

## Non-Disclosure Agreement

**NATIONAL UNIVERSITY OF SINGAPORE**, a company limited by guarantee incorporated in Singapore under the Companies Act (Cap. 50) and having its registered address at 21 Lower Kent Ridge Road, Singapore 119077 (“**NUS**”), has published an Invitation to Quote/ Invitation to Tender/ Request For Proposal (“**ITQ/ ITT/ RFP**”) (as applicable) for the procurement of Goods, Services and/or Construction Works (“**Procurement**”) in this eProcurement system.

The Recipient acknowledges that NUS possesses Confidential Information (as defined below) which may be disclosed to the

Recipient (i) by the said ITQ/ ITT/ RFP documents (ii) during the Procurement process including any briefings, site visits and/or clarifications made; and (iii) during the Contract Period in the event that the Recipient is awarded the Procurement contract.

The Recipient is interested in viewing the said ITQ/ ITT/ RFP documents and participating in the Procurement. The Recipient undertakes that it shall only use the Confidential Information for the purposes of considering the submission of a bid for the said ITQ/ ITT/ RFP and performing its contractual obligations to NUS in the event that the Recipient is awarded the Procurement contract (“**Purpose**”).

In consideration of NUS disclosing the Confidential Information for the Purpose, the Recipient undertakes and agrees to the terms and conditions as set out below:-

### **1 CONFIDENTIAL INFORMATION**

1.1 The term “**Confidential Information**” for the purpose of this Agreement shall mean any and all information and material in any medium (including without limitation on whether it be written, visual, electronic or oral):

- (a) relating to NUS, its business or affairs, any personal data, which is disclosed, furnished or communicated by NUS to the Recipient and/or its Representatives (term as defined in clause 2.1);
- (b) disclosed by NUS to the Recipient and/or its Representatives which is proprietary or confidential in nature or which has been clearly marked as proprietary or confidential or is otherwise clearly identified by NUS as proprietary or confidential at the time of disclosure;
- (c) obtained by the Recipient and/or its Representatives as a result of being allowed access to any NUS’ computer or communications systems, computer software programmes or applications, data files or documentation, or other similar hardware, software or data, or any premises where NUS may carry on business;
- (d) all information, notes, analyses, compilations, studies, specifications, drawings or other documents produced, developed or compiled by Recipient and/or its Representatives from the Confidential Information (the “**Derivatives**”).

1.2 Notwithstanding any other provision of this Agreement, the parties acknowledge that Confidential Information shall not include any information that:

- (a) is or becomes publicly available without breach of this Agreement;
- (b) the Recipient can prove by written evidence was (i) previously in the possession of the Recipient and (ii) not acquired directly or indirectly from NUS;
- (c) the Recipient lawfully receives without any obligation of confidentiality from a third party; or
- (d) is required to be disclosed by law, regulation, regulatory requirement or order of court.

## **2 OBLIGATIONS OF CONFIDENTIALITY**

- 2.1 The Recipient hereby agrees to hold and keep in strictest confidence any and all Confidential Information. The Recipient may disclose the Confidential Information to the Recipient's directors, officers, employees, representatives, professional advisors, subcontractors and/or agents (collectively referred to as "**Representatives**").
- 2.2 The Recipient undertakes that it shall and shall cause its Representatives to use the Confidential Information solely to carry out the Purpose and shall not trade, disclose or make available any or all of the Confidential Information to any third parties in any manner whatsoever.
- 2.3 The Recipient shall take all steps and measures to minimise the risk of disclosure of the Confidential Information and shall only distribute or grant access to the Confidential Information to its Representatives who are involved in the Purpose and on a "need to know basis".
- 2.4 In respect of each Representative to whom the Recipient discloses Confidential Information in accordance with this Agreement or who receives Confidential Information on behalf of the Recipient, the Recipient shall:
- (a) procure that each Representative strictly complies with all of the Recipient's obligations under this Agreement as if those obligations were imposed on that person;
  - (b) upon NUS' request, immediately cease to disclose the Confidential Information to that Representative; and
  - (c) be responsible for any breach of the terms of this Agreement by that Representative.
- 2.5 The Recipient shall ensure that the Confidential Information:
- (a) shall not be copied or reproduced in any form whatsoever by the Recipient or its Representatives save as may be necessary for the Purpose; and
  - (b) subject to clause 2.8, shall not be retained or stored for longer than necessary for the Purpose and performance of its obligations herein.
- 2.6 The Recipient shall ensure that the Confidential Information is properly secured and stored in a manner which does not permit unauthorised access.
- 2.7 The Recipient shall immediately advise NUS of any unauthorised disclosure, misappropriation or misuse by any person of any Confidential Information, upon the Recipient having knowledge of the same.
- 2.8 The Recipient shall and shall cause its Representatives to promptly return to NUS or destroy any or all Confidential Information upon the request of NUS at any time, save and except that the Recipient may retain one copy for its internal and legal compliance.
- 2.9 The Recipient shall not and shall cause that its Representatives do not make any press or other public statements (which includes announcement and releases) relating to this Agreement in any medium concerning all or any part of the Purpose, including without limitation, the existence of this Agreement.

