by him or his methods of operation for the purposes of the execution and completion of the Works. The Contractor shall also provide at his own cost and expense any additional accommodation or land outside the Site required by him for the purpose of the Works.

#### 12.5 **Other Contractors**

- (1) The University reserves the right to employ or otherwise engage any persons to carry out on Site, work which does not form any part of the Works, whether or not information with respect to such work is provided in the Contract. Every person so employed shall be deemed to be a person for whom the University is responsible and not to be a subcontractor. The Contractor shall permit the execution of any work by any such person employed or engaged by the University. For the avoidance of doubt, any properly authorised authority or statutory boards who may be employed in the execution on or near the Site of any work not in the Contract shall not be regarded as contractors of the University and shall not be deemed to be a person for whom the University is responsible.
- (2) If any part of the Works depends for proper execution or results upon the work of any such person employed or engaged by the University as aforesaid, the Contractor shall inspect and promptly report in writing to the University any apparent discrepancies or defects in such work that may materially and adversely affect the execution of the Works. Failure of the Contractor so to report to the University shall constitute acceptance by the Contractor of such person's work as fit and proper to receive into the Works.

### 13 **SUSPENSION**

#### 13.1 **Suspension of Work**

- (1) The Contractor shall, on the instruction in writing of the University, suspend the progress of the Works or any phase or part of the Works for such time or times and in such manner as the University may consider necessary and shall, during such suspension, properly protect and secure the Works or such phase or part of the Works so far as is necessary in the opinion of the University.
- (2) Subject to Clauses 23 and 32, the University may certify any Loss and Expense which the Contractor may have incurred in giving effect to the instruction beyond any loss, expense, costs or damages which would have been incurred or for which the Contractor had or ought to have allowed in the Tender and, subject to Clause 14, may grant the Contractor an extension of time unless such instruction, loss, expense, costs or damages or extension is:

- (a) otherwise provided for in the Contract; or
- (b) necessary by reason of some default on the part of the Contractor or is caused by an event which it was or would have been the Contractor's responsibility to have overcome; or
- (c) necessary for the proper execution of the Works or for the safety of the Works or any part of the Works.

13.2 Not in use.

## **14 TIME FOR COMPLETION**

### **14.1 Contractor to Complete on Time**

The Contractor shall complete the Works and any phase or part of the Works within the Time or Times for Completion stated in:

- (a) The Letter of Acceptance; or
- (b) The Appendix, as the case may be.

### **14.2 Extension of the Time for Completion**

The time within which the Works or any phase or part of the Works is to be completed may be extended by the University either prospectively or retrospectively and before or after the Time for Completion by such further period or periods of time as may reasonably reflect delay in completion of the Works which, notwithstanding due diligence and the taking of all reasonable steps by the Contractor to avoid or reduce such delay, will or might be or has been caused by any of the following events:

- (a) Force majeure.
- (b) Exceptionally adverse weather conditions the assessment of which shall be in accordance with the relevant provision in the Specifications.
- (c) Industrial action by workmen, strikes, lock-outs or embargoes affecting any of the trades employed upon the Works or in the preparation, manufacture or transportation of materials or goods required for the Works and provided the same are not due to any unreasonable act or default of the Contractor or of any subcontractor. Provided that this event shall only apply if the industrial action by workmen, strike, lock-out or embargo causing the delay is in Singapore.
- (d) One or more of the "excepted risks" referred to in Clause 25.2.
- (e) Compliance with the requirements of any law, regulation, by-law or public authority or public service company as stipulated in Clause 7.1.
- (f) Fire, storm, lightning, high winds, earthquake or flooding.



- (g) Ordering of test by the University which is not provided by the Contract pursuant to Clause 10.4 and the uncovering or making openings for inspection of any work pursuant to Clause 10.6, unless the test or inspection showed that the Plant, materials, goods or workmanship had not been in accordance with the provisions of the Contract.
- (h) The issue of any instruction for a variation.
- (i) Not in use.
- (j) Not in use.
- (k) Subject to Clause 13.1(2) an instruction by the University to suspend any work.
- (l) The Contractor not having received from the University within a reasonable time necessary Drawings, instructions or other information in regard to the Works for which notice has been given by the Contractor in accordance with Clauses.
- (m) Acts or omissions of other contractors engaged by the University in executing work not forming part of the Contract.
- (n) Any act of prevention or breach of contract by the University not mentioned in this Clause.
- (o) Any search instructed by the University under Clause 18.4 and such search reveals any defect, shrinkage or other fault for which the Contractor is not liable.
- (p) Not in use.
- (q) Any other ground for extension of time expressly mentioned in the Contract and not mentioned in this Clause 14.2.

Provided always that the Contractor shall not be entitled to any extension of time where the instructions, or acts of the University are necessitated by or intended to cure any default of or breach of Contract by the Contractor and such disentitlement shall not set the Time for Completion at large.

### 14.3 Notice

- (1) If the Contractor is of the opinion that the progress or completion of the Works is or will be or has been delayed by any of the events stated in Clause 14.2, he shall forthwith notify the University in writing of such event and shall in any case do so within 7 days of the occurrence of such event. If the Contractor is of the opinion that the event is one which entitles him to an extension of time under Clause 14.2, he shall in that notice and in any case not later than the 7 day period set out above inform the University, together with the appropriate Contract references, of the reasons why there will or may be delay to the completion of the Works or any part or section of the Works, the length of the delay and of the extension of time required, and the effect of the event on the programme accepted under Clause 9. Both the submission of a notice in writing and of the further information within the 7 day period set out above shall be condition precedent to any

entitlement to an extension of time.

- (2) Not in use.
- (3) When the University has received sufficient information to enable him to decide the Contractor's application, he shall, within a reasonable time, inform the Contractor of such extension of time, if any, of the whole or any phase or part of the Works (as the case may be) as may in his opinion be fair, reasonable and necessary for the completion of the Works. The University shall take into account the effect, or extent, of any work omitted under the Contract and shall also take into account whether the event in question is one which will delay completion of the Works. The University shall also take into account any delays which may operate concurrently with the delay due to the event or events in question and which are due to acts or default on the part of the Contractor.
- (4) Provided that the Contractor shall have complied with the requirements of Clause 14.3(1), if the Contractor shall not have provided the University with sufficient information to enable him to decide the Contractor's application, the University may nevertheless inform the Contractor such extension of time of the whole or any phase or part of the Works (as the case may be) as may in his opinion appear to be fair, reasonable and necessary for completion of the Works on the information available to him, taking into account all the matters set out in Clause 14.3(3).
- (5) Not in use.

## **15 EXPEDITING PROGRESS OF WORKS**

### **15.1 Notification to Expedite**

If for any reason which does not entitle the Contractor to an extension of time, the rate of progress of the Works or any phase or part of the Works is at any time, in the opinion of the University, too slow to achieve completion by the Time for Completion of the Works or the relevant phase or part of the Works, the University shall notify in writing the Contractor accordingly. The Contractor shall thereupon take such steps as are necessary to expedite progress and to complete the Works or the relevant phase or part of the Works in accordance with the Contract. Such steps shall include, if required by the University, the preparation of a revised or modified programme for acceptance pursuant to Clause 9. Unless the University shall issue an instruction for variation as described in Clause 19.1(f), the Contractor shall not be entitled to any additional payment whatsoever for taking any of the steps referred to herein.

### **15.2 Work to Expedite Progress**

If, as a result of any notice given by the University under Clause 15.1, the Contractor considers that it is necessary to do any work at night or on Sundays or on public holidays, he shall be entitled to seek the consent of the University so to do, which consent shall not be unreasonably withheld.

## **16 LIQUIDATED DAMAGES**

### **16.1 Payment by the Contractor**

- (1) If the Works shall not have been substantially completed within the Time for Completion or any extended time made pursuant to Clause 14, the Contractor shall pay or allow to the University liquidated damages calculated at the rate or rates stated in the Appendix hereto for the period during which the Works shall so remain incomplete and the University may recover the amount of such liquidated damages from the Contractor. The payment or deduction of such damages shall not relieve the Contractor from his obligation to complete the Works or from any other of his obligations and liabilities under the Contract.
- (2) The provisions of Clause 16 shall apply mutatis mutandis to any phase or part of the Works for which a separate rate of liquidated damages is stated in the Appendix hereto.

