

Nanyang Technological University, Singapore
Standard Terms and Conditions for the Provision of Gifts
("Standard T&Cs")

1. DEFINITIONS AND INTERPRETATION

1.1 Unless the context otherwise requires, the following expressions shall have the following meanings:

- (a) **"Business Day"** means a day on which commercial banks are open for normal business in Singapore and excludes Saturdays, Sundays and gazetted public holidays.
- (b) **"Donor"** means any individual, firm, corporation, association, foundation or other entity that makes a Gift to the University, including the Donor's successors and assigns.
- (c) **"Endowed Gift"** means any Gift given to the University where only the income generated from the investment of the Gift, can be used for the Purpose.
- (d) **"Gift"** means a contribution, grant, testamentary disposition or otherwise, property and moneys from a Donor that the University receives without making any commitment of resources or services with a commercial value in return, other than naming opportunities and using the Gift as the Donor may designate.
- (e) **"Gift Account"** means the University's record, account or other point of reference or document of record designated, created or generated by the University for the purposes of the management and administration of the Gift.
- (f) **"MOE"** means the Ministry of Education, Singapore.
- (g) **"Parties"** means the Donor and the University, and **"Party"** means either of them.
- (h) **"Recording Document"** means such document recording the Gift in question, whether or not in the nature of a letter from the Donor, an acknowledgement from the University, a gift form as stipulated by the University or a gift agreement or deed between the Donor and the University.
- (i) **"Statutes and Regulations"** means the statutes and regulations of the University as adopted and revised from time to time.
- (j) **"University"** means Nanyang Technological University, including its successors and assigns.

1.2 In these Standard T&Cs, except where the context indicates the contrary:

- (a) **"person"** includes any individual, corporation, company, incorporated or unincorporated body of persons, firm, business, institution, trust, association, joint venture, government, governmental agency or department, any state or agency thereof or other legal entity;
- (b) **"writing"** or any cognate expression includes a reference to any communication effected by mail, facsimile transmission or any other means of electronic communication;
- (c) words importing the singular shall include the plural and vice versa and words denoting a given gender shall include each other gender;
- (d) any reference to **"day"** shall mean a part or whole period of twenty-four (24) hours, ending at twelve (12) midnight;

- (e) headings are inserted for ease of reference only and shall not be taken into account in the construction of or affect the interpretation of any provision to which they refer;
- (f) references to statutory provisions shall be construed as references to those provisions as respectively amended, consolidated, extended or re-enacted from time to time and all statutory instruments or orders made pursuant to them; and
- (g) references to clauses or sub-clauses shall have reference to clauses or sub-clauses of these Standard T&Cs.

2. THE GIFT

- 2.1 The Donor hereby agrees to give a Gift as described in the Recording Document and for such purpose as set out in the Recording Document ("**the Purpose**").
- 2.2 The Donor shall disburse the Gift in the manner as described in the Recording Document.
- 2.3 The Donor acknowledges and agrees that eligibility for tax deduction in respect of the Gift is dependent on the prevailing laws and regulations, including relevant tax laws at the date of the Recording Document and/or the relevant date on which the Gift is made and that any direction, decision, instruction or determination by the Inland Revenue Authority of Singapore (or any applicable authority) (the "**Tax Authorities**") shall be conclusive and binding on the Parties. The University will abide by and comply with such applicable notifications, procedures and law including, where required and in the appropriate circumstances, the University will submit all applicable tax filings to the Tax Authorities and, where applicable, procure the issuance of a tax-deductible receipt. In the event of doubt, the Donor is advised to seek independent professional advice.
- 2.4 The Donor acknowledges that the act of giving of the Gift to the University is irrevocable and the Donor hereby completely and irrevocably assigns by way of the Gift to the University for its use and benefit, the absolute legal and beneficial ownership in, and possession to, the Gift, and all other rights, title and interest in the Gift which are vested in the Donor and the Donor hereby delivers the Gift to the University and places the University in possession and control of the Gift.