## **3 DISCLOSURE DUE TO COURT ORDER/GOVERNMENTAL ACTION**

- 3.1 In the event that the Recipient or any of its Representatives are obligated to disclose any Confidential Information as a result of a court order or pursuant to governmental action, the Recipient shall immediately inform NUS so that NUS is given an opportunity to raise objections to such disclosure to the relevant authority requiring such disclosure. Should any such objection by NUS be unsuccessful, the Recipient or

its Representative(s) so obligated to disclose Confidential Information may disclose only such Confidential Information to the extent required by the relevant court order or governmental action.

#### **4 NO LICENCE AND WARRANTY**

4.1 Nothing in this Agreement shall be construed as granting expressly or by implication during the duration of this Agreement or thereafter, any transfer, assignment, license or any other rights in respect of any license, trademark, logo, patent, copyright or any other industrial or intellectual property right in force and belonging to NUS which rights shall remain vested in and the absolute property of NUS.

4.2 NUS makes no representation or warranty, whether written, oral, statutory, express or implied with respect to the Confidential Information, including without limitation, its accuracy or completeness or any warranty of merchantability, satisfactory quality or of fitness for any particular purpose, and NUS shall not be liable for any damages whatsoever that may be suffered by the Recipient including direct or consequential damages, resulting from the receipt or use of the Confidential Information.

#### **5 PERSONAL DATA PROTECTION ACT 2012**

5.1 The Recipient shall comply with the Personal Data Protection Act 2012 (“**PDPA**”) and all subsidiary legislation related thereto, as may be amended from time to time (collectively “**Data Protection Legislation**”) with regard to any and all personal data (as defined in the PDPA) that it receives from NUS.

5.2 The Recipient agrees that when dealing with personal data received from NUS, it shall:

- (a) only use personal data in accordance with the Purpose for which NUS disclosed the personal data, in accordance with the instructions of NUS or as is necessary for NUS to fulfill its obligations under the Data Protection Legislation;
- (b) take appropriate technical and organisational measures to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access and against all other unlawful forms of processing. Such measures shall ensure a level of security appropriate to the risks represented by the processing and the nature of the data to be protected, having regard to the state of the art and the cost of implementation;
- (c) give NUS notice in writing as soon as reasonably practicable should it be aware of, or reasonably suspect that, any of the events referred to in Clause 5.2(b) has occurred and shall promptly take all steps necessary to remedy the event and prevent its re-occurrence;
- (d) not retain personal data for any longer than is necessary for the Purpose for which NUS disclosed the personal data;
- (e) limit disclosure of such personal data to its employees on a need to know basis and only for the Purpose for which such personal data was disclosed by the NUS;
- (f) not to disclose or transfer any personal data received from NUS to any third party without the prior written approval of NUS, and upon such additional terms and conditions which NUS may impose on it for such disclosure or transfer; and
- (g) where the personal data is to be transferred to another country, not to do so unless the consent of the individual whose personal data is to be transferred to another country has been obtained save where an exception to such consent under the PDPA applies. Further, the Recipient shall not transfer the personal data to another country, unless it has taken all measures necessary to ensure that such personal data is transferred in accordance with the requirements of the Data Protection Legislation.

5.3 Notwithstanding anything to the contrary, the Recipient undertakes to indemnify and at all times hereafter to keep NUS indemnified against any and all losses, damages, actions, proceedings, costs, claims, demands, liabilities (including full legal costs on a solicitor and own client basis) which may be suffered or incurred

by NUS or asserted against NUS by any person, party, entity or authority whatsoever, in respect of any matter or event whatsoever arising out of, in the course of, by reason of or in respect of any breach of any of the provisions in this Clause.