16.2 Not in use.

### **16.3 The University's Common Law Rights for Damages**

In the event that the University for whatever reason shall not be entitled in law to recover liquidated damages, the University shall remain entitled to recover such loss, expense, costs or damages as he would have been entitled under common law as if the provisions in this Clause relating to the payment of liquidated damages had not formed part of the Contract. The Contractor's liability to pay the University such loss, expense, costs or damages shall not be limited in any way whatsoever by the amount of liquidated damages for which he might otherwise have been liable.

### **16.4 Extension of Time During Delay Period**

For the avoidance of doubt, if the Contractor shall have failed to complete the Works or any phase or part of the Works by the Time for Completion and the execution of the Works thereafter is delayed by any of the events set out in Clause 14.2(g) to (q) inclusive, the University's right to liquidated damages shall not be affected thereby but, subject to compliance by the Contractor with Clause 14, the University shall grant an extension of time pursuant to Clause 14. Such extension of time shall be added to the Time for Completion of the Works (or of the relevant phase or part).

## **17 PRACTICAL COMPLETION**

### **17.1 Notice of Practical Completion**

- (1) When the Contractor considers that the whole of the Works have been substantially completed, he may give notice in writing to that effect to the University accompanied by an undertaking, in the prescribed form, to complete any outstanding work during the Defects Liability Period. Within 21 days of the receipt of such notice and undertaking the University shall either:
  - (a) issue to the Contractor a Notice of Practical Completion, stating the date on which in his opinion the Works were substantially completed in accordance with the

Contract; or

- (b) give instructions in writing to the Contractor specifying all the works which in his opinion are required to be done by the Contractor before the issue of a Notice of Practical Completion.

Provided that the University may, at his discretion and without the receipt of any notice or undertaking from the Contractor, exercise either of the powers given to him in Clause 17.1(1)(a) and Clause 17.1(1)(b).

- (2) If the University has given instructions pursuant to Clause 17.1(1)(b):
  - (a) he may notify the Contractor of any defects in the Works affecting Practical Completion that may appear after such instructions and before completion of the works specified therein and such defects shall comprise part of the said instructions; and
  - (b) the Contractor shall not be entitled to be issued the Notice of Practical Completion until the works specified in the said instructions have been completed to the satisfaction of the University.

## 17.2 Access for Remedial Work

Upon the Date of Practical Completion, the Contractor's licence to occupy the Site for the purposes of carrying out the Works shall terminate save that the Contractor shall be permitted to re-enter the Site to carry out any outstanding work (and the rectification of defects during the Defects Liability Period) with due expedition and without delay, upon giving reasonable notice in writing to the University.

## 17.3 Completion of Phase or Part

- (1) In accordance with the procedure set out in Clause 17.1, the Contractor may request the University to issue a Notice of Practical Completion in respect of:
  - (a) any phase or part of the Works in respect of which a separate Time for Completion is provided in the Appendix;
  - (b) any substantial part of the Works which has been both completed to the satisfaction of the University and, otherwise than as provided for in the Contract, occupied or used by the University; or
  - (c) any part of the Works in respect of which the University has issued an instruction for early occupation or use by the University prior to the completion of the whole of the Works (where such prior occupation or use is not provided for in the Contract or has not been agreed by the Contractor).
- (2) The provisions of Clause 17.1 shall apply mutatis mutandis to the provisions of Clause 17.3(1).

## **18 DEFECTS**

### **18.1 Completion of Outstanding Works and Remedying Defects**

To the intent that the Works shall, at or before the expiration of the Defects Liability Period, be in the condition required by the Contract and shall meet all other requirements of the Contract, the Contractor:

- (a) shall complete with due expedition and without delay any work outstanding at the Date or Dates of Practical Completion (whether or not the subject of any undertaking to do so) and as may be instructed by the University; and
- (b) shall execute all such works of amendment, reconstruction and remedying defects, shrinkages or such other faults of whatever nature as the University may at any time during the Defects Liability Period or within 14 days after its expiration instruct the Contractor to execute.

For the avoidance of doubt, the obligation of the Contractor to comply with this Clause shall not in any way prejudice the University's rights under the provisions of any guarantee relating to the Works or any phase or part of the Works required by the Specifications or provided by any supplier or sub-contractor.

### **18.2 Cost of Remedying Defects**

All work referred to in Clause 18.1(b) shall be executed by the Contractor at his own cost if the necessity for such work is in the opinion of the University, due to:

- (a) the fact that it is a Defect; or
- (b) where the Contractor is responsible for the design of the whole or any part of the Permanent Works, any fault in such design; or
- (c) the neglect or failure on the part of the Contractor to comply with any obligation, expressed or implied, on the Contractor's part under the Contract.

If the necessity for the execution of any work is other than one of the causes set out in paragraphs (a) - (c) above, subject to compliance by the Contractor with Clause 23, such work shall be valued in accordance with Clause 20 as if it were a variation ordered under Clause 19 but shall not otherwise be construed as a variation to the Works for the purposes of Clause 19 or 20.

### **18.3 Diminution in Value of Works**

If any Defect which the Contractor would otherwise have been liable to rectify at his own cost is such that in the opinion of the University it will be impracticable or inconvenient to rectify, the University shall ascertain the diminution in the value of the Works to the University due to such Defect and the amount of the diminution shall be recoverable by the University.

#### **18.4 Contractor to Search**

If any Defect, shrinkage or other fault in the Works appears at any time from the commencement of Works to the end of the Defects Liability Period, the University may instruct the Contractor to search under the direction of the University for the cause of the Defect, shrinkage or other fault. If such Defect, shrinkage or other fault is one for which the Contractor is liable under the Contract or the necessity for such a search is caused by the Contractor or arises from some default by the Contractor, the cost of the work carried out in searching as aforesaid shall be borne by the Contractor and the Contractor shall in such case remedy such Defect, shrinkage or other fault at his own cost.

#### **18.5 Liability at Common Law**

The provisions of Clause 18.1 to 18.4 shall not derogate in any way whatsoever from the Contractor's liability under the Contract or otherwise for defective work at common law.

### **19 VARIATIONS TO THE WORKS**

#### **19.1 Variations**

The University may at any time issue an instruction requiring a variation. The term "variation" shall mean any change in the original Contract intention as deduced from the Contract as a whole describing or defining the Works to be carried out and shall include but is not restricted to:

- (a) an increase or decrease in the quantity of any part of the Works;
- (b) an addition to or omission from the Works;
- (c) a change in the character, quality or nature of any part of the Works;
- (d) a change in the levels, lines, positions and dimensions of any part of the Works;
- (e) the demolition of or removal of any part of the Works no longer desired by the University or the University;
- (f) a requirement to complete the Works or any phase or part by a date earlier than the relevant Time for Completion.

For the avoidance of doubt the term "variation" shall include any changes as aforesaid which may be designed to alter the use to which the Works will be put, but shall exclude any instruction (which would otherwise be a variation) which has arisen due to or is necessitated by or is intended to cure any default of or breach of contract by the Contractor.

#### **19.2 Power to Order Variations**

The University may at any time issue an instruction in writing requiring a variation. If or to the extent that an instruction does not state that it requires a variation but the Contractor considers that it does require a variation, the Contractor shall within 14 days from the date of receipt of the instruction notify in writing the University who may, if he thinks fit, within 14 days from the date

of receipt of the Contractor's notification, confirm, modify, rescind or contradict in writing the instruction and the Contractor shall then comply forthwith.

### 19.3 **Submission of Quotations**

The University may, before issuing an instruction for any variation, require the Contractor to submit a quotation for any proposed variation and the Contractor shall be obliged to submit such quotation in writing at his own cost. An instruction requiring a variation shall not be treated as an acceptance of any quotation.

## 20 **VALUATION OF VARIATIONS**

### 20.1 **Valuation Methods**

Subject to Clause 19.3, all variations shall be valued as follows:

- (a) Where the varied work is of similar character to, is executed under similar conditions as and does not significantly change the quantity of work described in the Contract, the Rates for the Works as set out in the Contract shall determine the valuation; or where there are no Rates, the same general level of pricing of the contract sum shall be the basis for valuation;
- (b) Where (a) does not apply, then by measurement and valuation at fair market rates and prices;
- (c) Where none of the above methods is applicable or appropriate in the circumstances of the particular varied work, then the valuation shall be based on the cost of necessary Plant, materials or goods, labour and any additional equipment necessary for the execution of the varied work plus 10 per cent. This percentage shall be deemed to compensate adequately the Contractor in respect of all supervision, the use of Construction Equipment, overheads, profit and all other costs or damages incurred in or connected with the execution of the varied work;

20.2 Not in use.

20.3 Not in use.

20.4 Not in use.

## 21 **MEASUREMENT**

### 21.1 **Contractor to Attend Measurement**

The University shall give reasonable notice to the Contractor when he requires any part of the Works to be measured. The Contractor shall then:

- (a) forthwith attend or send a properly qualified and authorised representative to take jointly with the University any measurements of the Works that may be necessary for the purposes of any valuation, including the valuation of any variation; and

- (b) supply documents and information necessary for the taking or calculation of any measurement and all other particulars that may be reasonably required by the University for the purposes of establishing an agreed measurement.