3. ADMINISTRATION OF THE GIFT

- 3.1 The administration of the Gift is detailed in the Recording Document.
- 3.2 Subject to Clause 3.3, the University shall have the sole discretion in the management and control of the Gift Account and the Purpose.
- 3.3 The Gift, the Gift Account and the Purpose shall be subject to:
 - (a) the Statutes and Regulations and the University's policies and procedures; and
 - (b) all applicable rules, regulations and guidelines issued by MOE or the relevant authorities.
- 3.4 If no Purpose is stated in the Recording Document, the University shall, subject to Clause 3.3, be entitled to determine the application and purpose of the Gift in its sole and absolute discretion.
- 3.5 The University may charge all reasonable costs and expenses incurred in administering a Gift or the Purpose to the relevant Gift Account.
- 3.6 If the Purpose is fulfilled and there is surplus of the Gift after deducting all the related expenses and costs ("**the Surplus**"), the Donor hereby agrees that the University is entitled to retain the Surplus and has right to use the Surplus at its sole discretion.

- 3.7 In the event that the fulfilment of the Purpose of the Gift becomes unsuitable, ineffective or cannot be carried out according to the directions given by the Donor, whether in whole or in part, the University may recommend, subject to the Donor's agreement in writing, that the Gift be used for such purposes as nearly as possible similar to the original Purpose of the Gift, regard being had to the spirit of the Gift.
- 3.8 If the Donor's agreement cannot be obtained despite reasonable efforts by the University to do so, the Gift may be used by the University for such purposes as nearly as possible similar to the original Purpose, regard being had to the spirit of the Gift.
- 3.9 The University shall not be liable for frustration of the Purpose as a result of changes in the manner of its operations in their ordinary course. The University's acceptance of a Gift shall not be construed as imposing any obligation on the University to continue to make available any facility, programme, course, activity or event pertaining to the Purpose, each of which shall be determined by the University in its ordinary course of operations.

4. ADMINISTRATION OF ENDOWED GIFT

- 4.1 For the purposes of this Clause 4, the "**Gift Account**" shall comprise of the Endowed Gift and any relevant government matching grant.
- 4.2 The University shall have sole discretion in the management and control of the Gift Account and will not be liable to the Donor for any loss, damage, liability or insufficient or inadequate profit made from the Gift Account's investments.
- 4.3 Subject to all the subclauses in Clause 3 (except for Clause 3.6 which is not applicable for an Endowed Gift):
- (a) the funds in the Gift Account may, in the University's sole discretion, be pooled with other funds of the University, including the University's General Endowment Fund and Designated Endowment Fund(s), for investment purposes; and
 - (b) the distributable income attributable to the Gift Account may be applied at the sole discretion of the University so long as any such application shall not result in the reduction of the Gift Account's principal sum.

5. NAMING RIGHT

- 5.1 In the case where the University has conferred a naming right to the Donor in recognition of the Gift (the "**Name**"), the University may withdraw and discontinue the use of the Name or rename it after any one or more of the following circumstances:
- (a) to comply with any applicable rules and requirements of MOE or the relevant authorities;
 - (b) in any other circumstances as may be provided for in the Statutes and Regulations, policies and procedures and, in particular, if the continued use of the Name will adversely affect the reputation of University as a whole; or
 - (c) following an acquisition, merger or dissolution of the Donor.

The University shall, where time permits and in good faith, consult the Donor before any change is made.

- 5.2 Where Clause 5.1 applies, the Donor is deemed to have granted the University an irrevocable, royalty free, non-exclusive and perpetual licence to use the Donor's name and logo ("**Donor's Marks**"), where applicable, in connection with the naming rights set out in Clause 5.1. The Donor shall indemnify and hold harmless the University against any loss, damage, liability, cost or expenses that the University may incur or suffer arising from or in connection with any alleged, purported or actual claim that the Donor's Marks or the use of the Donor's Marks by the

University in accordance with this Clause 5 infringes the rights (including intellectual property rights) of any other party.