## **6 TERM OF AGREEMENT**

- 6.1 This Agreement shall come into effect immediately and shall, unless otherwise agreed between the parties in writing, continue in full force and effect until the achievement or completion of the Purpose or if the Purpose no longer applies (as the case may be), provided that the obligations undertaken under this Agreement with respect to the Confidential Information shall survive and continue after the expiry or termination of this Agreement.

## **7 REMEDIES**

- 7.1 Upon the breach of this Agreement, NUS reserves the right to seek against the Recipient any available form of legal or equitable relief, including, but without limitation, injunctive relief as a remedy for such breach. The Recipient recognises that there may be no adequate remedy at law for NUS arising from the Recipient's breach of this Agreement and the Recipient shall not plead as a defence to an injunction action by NUS that NUS has an adequate remedy at law.

## **8 RELATIONSHIP**

- 8.1 The Recipient acknowledges and agrees that the disclosure of any Confidential Information shall not be construed as creating any obligation on NUS to furnish information to the Recipient or to enter into any agreement or arrangement with the Recipient or any other party.
- 8.2 The Recipient acknowledges and agrees that no agency or partnership relationship shall be created between NUS and the Recipient by this Agreement, and any inference of such a relationship is hereby expressly excluded.

## **9 RIGHTS CUMULATIVE; NO WAIVER**

- 9.1 The rights and remedies as provided herein are cumulative and not exclusive of any rights and remedies provided by law or equity to any party.
- 9.2 No failure or delay on the part of NUS to exercise any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by NUS of any right, power or privilege preclude NUS from any other or further exercise thereof or the exercise of any other right, power or privilege.

## **10 SEVERABILITY**

- 10.1 If any provision of this Agreement is declared by any judicial or other competent court or authority to be void, voidable, illegal or otherwise unenforceable such provision or part thereof shall be severed from this Agreement and the remaining provisions of this Agreement shall remain in full force and effect.

## **11 ASSIGNMENT**

- 11.1 NUS may assign or otherwise transfer all or any part of its rights or obligations under this Agreement by giving the Recipient not less than seven (7) days' prior notice in writing and the Recipient agrees to execute such documents to effect the same.

## **12 NOTICES**

- 12.1 Any notice which NUS is required to give to the Recipient under this Agreement shall be deemed to have been served on the Recipient if the notice is sent:

- (a) Personally;
- (b) By post to the address provided by the Recipient in its EPS (as defined in Clause 12.4 below) registration form or to such other address as may be provided in writing by the Recipient to the EPS or NUS; or
- (c) By e-mail to the e-mail address provided by the Recipient in its EPS registration form or to such other e-mail address as may be provided in writing by the Recipient to the EPS or NUS.

12.2 Any notice which the Recipient is required to give to NUS shall only be deemed to have been served on NUS if the notice is sent:

- (a) Personally;
- (b) By post to 21 Lower Kent Ridge Road, University Hall, Lee Kong Chian Wing, UHL #03-07, Singapore 119077; or
- (c) By e-mail to [cpo@nus.edu.sg](mailto:cpo@nus.edu.sg).

12.3 Any such notice shall be deemed to have been duly served:

- (a) If delivered personally, on the day of delivery;
- (b) If sent by post, three (3) days after posting; and
- (c) If sent by e-mail, on the day of the conclusion of the transmission.

12.4 The term "EPS" for the purpose of this Clause 12 shall mean the eProcurement system or portal used by NUS to carry out the procurement of Goods, Services and/or Construction Works electronically.

### **13 GOVERNING LAW & GENERAL PROVISIONS**

13.1 This Agreement is governed by and shall be construed in accordance with the laws of Singapore.

13.2 A party who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act (Cap. 53B) and any amendments thereto to enforce any of its terms.

13.3 Subject to Clause 13.4, any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration administered by the Singapore International Arbitration Centre ("SIAC") in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules") for the time being in force, which rules are deemed to be incorporated by reference in this clause. The seat of the arbitration shall be in Singapore. The tribunal shall consist of 1 arbitrator. The language of the arbitration shall be English.

13.4 Nothing in Clause 13.3 shall preclude NUS from resorting to any court of competent jurisdiction for interim or interlocutory injunctive relief.

13.5 This Agreement constitutes the entire understanding between NUS and the Recipient with respect to its subject matter hereof and supersedes all prior agreements or understandings, whether oral or in writing, between them relating thereto. No amendment or modification of this Agreement shall be valid or binding on NUS and the Recipient unless made in writing and signed by or on behalf of both parties.