#### **21.2 Contractor to Provide Assistance**

The Contractor shall at his own cost provide the University with assistance and with every appliance necessary for measuring the Works.

#### **21.3 Record of Measurements**

Any measurements taken jointly shall be recorded at the time and signed by the representative of the Contractor and the University. If the Contractor does not attend or send a representative to take the measurements jointly with the University, the measurements made by the University notified in writing to the Contractor shall be taken to be correct and shall be final and binding on the Contractor.

#### **21.4 Failure to Agree Measurements**

If the Contractor attends or sends a representative but there is no agreement on the whole or part of the measurements, the Contractor shall notify in writing the University within 14 days of the date upon which the measurements were taken of the respects in which the measurements taken by the University are not accepted as correct. Such notice shall set out in detail the documents and other information in justification.

### **22 CLAIMS FOR LOSS AND EXPENSE**

#### **22.1 Reasons for Loss and Expense**

The Contractor shall be entitled to recover as Loss and Expense sustained or incurred by him and for which he would not be reimbursed by any other provision of the Contract, all loss, expense, costs or damages of whatsoever nature and howsoever arising as a result of the regular progress and/or completion of the Works or any phase or part of the Works having been disrupted, prolonged or otherwise materially affected by:

- (a) the issue of an instruction for a variation;
- (b) Not in use;
- (c) Not in use;
- (d) the suspension by the University of any work for a cause which entitles the Contractor to recover Loss and Expense;
- (e) the Contractor not having received from the University within a reasonable time necessary Drawings, instructions or other information in regard to the Works for which notice in writing had been given by the Contractor in accordance with Clause 3.4;



- (f) the issue of an instruction by the University under any of Clauses 3.6, 4.4, 10.4, 10.6, 18.2, 18.4 and 25.1(3) but only if the University is liable to pay to the Contractor any Loss and Expense by reason of such an instruction;
- (g) not in use;
- (h) acts or omissions of other contractors engaged by the University in executing work not forming part of this Contract; or
- (i) any act of prevention or breach of contract by the University not mentioned in this Clause.

Provided always that the Contractor shall not be entitled to any such Loss and Expense where it arises from or is necessitated by or is intended to cure any default or breach of contract by the Contractor.

## **22.2 Sufficiency of Loss and Expense**

The Contractor shall not be entitled to recover any loss, expense, costs or damage whatsoever resulting from any disruption, prolongation or other material effect to the regular progress or completion of the Works or any phase or part of the Works except in accordance with the express provisions of the Contract.

## **23 PROCEDURE FOR CLAIMS**

### **23.1 Notice of Claims**

- (1) Whenever the Contractor intends to claim any payment pursuant to the Contract (other than Clause 20), he shall give notice in writing of his intention to do so to the University within 30 days after the event giving rise to his claim has first arisen and shall comply with Clause 23.2 to 23.4. The notice shall specify the event and its consequences, and the giving of such a notice shall be a condition precedent to any entitlement that the Contractor may have.
- (2) The fact that the Contractor does not or may not know whether the valuation of a variation has been agreed or whether the University has decided to include in any certificate any amount in respect of any claim shall not excuse the Contractor from the requirement to give a notice under Clause 23.1(1).

### **23.2 Contemporary Records**

Upon the happening of any event in respect of which the Contractor may intend to make a claim, the Contractor shall keep such contemporary records as may reasonably be necessary to support any claim he may subsequently wish to make. Without necessarily admitting the University's liability, the University may, on receipt of a notice under Clause 23.1, inspect such contemporary records and may instruct the Contractor to keep any further contemporary records which he considers to be material to the claim of which notice has been given. The Contractor shall permit the University to inspect all records kept pursuant to this Clause and shall supply him with copies of such records as and when the University so instructs.

### 23.3 Substantiation of Claims

Within 14 days, or such other time as may be agreed by the University, of giving notice under Clause 23.1, the Contractor shall send to the University an account in writing giving detailed particulars of the amount claimed and the grounds upon which the claim is based, together with particulars of any claim for extension of time made pursuant to Clause 14 and for any Loss and Expense associated therewith (where applicable). Where the event giving rise to the claim has a continuing effect, such account shall be considered to be an interim account and the Contractor shall, at such intervals as the University may require, send such further interim accounts giving the accumulated amount of the claims and any further grounds upon which they are based. Within 30 days of the end of the effects resulting from the event, the Contractor shall send to the University a final account of the claims. The obligation to give particulars of any claim for an extension of time under this Clause shall not release the Contractor from his obligations under Clause 14.3(1).

### 23.4 Access to Contractor's Books and Documents

In order to verify any claim submitted under this Clause, the University shall have access to all books, documents, papers or records in the possession, custody or control of the Contractor that are material to the claim for the purpose of making audit, examination, excerpts and transcriptions. Such books, documents, papers or records shall remain available in accordance with this Clause until all claims, arbitration or litigation have been finally disposed of. The Contractor shall use his best endeavours to ensure that all books, documents, papers or records in the possession custody or power of a subcontractor or supplier where material to the claim are similarly made available.

### 23.5 Payment of Claims

- (1) Subject to compliance with Clause 23.1 to Clause 23.4, the Contractor shall be entitled to have included in any payment certified by the University pursuant to Clause 32 such amount in respect of any claim as the University may consider due to the Contractor.
- (2) If the Contractor fails to supply the University with sufficient substantiation of the whole of any amount claimed, the Contractor shall only be entitled to payment in respect of such part of the amount as may have been substantiated to the satisfaction of the University.
- (3) The inclusion by the University in any certificate under Clause 32 of any amount in respect of any claim or any payment by the University in respect of any such amount shall not:
  - (a) prejudice the University's right to dispute the Contractor's entitlement to the amount certified either in principle, or as to its quantification or from referring such dispute for decision pursuant to Clause 34; and
  - (b) be taken into account by the University or any arbitrator (or other tribunal) in deciding whether the Contractor shall repay to the University the whole or any part of such amount.

## **23.6 Failure to Comply**

If the Contractor shall have complied with Clause 23.1 but shall not have complied fully or at all with any of the provisions of Clause 23.2 to 23.4, the University shall be entitled to make such assessment, valuation or opinion as shall be reasonable on the basis of the information available to him. If the Contractor should dispute such an assessment, valuation or opinion, such dispute shall be decided by the University or the arbitrator (or other tribunal) on the basis only of the information available to the University at the time when he made his assessment, valuation or opinion and no account shall be taken of any information which the Contractor did not supply to the University, whether or not he could have done so.

## **24 CONSTRUCTION EQUIPMENT, TEMPORARY WORKS, MATERIALS AND GOODS**

### **24.1 University not Liable for Damage**

The University shall not at any time be liable for loss or damage to any of the said Construction Equipment, Temporary Works, materials or goods nor for any loss, expense, costs, damages, liability or claim arising from the presence or use of the said Construction Equipment, Temporary Works, materials or goods.

## **25 GENERAL RESPONSIBILITIES**

### **25.1 Care of the Works**

- (1) From the date of commencement of the Works until 14 days after the Date of Practical Completion (or the latest date if more than one) certified by the University pursuant to Clause 17, the Contractor shall take full responsibility for the care of the whole Works or of any phase or part of the Works which has not been substantially completed as well as any Plant, materials, or goods intended for or connected with the Works and all Construction Equipment, Temporary Works, materials, goods, structures, other works, workers' quarters on the Site and any other things of whatsoever nature required by the Contractor for the purposes of the Contract.
- (2) The Contractor shall take full responsibility for the care of any outstanding work which he shall have undertaken or shall be obliged to complete during the Defects Liability Period until such outstanding work has been completed to the satisfaction of the University.
- (3)
  - (a) In the event of any damage, loss or injury to the Works or parts of the Works from any cause whatsoever (except the "excepted risks" as defined in Clause 25.2), the Contractor shall, at his own cost, make good with all reasonable expedition such damage, loss or injury to the satisfaction of the University and shall notwithstanding such damage, loss or injury proceed with the construction and completion of the Works in all respects in accordance with the Contract and the University's instructions.
  - (b) In the event of any damage, loss or injury to the Works happening from any of the "excepted risks", the Contractor shall, if and to the extent required by any instruction in writing of the University, rectify and make good the same. Subject to

compliance by the Contractor with Clause 23, the University shall certify pursuant to Clause 32 any Loss and Expense incurred by the Contractor in complying with the instructions of the University.