6. PUBLICITY

- 6.1 The Donor hereby agrees that the University may identify and publicise the Donor's contribution to the public in any media of its choice, including the University's publications and the University website and, unless otherwise notified by the Donor to the University, refer to the Donor at any time without prior reference to the Donor. Such publicity may not be exclusive to the Donor and may be carried out by the University with other donations, gifts and/or sponsored funds.
- 6.2 The beneficiaries of the Gift may be featured in suitable publications and the University website at an appropriate time. Where applicable, the University may make arrangements for the beneficiaries to meet the Donor, unless the Donor has otherwise notified the University in writing that it does not wish to participate in such arrangements.

7. REPRESENTATIONS AND WARRANTIES

The Donor hereby irrevocably represents and warrants that:

- (a) the Donor has the full power and authority to validly and legally accept and agree to the terms and conditions herein;
- (b) the Donor has full legal capacity to give the Gift to the University, free and clear of all claims, liens, encumbrances and restrictions;
- (c) no other person has any right, title, benefit or interest (whether proprietary, contractual or otherwise) in or to the Gift;
- (d) the Donor is in compliance with (i) applicable financial record keeping and reporting requirements and anti-money laundering statutes in Singapore and of all jurisdictions in which the Donor, its holding company, subsidiaries and affiliates conduct business or operations; and (ii) any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency or proceeding by or before any court or governmental agency; and
- (e) the Donor is not the subject of any action or investigation by any governmental or regulatory entity with regard to any actual or alleged breach of any applicable anti-bribery or anti-corruption laws ("**Anti-Bribery and Corruption Laws**").

8. TRADEMARKS AND TITLES

The name and logo of the University are the trademarks and intellectual property of the University. In the event that the Donor desires to use the name or logo of the University, the Donor shall obtain the prior written approval of the Head of the University Advancement Office of NTU (or such other authorised personnel as may be designated or notified by the University from time to time) prior to the use of the name or logo of the University in any publicity material regarding the Gift.

9. DEFAULT

- 9.1 The University is entitled to withdraw, discontinue and/or cease all rights and benefits of the Donor in the event of:
- (a) any breach or default under the Recording Document and/or these Standard T&Cs by the Donor (including, without limitation, any failure by the Donor to make payment of the Gift (or any part thereof) in accordance with the provisions of the Recording Document and/or these Standard T&Cs);

- (b) reputational or integrity concerns to the University in connection with the Gift and/or the Donor; or
 - (c) a direction or order from the MOE or the relevant authorities.
- 9.2 Upon the occurrence of any event of default as described in Clause 9.1, the University shall:
 - (a) cease any naming rights granted to the Donor;
 - (b) withdraw any benefits which the Donor is entitled to;
 - (c) have no further obligation or liability to the Donor;
 - (d) not be required to return any unutilised portion of the Gift; and
 - (e) have the right to use the Gift at its sole and absolute discretion without the Donor's agreement.
- 9.3 Save as provided herein, termination shall not affect or prejudice any rights or remedies which have accrued to a Party prior to the effective date of termination.
- 9.4 Nothing in this Clause 9 shall be deemed to prejudice any other rights or remedies available to the University against the Donor for any breach of the Donor's obligations.
- 10. TERMINATION OF THE UNIVERSITY'S OBLIGATIONS**
- 10.1 For a non-endowed Gift, the University's obligations under the Recording Document and/or these Standard T&Cs shall cease upon the earlier of:
 - (a) the completion of the utilisation of the Gift by the University;
 - (b) the date on which the Purpose is achieved and satisfied in full;
 - (c) the date the Recording Document is terminated in accordance with its terms and/or by the mutual agreement of the Parties in writing;
 - (d) the termination date contained in the Donor's notice issued in accordance with Clause 9.1; and
 - (e) the expiry of the term of the Gift Account (if any) stated in the Recording Document.
- 10.2 Save as provided herein, termination shall not affect or prejudice any rights or remedies which have accrued to a Party prior to the effective date of termination.
- 10.3 Nothing in this Clause 10 shall be deemed to prejudice any other rights or remedies available to the University against the Donor for any breach of the Donor's obligations.
- 11. INDEMNITY AND LIMITATION OF LIABILITY**
- 11.1 The Donor shall at all times fully indemnify and keep fully indemnified the University against all and any claims, proceedings, actions, liability, loss, damages, costs and expenses (including without limitation legal costs and expenses on a full indemnity basis) that may be brought against or suffered or incurred by the University as a consequence of any breach of the Donor's representations and/or warranties.