- (c) In the event of damage, loss or injury to the Works happening from an excepted risk and also from a risk for which the Contractor is responsible under Clause 25.1(1) and 25.1(2), the University shall, when certifying the amount, make a fair apportionment of the costs so that the University shall not be obliged to pay costs for which the Contractor was responsible under the Contract.

## 25.2 Excepted Risks

The "excepted risks" are:

- (a) insofar as they occur in Singapore and directly affect the execution of the Works:
  - (i) war and hostilities (whether war be declared or not), invasion, act of foreign enemies;
  - (ii) rebellion, revolution, insurrection or military or usurped power or civil war;
  - (iii) riot, commotion or disorder, unless solely restricted to employees of the Contractor or of his sub-contractors and arising from the conduct of the Works;
  - (iv) ionising radiations, or contamination by radio activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radioactive, toxic, explosive, or other hazardous properties of any explosive, nuclear assembly or nuclear component;
  - (v) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;
- (b) the use or occupation of the University of any part of the Works, except as may be expressly provided in the Contract;
- (c) the design of the Works, other than any part of the design provided by the Contractor or for which the Contractor is responsible under the Contract.

## 26 INDEMNITY PROVISIONS

### 26.1 Injury to Persons

- (1) The Contractor shall be liable for and shall indemnify the University against any loss, expense, costs, damages, liability or claim whatsoever in respect of personal injury to or the death of any person whomsoever arising out of or in the course of or by reason of the carrying out of the Works, unless the same is shown to be due solely to any negligent or wilful act of the University or of any person for whom the University is responsible.
- (2) For the avoidance of doubt, the indemnity provided by the Contractor under Clause 26.1

shall include any damages or compensation payable at common law or under any statute in respect of or in consequence of any accident, illness or injury to any workman or other person in the employment of the Contractor or any subcontractor, save and except an accident, illness or injury resulting solely from any act or default of the University, or of any person for whom the University is responsible.

## **26.2 Damage to Property**

Without prejudice to his liabilities in regard to completing the Works under Clause 4.1, the Contractor shall be liable for and shall indemnify the University against any loss, expense, costs, damages, liability or claim due to injury or damage of any kind to any property real or personal (including any property of the University other than the Works) insofar as such injury or damage arises out of or in the course of or by reason of the carrying out of the Works, unless the Contractor proves to the satisfaction of the University that it was not due to any negligence, omission, breach of contract or default of the Contractor, or of any person for whom the Contractor is responsible including the Contractor's servants or agents or any subcontractors and their servants or agents.

## **26.3 Contractor to Rectify Damage**

Without prejudice to the provisions of Clause 26.2, where injury or damage of any kind arises to any property out of or in the course of or by reason of the carrying out of the Works, the University shall be entitled to instruct the Contractor to rectify any such injury or damage at any time before the issue of the Final Completion Certificate and the Contractor shall upon receipt of such an instruction forthwith comply with the same.

# **27 INSURANCE FOR PERSONAL INJURY, WORK INJURY COMPENSATION AND PROPERTY DAMAGE**

## **27.1 The Policies**

- (1) Without prejudice to his liability to indemnify the University under Clause 26, the Contractor shall, before commencement of any work under the Contract, maintain:
  - (a) such insurances (subject to any limitations permitted by the Specifications or other Contract documents) as are necessary to cover the liability of the Contractor or, as the case may be, of any such subcontractor, in respect of personal injuries or death arising out of or in the course of or by reason of the carrying out of the Works or the sub-contract works including any liability of the Contractor under the Work Injury Compensation Act or any subsequent modification or re-enactment of such Act; and
  - (b) such insurances as may be specifically required by the Contract in respect of injury or damage to property real or personal (other than the Works) arising out of or in the course of or by reason of the carrying out of the Works and caused by any negligence, omission, breach of contract or default of the Contractor, his servants or agents or, as the case may be, of such subcontractor and his servants or agents. Such insurances shall be subject to such limitations as to the extent of liability for any one accident as may be set out in the Appendix hereto.

The Contractor's insurances shall provide for the University's interests to be noted as "Principal" (for Work Injury Compensation/University's Liability) or as an "Additional Insured" with a "cross liability" provision (for Third Party Liability).

- (2) Any such insurance as is referred to in Clause 27.1 (1) shall be placed with an insurer approved by the University and the Contractor shall deposit with the University before the commencement of any work on Site a copy of the policy or policies of insurance and no later than 14 days thereafter the receipts in respect of the premiums paid under such policy or policies.

## **27.2 Damage to Property when Contractor Not Negligent**

- (1) The Contractor shall, before commencement of any work under the Contract, maintain in the joint names of the University and Contractor such insurances for such amounts of indemnity as may be specified in the Specifications or other Contract documents in respect of any loss, expense, costs, damages, liability or claim which the University may incur or sustain due to injury or damage of any kind to property real or personal (including property of the University but not the Works themselves) caused by collapse, subsidence, vibration, weakening or removal of support or lowering of ground water arising out of or in the course of or by reason of the carrying out of the Works except injury or damage:
  - (a) caused by any breach of contract, negligence, omission or default of the Contractor, his servants or agents or of any subcontractor, his servants or agents or any other person responsible for the provisions of any Plant, materials, goods or work for the Works;
  - (b) attributable to any error or omission in the design of the Works (other than work for the design of which the Contractor is responsible under the Contract); and
  - (c) from any of the "excepted risks" as defined in Clause 25.2.
- (2) Any such insurance as is referred to in Clause 27.2 (1) shall be placed with an insurer approved by the University and the Contractor shall deposit with the University before the commencement of any work on Site a copy of the policy or policies of insurance and no later than 14 days thereafter the receipts in respect of the premiums paid under such policy or policies.

## **27.3 Default in Insuring**

Should the Contractor or any subcontractor default in taking out or maintaining the insurance policies as stipulated in Clauses 27.1 and 27.2, the University (without prejudice to any other rights and remedies available) may himself insure against any risk with respect to which the default has occurred and the amount paid by him in respect of premiums shall be recoverable from the Contractor.

## **28 INSURANCE OF THE WORKS**

### **28.1 Risks to be Insured**

- (1) Without limiting his obligations or responsibilities under Clause 25, the Contractor shall, before commencement of any work under this Contract, in the joint names of the University and the Contractor, insure against all damage, loss or injury from whatever cause arising (other than the "excepted risks" as defined in Clause 25.2) for which he is responsible under the terms of the Contract, the Permanent Works, any Temporary Works and all unfixed Plant, materials and goods delivered on or adjacent to the Site for incorporation into the Works (but excluding tools and Construction Equipment owned or hired by the Contractor or any subcontractors) and any structures or other works erected on or adjacent to the Site to the value of not less than the Contract Sum shown in the Letter of Acceptance (plus the percentage stated in the Appendix for professional fees). The Contractor shall keep such Permanent Works, Temporary Works, materials, goods, structures or works so insured until 14 days after the Date of Practical Completion (or the latest Date of Practical Completion if more than one) certified by the University pursuant to Clause 17 and during the Defects Liability Period for damage, loss or injury arising from a cause occurring prior to the commencement of the Defects Liability Period.
- (2) Such insurance shall be effected with an insurer in terms approved by the University and the Contractor shall deposit with the University before the commencement of any work on Site a copy of the policy or policies of insurance and no later than 14 days thereafter the receipts in respect of the premiums paid under such policy or policies. Each policy taken out pursuant to Clause 28 shall provide expressly for the payment in the first place to the University of any insurance moneys due under the policy.
- (3) In the event that the Contractor defaults in taking out or maintaining such insurance policies as aforesaid, the University (without prejudice to any other rights or remedies available) may himself insure against any risk in respect of which the default has occurred and any amount paid by him in respect of premiums shall be recoverable from the Contractor.
- (4) Where the Contractor maintains a general policy of insurance with insurers approved by the University covering contracts as well as the Contract against the aforesaid insured risks, and in the like terms as to payment of insurance moneys to the University, then the maintenance by the Contractor of such policy shall, if the University's interest is endorsed thereon, be a discharge of the Contractor's obligations to insure in joint names. In such a case, the production by the Contractor, as and when required by the University, of current certificates of insurance from the insurers confirming the existence and continuance of the relevant cover required by this Clause shall be a sufficient discharge of the Contractor's aforesaid obligation to deposit the policy or policies and receipts for premiums paid with the University. Such certificates shall state expressly any exclusions or limitations of liability or insurance excesses under the policy.

### **28.2 Application of Insurance Moneys**

- (1) Upon the occurrence of any damage, loss or injury to the Works or unfixed Plant, materials or goods prior to completion from any cause whatsoever the Contractor shall (subject to Clause 25.1(3)) proceed immediately to rectify and make good the same free

of charge. Any moneys, if and when received under the policies of insurance under this Clause shall be paid in the first place to the University and then (less only the aforesaid percentage for professional fees, if any) released to the Contractor by instalments on the interim certificates of the University.

- (2) The amounts released as aforesaid shall be calculated as from the date of receipt of the moneys in proportion to the extent of the work of restoration, replacement or repair previously carried out by the Contractor.

28.3 Notwithstanding anything stated to the contrary in **Clause 27 and Clause 28 of the Conditions of Contract**, the University has, through its Appointed Insurance Broker, arranged with Appointed Insurer for blanket Contractors' All Risks insurance policy.

The Contractor is to note that he is however still responsible for the payment of premium for this insurance.

The insurance arrangement shall not in any way reduce the Contractors' liability in relation to: -

- (i) his responsibility to make good at his own expense, such loss or damage to Works for which he is held liable/responsible under **Clause 25.1 of the Conditions of Contract**; and
- (ii) his liability to indemnify the University under **Clause 26.1 and Clause 26.2 of the Conditions of Contract** in respect of bodily injury to persons or damage to property

28.4 The coverage provided by the insurance specified in **Clause 28.3** shall be as follows:

- (i) loss or destruction of or damage caused to the Works including any unfixed materials or other thing delivered to the Contract site for incorporation therein during the Contract Period (as stated in the Appendix) plus Defects Liability Period, for loss or destruction of or damage arising from a cause occurring prior to the commencement of the Defects Liability Period and for any loss or destruction of or damage occasioned by the Contractor in the course of any operation carried out by him for the purpose of complying with his obligations under **Clause 18 of the Conditions of Contract**.
- (ii) loss or destruction of or damage caused to existing property belonging to the University from any cause in relation or in connection with the execution of the Contract, subject to a limit of S\$1,000,000 in the aggregate (on first loss basis); and
- (iii) liability for damage, loss which may occur to any third party property, or injury to any person, caused by or arising out of the execution of the Services or in carrying out of the Contract.



28.5 A summary of the details of cover provided by the insurance specified in **Clause 28.3** is as follows:

- Insured Parties - Contractor and his sub-contractors of all tiers, the University as the Employer/Principal and representative of consultants and Employer/Principal only in respect of their on-site activities
- Section 1: Insurance for Project Works
  - (a) Sum Insured:
    - (i) Contract value
    - (ii) Professional Fees (10% of Contract Sum)
    - (iii) Removal of Debris (5% of Contract Sum)
    - (iv) Cover for Existing Property: S\$1,000,000 in the aggregate (on first loss basis, subject to the provisions of the Reinstatement of Loss Clause)
  - (b) Excess:
    - In respect of Project Development
      - (i) S\$15,000 or 10% of loss whichever is the higher in respect of loss, destruction or damage due to defective design plan specification material workmanship
      - (ii) S\$15,000 or 10% of loss whichever is higher in respect of loss, destruction or damage to temporary structures, piling, sub-structures and basement works
      - (iii) S\$15,000 in respect of loss, destruction or damage by flood, fire, storm, tempest, typhoon, frost, earthquake, subsidence, landslip or collapse
      - (iv) S\$3,500 in respect of any other loss, destruction or damage
    - In respect of Direct Fit-Out Contracts and Renovation and Redecoration Contracts and Term Contracts
      - (i) S\$2,000 for each and every occurrence
- Section 2: Liability to Third Party
  - (a) Limit of Indemnity: S\$10,000,000.00 any one occurrence and unlimited for any one period
  - (b) Excess:
    - In respect of Project Development
      - (i) S\$15,000 or 10% of loss amount whichever is the higher in respect of loss or damage to third party property caused by collapse, subsidence, vibration, weakening or removal of support or lowering of ground water, Riba 19(2)(a)
      - (ii) S\$15,000 or 10% of loss amount whichever is the higher in respect of loss or damage to underground services
      - (iii) S\$3,500 in respect of other third party property damage

In respect of Direct Fit-Out Contracts and Renovation and Redecoration Contracts and Term Contracts

(i) S\$2,000 in respect of third party property damage

- Period of Insurance shall be the same as the Contract Period as specified in the Appendix
- The Contractors' All Risks specimen insurance policy with the detailed terms and conditions is shown in Exhibit A and can be downloaded from the University's website at <https://www.ntu.edu.sg/odfm> under Useful Information → Tender/Contract Documents → "Exhibit A - Specimen Contractors' All Risks Insurance Policy (2020 – 2022) P2356628".

For the purpose of Contract pricing, the Contractor shall assume the following insurance premium rates:

- Contractors' All Risks Insurance – 0.10%

A minimum premium at S\$750 per policy applies.

The premium for the above insurance shall be calculated as follows:

Contractors' All Risks

Premium = (Contract Sum + additional 10% for Cover for Professional Fees + additional 5% for Cover for Removal of Debris) x 0.10%

The Contractor shall allow for the calculated premiums as well as cost of his insurance obligations and all necessary attendance in connection with the above-mentioned insurance as well as other lines of insurance he takes up on his own accord.

- 28.6 Upon the award of Contract, the Contractor shall be responsible for the declaration of the Contract to the Appointed Insurer **within fourteen (14) days** of award to effect the insurance as specified in **Clause 28.3, Clause 28.4** and **Clause 28.5**. Tax Invoice for the insurance will be issued by the Appointed Insurer to the Contractor as a formal request for payment within **five (5) working days** from Contractor's declaration of Contract. The Contractor shall thereafter make the necessary payment to the Appointed Insurer in accordance to the Premium Payment Warranty Clause (in no case should premium payment be settled later than 60 days from the Commencement of Works stipulated under **Clause 12.1 of the Conditions of Contract**. Official receipts issued by the Appointed Insurer within **five (5) working days** from receipt of premium payment shall be submitted by the Contractor to the University as proof of insurance placement.
- 28.7 The Contractor shall be responsible for any exceptions contained in the policies and bear the amount of any excess(es) stated therein.
- 28.8 The Contractor shall adhere to and comply in a timely and co-operative manner with all insurance provisions, requirements or procedures as indicated herein or as may be further specified, either by the University and/or the Appointed Insurance Broker and/or the Appointed Insurer and shall bear at his own cost the consequences of any failure so to do.

The Contractor shall ensure similar compliance from any sub-contractors that may benefit from the University's insurances as described but any contingent liability arising out of the Contractor's failure to secure compliance from such sub-contractors shall be for the sole account of the Contractor and shall not be covered as a claim under the pre-arranged insurances.

The Contractor shall provide access and render co-operation to, including additional information relating to the Works as may be required by the Appointed Insurer, and attend to any site visits by risk engineers appointed by Appointed Insurer. Such visits, if required, are for the purpose of providing the Appointed Insurer the means of ensuring that the measures implemented by the Contractor and/or their sub-contractors are reasonable and sufficient to avoid or prevent any mishap or accident from occurring in the course of carrying out the Works. If, in the opinion of the risk engineers and/or the S.O./the University, additional measures become necessary to prevent or avoid any potential occurrence of any mishap or accident, such costs and expenses incurred in implementing such measures shall be borne by the Contractor.

The University shall, through its Appointed Insurance Broker provide the Contractor with an appropriate loss procedure and claims handling manual as well as reporting forms relative to the pre-arranged insurances and required declarations thereunder. Contact details shall be provided to the Contractor upon Contract Award.

The Contractor shall, at his own expense, notify, prepare, negotiate and settle all claims with the Appointed Insurer, appointed loss adjuster(s) and/or the Appointed Insurance Broker. If the Contractor fails to promptly attend to such notification, preparation, negotiation or settlement of claims with the Appointed Insurer, appointed loss adjuster(s) and/or the Appointed Insurance Broker, the University may, without prejudice to any right that he may have against the Contractor, reserve the option to settle the same with the said parties. Any settlement reached between the University and the Appointed Insurer shall be binding upon the Contractor.

Monies, if and when received from the Appointed Insurer in respect of material damage to the existing property belonging to the University, shall be paid in the first place to the University and then (less only the percentage for the professional fees) released to the Contractor by instalments in the course of making good the damaged property.

- 28.9 The Contractor shall be responsible for ensuring that the insurances as specified in **Clause 28.3** shall remain in full force for the entire Contract Period including any extension thereto. If any extension of Period of Insurance is required regardless of cause, the Contractor is responsible for making the necessary arrangements via the Appointed Insurer. The Contractor shall be responsible to settle any additional premium associated with such extension(s) upfront, and if in his opinion that such additional premium is contributed by an Extension of Time granted for delay caused by the University, he shall provide substantiation in a claim for premium reimbursement.

The Contractor shall be responsible for the additional premiums incurred in maintaining in full force the insurance under Section I of the Contractors' All Risks insurance, in the event that loss or destruction of or damage is caused to the Works and existing property belonging to the University for which the Appointed Insurer is liable.

The Contractor shall submit to the University the official receipts and/or endorsements issued by the Appointed Insurer as proof of the extension of Period of Insurance within **30 days** of the commencement of such extension.

- 28.10 Should the Contractor fail to make payment for the insurances as specified in **Clause 28.3** including any necessary extensions within the stipulated period (and thus fail to keep in force the insurances as specified in **Clause 28.3**), the University (without prejudice to any other rights and remedies available) may himself make payment to the Appointed Insurer and the total costs incurred (including late payment expense or charges incurred, if any) paid by the University shall be recoverable from the Contractor. The University may at its discretion from time to time deduct the total costs incurred as aforesaid from any monies due or which may become due to the Contractor or recover the same as debt due from the Contractor.
- 28.11 The Contractor shall at his own expense provide in addition but not be limited to the following insurances, insofar as they may be applicable:
- (i) Work Injury Compensation Insurance including the University as an insured party in his capacity as "Principal" for the duration of the Contract. The insurance shall provide compensation in accordance with the provisions under the Work Injury Compensation Act (Cap. 354) or any statutory modification or amendment or re-enactment thereof. The insurance shall also provide for liability under Common Law for all damages payable to any one claimant or any number of claimants in respect of or arising out of any one occurrence or in respect of or arising out of all occurrences of a series consequent upon or attributable to one source or original cause for a limit of not less than S\$10,000,000.
  - (ii) for loss or damage to materials, construction equipments and other items whilst in the course of transport to the Contract site (other than transit in land within the territorial limit);
  - (iii) for loss or damage to construction plant and equipment and other items brought on to the Contract site by the Contractor for use in the execution and completion of the Works, including whilst in the course of transport of such items to the Contract site;
  - (iv) for liability to third parties for all owned, leased, hired or non-owned mechanically propelled vehicles used or operated in the performance of the Contract by or on behalf of the Contractor on public highways or elsewhere such as to be eligible for compulsory Motor Vehicle Insurance under the provisions of the Laws of Singapore;
  - (v) for liability to third parties for all aircraft or any waterborne vessel or craft used or operated in the performance of the Contract by or on behalf on the Contractor, if such use is required; and
  - (vi) for liability to worker or employees of the Contractor not covered under the insurance referred to **Clause 28.11(i)** above.
- 28.12 The Contractor shall be entitled to and at his own expense provide for his own account or that of any sub-contractor, supplier, vendor or similar party such other forms of insurance, additional limits of liability, coverage for additional exposures or risks encountered during the course of the Works and the like as he may deem necessary.
- 28.13 Any liability, cost or expense arising out of the failure of the Contractor to comply with **Clause 28.11**, or failure by any party to maintain insurance as specified in **Clause 28.12** shall be for the sole account of the Contractor.

## **29 DAMAGE TO PROPERTY OF THE UNIVERSITY**

### **29.1 Costs of Making Good Damages Loss or Injury**

(1) In the case of damage, loss or injury to property belonging to the University (other than property forming part of the Works) caused by the Contractor or any person for whom the Contractor is responsible including the Contractor's servants or agents or any subcontractors and their servants or agents arising directly or indirectly out of or in relation to or in connection with the design for which the Contractor is responsible, construction or completion of the Works under the Contract, the cost of making good such damage, loss or injury shall be recoverable by the University from the Contractor on presentation of an itemised certificate from the University or the relevant authority specifying the amount payable save and to the extent that the Contractor may prove to the satisfaction of the University that the amount or any part of it was not caused by any negligence, omission, breach of contract or default of the Contractor, or any person for whom the Contractor is responsible as set out above. The cost of making good such damage, loss or injury shall be recoverable by the University from the Contractor whether or not the University is liable in law to the relevant authority for the damage, loss or injury.

(2) Provided always that:

(a) Upon payment or deduction of such cost being made, the University shall, where the property does not belong to the University, pay the amount to the relevant authority and furnish to or procure for the Contractor such discharge or release as the Contractor may reasonably require.

(b) If the cost which the Contractor is liable to pay has not been ascertained at the time any moneys payable to the Contractor are due for release to him, then the University may withhold a sum which is, in the opinion of the University, sufficient to cover such liability. As soon as the cost payable by the Contractor has been ascertained and deducted from the sum retained, the balance if any shall be released to the Contractor.

(3) Nothing herein shall affect in any way any other remedy at law that the owners of the property which has suffered damage, loss or injury may have against the Contractor.

## **30 ASSIGNMENT AND SUBCONTRACTING**

### **30.1 Assignment by Contractor**

The Contractor's performance by himself and his servants' principal functions of controlling the Site with his own Site staff, co-ordinating the work of any subcontractors and ordering of materials and goods for the Works, is of the essence of the Contract and unless the University shall agree in writing, the Contractor shall neither assign his interests, rights or benefits under the Contract nor transfer his liability nor make arrangements for the vicarious performance of such functions by any other person nor make arrangements whereby the execution of the Works is carried out by another person or persons.

### **30.2 Sub-Contractors**

Except where expressly provided by the Contract, the Contractor shall not engage or permit the engagement of any Sub-Contractor without the prior written consent of the University, which consent shall not be unreasonably withheld.

## **31 TERMINATION BY THE UNIVERSITY**

### **31.1 Termination for Default**

- (1) If in the opinion of the University, the Contractor
  - (a) has abandoned the Contract;
  - (b) has, without reasonable cause, failed to commence the Works in accordance with the Contract.
  - (c) has failed to comply with his obligations under Clause 9 or has failed to execute the Works in accordance with a programme accepted under Clause 9 whereby the Works or any phase or part will be completed within the Time for Completion or any extended time or has otherwise failed to proceed with the Works with due diligence or expedition;
  - (d) has persistently failed to remove Plant, materials, goods or work from the Site or to pull down and replace work following the expiry of 3 days from receipt by the Contractor of a written notice by the University to the effect that the Plant, materials, goods or work have been condemned and rejected by the University;
  - (e) has acted in breach of Clause 30.1 or 30.2; or
  - (f) has persistently refused or failed to comply with a written instruction from the University which the University is empowered to give under the Contract,

then the University may issue a certificate (called hereafter a "Termination Notice") to the Contractor identifying the nature of the default.

- (2) If the Contractor:
  - (a) has committed an act of bankruptcy or becomes bankrupt or insolvent or makes a composition with creditors or if, being a company, any winding up order of any kind is made, or a receiver or manager or judicial manager of the Contractor's undertaking or assets is appointed, or possession taken or execution levied by creditors or debenture holders or under a floating charge;
  - (b) has 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 this Contract with the University, or for showing or forbearing to show favour or disfavour to any person in relation to this Contract or any other Contract with the University, or if any of 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 this Contract or any other contract with the

University the Contractor or any person employed by him or acting on his behalf shall have committed any offence under the Penal Code or the Prevention of Corruption Act or any re-enactment or modification of such Code or 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 the said Acts;

- (c) has failed to provide the security deposit in accordance with Clause 4.5;
- (d) has failed to insure the Works or to deposit insurance policies or receipts for premiums as required by Clauses 27 and 28;
- (e) shall have been issued with a Termination Notice or a copy thereof and either:
  - (i) the default in the Termination Notice has not been made good within 7 days; or
  - (ii) the default has been repeated within 14 days of the Termination Notice; or
  - (iii) any other default such as would entitle the University to issue a Termination Notice has been committed by the Contractor within 14 days of the issue of the original Termination Notice,

then the University, without prejudice to any other rights and remedies available to him, may give to the Contractor notice in writing of the termination of the employment of the Contractor whereupon the Contractor's employment under the Contract shall terminate. Upon receipt of the University's notice, the Contractor shall immediately vacate and surrender possession of the Site to the University, leaving all Construction Equipment, Plant, Temporary Works, temporary buildings, structures, tools, goods, equipment and unfixed materials upon the Site, other than those which the Contractor may be specifically directed in writing by the University to remove.

### **31.2 Effects of Termination for Default**

- (1) In the event of the termination of the employment of the Contractor under Clause 31.1, the University or any other contractor appointed by him may use for completion of the Works any of the Construction Equipment, Plant, Temporary Works, temporary buildings, structures, tools, goods, equipment and unfixed materials left upon the Site pursuant to Clause 31.1(2) as the University may think proper. Further the University shall have a lien over all of the said Construction Equipment, Plant, Temporary Works, temporary buildings, structures, tools, goods, equipment and unfixed materials and may sell any of the same and apply the proceeds of sale in or towards the satisfaction of any sums due or becoming due to him from the Contractor under the Contract.
- (2) The University shall, as soon as may be practicable after such repossession of the Site by the University pursuant to this Clause, determine what amount (if any) had, at the time of such repossession been reasonably earned by or would reasonably accrue to the Contractor in respect of work then actually done by him under the Contract, the value of any of the unfixed or partially fixed Plant, materials or goods, the value of any Construction Equipment, Temporary Works, temporary buildings, structures, tools or equipment and the amount received from any proceeds of sale.

- (3) No sum shall be certified as due to the Contractor nor shall the University be liable to pay to the Contractor any sum (including damages and amounts for which the University was liable at the date of termination) in respect of the Contract until the expiry of the Defects Liability Period of the whole of the Works and thereafter until the University has ascertained and certified an amount (called hereafter “the University’s Cost”) representing the total of the cost to the University of completion and remedying of any Defects, damages for delay in completion (if any) as provided by Clause 31.3 or otherwise and all other expenses incurred by the University. The Contractor shall then be entitled to receive only such sum (if any) as the University may certify would have been payable to the Contractor upon due completion of the Works by the Contractor after deducting the University’s Cost. If the University’s Cost exceeds the sum which would have been payable to the Contractor upon due completion by the Contractor, then the Contractor shall, upon demand, pay to the University such excess and such excess shall be deemed a debt due by the Contractor to the University and shall be recoverable accordingly.

### 31.3 Liquidated Damages after Termination

If the employment of the Contractor has been terminated for default pursuant to Clause 31.1 and completion of the Works or any phase or part by the University or by other contractors or persons appointed by the University to complete the Works, phase or part has been delayed beyond the Time for Completion, the following provisions shall have effect:

- (a) The University shall be entitled to the same liquidated damages for delay as those which would have been payable if the Contractor had completed the Works or phase or part on the actual completion date of the University or the other contractors or persons appointed by the University.
- (b) For the purpose of giving effect to the above, the University shall, upon the completion of the Works or phase or part issue a certificate. Such certificate shall state the date upon which the Contractor should have completed the Works or phase or part and shall also state the full period of delay for which the Contractor is responsible and shall compute the total damages due to the University therefor. The certificate shall give credit for events occurring after the termination of the Contractor’s employment which would have entitled the Contractor to an extension of time had he duly executed and completed the Works or phase or part and duly complied with Clause 14. In assessing the period of delay, the University shall also reduce the period of delay to the extent that there has been any failure by the University or by any other contractors or persons engaged by the University to use due diligence and expedition in arranging for or completing the remaining parts of the Works or phase or part.
- (c) Upon the issue of a certificate under Clause 31.3(b), the amount of damages certified by such certificate shall be immediately recoverable by the University from the Contractor.

### 31.4 Termination Without Default

- (1) The University may at any time, give the Contractor a written Notice of Termination. This



shall have the effect of immediately terminating the employment of the Contractor under the Contract and the Contractor shall immediately thereafter vacate the Site, remove all his Construction Equipment and labour force from the Site and surrender possession of the Site to the University.

- (2) In the event of a Notice of Termination under Clause 31.4(1) or where Clause 13.2 is applicable, the University shall subject to compliance by the Contractor with Clause 23 certify payment to the Contractor:-
- (a) for all work executed prior to the date of termination at the Rates for the Works set out in the Contract including;
    - (i) the amounts payable in respect of any other items shown and separately priced in the Contract including those for Construction Equipment, Temporary Works and the like, so far as the work comprised therein has been carried out or performed, and a proper proportion of any such items which have been partially carried out or performed;
    - (ii) the cost of Plant, materials or goods reasonably ordered for the Works which have been delivered to the Contractor or of which the Contractor is legally liable to accept delivery, and where such Plant, materials or goods will become the property of the University upon such payments made by him; and
  - (b) any Loss and Expense suffered by the Contractor in connection with or as a consequence of the termination.

The University shall expeditiously certify the amounts payable to the Contractor under this Clause, and the Contractor shall provide all reasonable assistance to the University. In the event that the Contractor does not submit the necessary information required, the University shall make his certification on the information available. The amount certified shall be paid by the University less any sums previously paid or due to or recoverable by the University from the Contractor.

## **32 PROGRESS PAYMENTS**

### **32.1 Payment Claims**

- (1) The Contractor shall submit to the University, at monthly intervals (on the day of each month specified by the University following the month in which the Contract is made), a claim for payment (hereafter referred to as the "Payment Claim"). For the purposes of payment claims made under this Clause, the Payment Claim shall have the same meaning ascribed in the Building and Construction Industry Security of Payment Act 2004 (hereafter referred to as the "Act"). The Payment Claim shall be made in compliance with the requirements of the Act and shall show the amounts (hereafter referred to as the "Claimed Amount") to which the Contractor considers himself to be entitled up to the last day of the monthly interval in question in respect of:
- (a) the value of the Permanent Works executed;

- (b) any other items shown and separately priced in the Contract including those for Construction Equipment, Temporary Works and the like;
  - (c) Not in use.
  - (d) any other sum to which the Contractor is entitled pursuant to Clause 23.5; and
  - (e) Not in use.
- (2) The Contractor may submit such monthly Payment Claims up to the University's issue of the Final Payment Certificate.

### **32.2 Payment Certificates**

- (1) Within 14 days of receiving a Payment Claim duly submitted pursuant to Clause 32.1, the University shall issue a certificate (hereafter referred to as the "Payment Certificate") to the Contractor showing the amounts, which may consist of deduction of any sums which have been or may become due and payable by the Contractor to the University under the Contract or otherwise (hereafter referred to as the "Response Amount") to which the Contractor is in his opinion entitled in respect of the Claimed Amount. The University shall substantiate with reasons in his Payment Certificate if the Response Amount is less than the Claimed Amount or if payments are withheld. Such Payment Certificate issued by the University shall comply fully with the requirements for Payment Response made in contemplation of the Act.
- (2) The Payment Certificate issued under Clause 32.2(1) shall be deemed the Payment Response from the University, which meaning shall be the same ascribed in the Act if the University does not provide any response within 14 days from the Payment Claim. Where the University provides a Payment Response in compliance with the Act within 14 days from the Payment Claim, the University's Payment Response shall take precedence over the Payment Certificate issued pursuant to Clause 32.2(1) and shall constitute the Payment Response defined in the Act.

### **32.3 Correction of Certificates**

The University may by any certificate make any correction or modification in respect of any error whether arithmetical or otherwise in any previous certificate which has been issued by him and make such adjustments as may be necessary in the amount of payment due and payable to the Contractor to take into account any over or under valuation in any previous certificate. Where the amount paid by the University to the Contractor pursuant to any error in a previous certificate exceeds any amount due and payable to the Contractor under any subsequent interim or final certificate, such excess shall be recoverable by the University from the Contractor.

### **32.4 Final Payment Claim**

- (1) Within 7 days of the Date of Practical Completion (or the last Date of Practical Completion, if more than one), the Contractor shall submit in writing to the University a claim for final payment in such form as the University may prescribe (hereafter referred to as the "Final Payment Claim").

- (2) This Final Payment Claim shall show the final amounts to which the Contractor considers himself to be entitled in respect of all the matters set out in Clause 32.1. If or to the extent that the measurements of the Works have not been completed by the University pursuant to Clause 21.1 (other than by reason of any failure on the part of the Contractor), the Contractor shall set out his best estimates of the relevant measurements and amounts due in respect of the Works. The Final Payment Claim shall also show all adjustments which the Contractor considers should be made to the Contract Sum. Insofar as substantiation of any claim has not been provided pursuant to Clause 23.3 or 23.4, the Contractor shall provide such substantiation with such a Final Payment Claim. Failure by the Contractor to provide with the Final Payment Claim such substantiation in respect of any event occurring before the Date of Practical Completion shall subject to Clause 23.5(2) and 23.6 bar the Contractor from advancing any claim for such an amount.
- (3) The Final Payment Claim made under this Clause shall constitute a Payment Claim made under the Act, provided always that the requirements for the Final Payment Claim made are fully complied with under the Act.

32.5 Not in use.

#### 32.6 **Period for Honouring Certificate**

The amount due to the Contractor under any certificate issued by the University pursuant to Clause 32 or any other term of the Contract shall (subject to the University's right to deduct or set-off any sum or damages for which the Contractor is or may be liable under the Contract or in any other way) be paid by the University to the Contractor within 30 days or such other time period as may be stipulated in the Appendix after the date of such certificate.

#### 32.7 **Claim and Payment of Goods and Services Tax**

- (1) The Contractor shall be deemed not to have allowed in his tender for goods and services tax (hereafter called "GST") chargeable under the Goods and Services Tax Act (hereafter in Clause 32.7 called "the Act") for the supply of goods, services or works required under the Contract.
- (2) Unless the Contractor is not a taxable person under the Act, the University shall reimburse the Contractor any GST charged on the goods, services or works required under the Contract.
- (3) The Contractor, when submitting the Payment Claims required by Clause 32.1 and the Final Payment Claim required by Clause 32.4, shall also show the amount which he considers himself to be entitled in respect of GST payable to him by the University. Upon issue of each certificate the Contractor shall forthwith prepare and submit to the University within 7 days the tax invoice under the Act in respect of the certificate. The amount of GST in the invoice shall accord with the amount of GST stated in the relevant certificate.
- (4) If the University notifies the Contractor that it intends to apply to the Comptroller of Goods and Services Tax for approval to issue to itself tax invoices in respect of the certificates, or that it has obtained such approval, the Contractor shall give his written agreement that, if such approval is or has been granted, he will not issue tax invoices in

respect of such certificates. If such approval is or has been granted by the Comptroller of Goods and Services Tax then the Contractor shall not issue tax invoices in respect of such certificates, provided that the University may, at any time by notice in writing served on the Contractor, re-impose on him the obligations contained in Clause 32.7(3) above.

- (5) If any dispute, difference or question shall arise between either the University or the Contractor and the Comptroller of Goods and Services Tax in relation to any tax chargeable or alleged to be chargeable in connection with the Contract or the Works or any part thereof, each shall render to the other such support and assistance as may be necessary to resolve the dispute, difference or question.
- (6) Clause 34 shall not apply to any dispute, difference or question arising under Clause 32.7.

32.8 Not in use.

### **33 FINAL COMPLETION CERTIFICATE**

#### **33.1 Time for Issue**

Within 30 days after the expiration of the Defects Liability Period, or if different Defects Liability Periods shall become applicable to different phases or parts of the Works, the latest of such Periods or as soon thereafter as any work instructed pursuant to Clause 18 shall have been completed, the University shall issue to the Contractor, with a copy to the University, a Final Completion Certificate.

#### **33.2 Certificate not Conclusive**

No certificate of the University shall of itself be conclusive evidence that the Works have been completed or that any Plant, materials, goods or work to which it relates are in accordance with the Contract.

### **34 SETTLEMENT OF DISPUTES.**

#### **34.1 Not in use.**

#### **34.2 Reference to Arbitration**

If a dispute or difference whatsoever kind shall arise between the University and the Contractor in connection with or arising out of the Contract or the execution of the Works, whether during the execution of the Works or after their completion and whether before or after any termination of the Contract or the Contractor's employment, either party may give notice to the other party of his intention to refer the decision or the dispute or difference to an arbitrator. The arbitrator may be agreed upon by the parties or failing such agreement, shall be a person to be nominated on the application of either party by the Chairman of the Singapore International Arbitration Centre. Such reference shall not, without University's consent in writing, be initiated before the Date of Practical Completion of the Works (or if there is more than one such Date of Practical

Completion, the latest) or alleged Date of Practical Completion of the Works. Any such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act or any re-enactment or modification thereof.

### **34.3 Arbitration in Event of Termination**

If the dispute or difference concerns the termination of the employment of the Contractor or the repudiation or abandonment of the Contract by either party, such dispute or difference shall be referred to an arbitrator in accordance with Clause 34.2. Any dispute or difference raised by the Contractor in connection with the termination of his employment or the repudiation or abandonment of the Contract by the University shall be referred to arbitration within 30 days of the notice of termination or act of repudiation or abandonment. Failure to do so within such period shall bar the Contractor absolutely from pursuing such dispute or difference in any arbitration or court proceedings whatsoever.

### **34.4 Powers of the Arbitrator**

An arbitrator appointed pursuant to Clause 34.2 hereof shall have full power to open up, review and revise any certificate, opinion, decision, requirement or notice and to determine all matters in dispute or difference which shall be submitted to him in the same manner as if no such certificate, opinion, decision, requirement or notice had been given, subject to any provision of the Contract which may constitute a decision or certificate or other document as final or binding or any document or event or omission as barring or preventing a claim being advanced by one party against the other.

### **34.5 Reference to Adjudication**

- (1) Notwithstanding Clause 34.1, if a dispute or difference involves a Payment Claim or Payment Response to which the Building and Construction Industry Security of Payment Act applies, the Contractor shall be entitled to make an adjudication application in accordance with the Building and Construction Industry Security of Payment Act, in which case the provisions of the Act shall apply.
- (2) Not in Use.

### **34.6 Arbitration**

- (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.

## **35 RECOVERY BY THE UNIVERSITY**

35.1 Wherever in the Contract provision is made for the University to recover any amount from the Contractor such amount may be deducted from or reduced by any sum due or to become due at any time thereafter from the University to the Contractor under this contract between the University and the Contractor or may be recovered by the University from the Contractor as a debt.

## **36 GOVERNING LAW AND NOTICES**

### **36.1 Law**

- (1) The law governing this Contract and any arbitration commenced under these Conditions shall be the law of Singapore, and any such arbitration shall be held in Singapore.
- (2) Unless otherwise expressly stated in this Contract, 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.
- (3) Where the Building and Construction Industry Security of Payment Act 2004 applies to this Contract, all provisions in this Contract shall be read to give effect to the provisions of the Act. For that purpose, the parties shall be entitled to such rights and be subject to such obligations as may be set out in the Building and Construction Industry Security of Payment Act 2004.

### **36.2 Notices**

- (1) The Contractor shall provide in his Form of Tender an address in Singapore for service of documents, hereafter referred to as "the Service Address".
- (2) The Contractor shall give seven (7) days written notice to the University before any change in the Service Address.
- (3) Except as provided in Clause 36.2(4), all certificates, notices or instruction to be given to the Contractor by the University or the University under the terms of the Contract shall be sent by post, cable, telex or facsimile transmission to or left at the Contract shall be sent by post, cable, telex or facsimile transmission to or left at the Service Address.
- (4) All certificates and notices under Clauses 31 and 34 shall be given by pre-paid registered mail or hand delivery to:
  - (a) in the case of the Contractor, the Service Address; and
  - (b) in the case of the University or the University, such address as the University shall in writing notify the Contractor.
- (5) Without prejudice to any other method of service that is authorised by law, service of any originating process by the University or University on the Contractor shall be deemed to be due service if it is posted to or left at the Service Address.