- 11.2 Neither Party will be liable to the other Party for any loss of profits, loss of goodwill, loss of business, loss of business opportunities, loss of anticipated savings, loss or corruption of data or information or business interruption costs, or any indirect, special, punitive, incidental or consequential damages however caused) and under any theory of liability (including but not limited to contract, strict liability and negligence or for breach of statutory duty or misrepresentation) whether or not such damages are foreseeable.

12. MATCHING GRANT

- 12.1 The University will, at its discretion and subject to the relevant laws and regulations, following receipt of the Gift (or each relevant instalment of the Gift), apply for a matching grant in respect of the Gift from the MOE. The Donor acknowledges that the provision of such matching grant is at the sole discretion of the MOE and is subject to the applicable laws and regulations at the relevant time.
- 12.2 In the event that the University's application for the matching grant is successful and the matching grant is received by the University (whether in whole or in part), the University will deal with the matching grant in accordance with MOE's requirements and guidelines.

13. NO THIRD PARTY RIGHTS

A person who is not a party to the Recording Document has no rights under the Contracts (Rights of Third Parties) Act 2001 to enforce any term of the Recording Document and/or the Standard T&Cs, and the Parties acknowledge that no right or benefit has been created and was intended to be expressly or impliedly conferred upon any third party under the Recording Document.

14. CONFIDENTIALITY

All communications between the Parties or all non-public information and other material supplied to or received by a Party which is either marked "confidential" or is by its nature intended to be exclusively for the knowledge of the recipient alone shall be kept strictly confidential and it shall not be disclosed to any other third party without the other Party's prior written consent.

15. PERSONAL DATA PROTECTION

The Donor hereby consents to (and where the Donor discloses the personal data of any other individual, the Donor represents, warrants and undertakes that it has obtained the consent of the said individual for) the collection, use and disclosure of the Donor's personal data (or, as the case may be, the relevant individual's personal data) including but not limited to name, nationality and contact information:

- (a) by the University (i) for the purpose of fulfilling its obligations including but not limited to the management and administration of the Gift and for publicity of the Donor's Gift (including the Donor's personal data, where required); (ii) for internal and external audit, compliance and record-keeping purposes including but not limited to statutory reporting and/or record-keeping requirements; and (iii) when required by law or an order of court; and
- (b) by authorised agents and service providers appointed by the University, whether in Singapore or outside of Singapore, who provide or supply, without limitation, payment processing, mailing, manpower, telecommunications or other business support and operations services.

16. AMENDMENTS AND INTERPRETATION

- 16.1 These Standard T&Cs may be amended by the University from time to time, to the extent permitted by law, and any amendments shall take effect from the date of such amendment unless otherwise stated by the University.
- 16.2 In the event that the Recording Document and/or these Standard T&Cs is prepared in any language other than English, the English version shall in all events prevail and be paramount in the event of any discrepancies, questions or disputes concerning the meaning, form, validity, or interpretation of the Recording Document and/or these Standard T&Cs.
- 16.3 In the event of any conflict or inconsistency between the Statutes and Regulations, the Recording Document and the Standard T&Cs, the following order of precedence shall apply (in descending priority): (a) the Statutes and Regulations, followed by (b) the terms in the Recording Document, and followed by (c) the Standard T&Cs.

17. GOVERNING LAW AND DISPUTE RESOLUTION

- 17.1 The Recording Document and/or these Standard T&Cs shall be governed by and construed in accordance with the laws of the Republic of Singapore.
- 17.2 The Parties agree that each Party will, in good faith, use every effort to resolve promptly any dispute or claim concerning the existence, scope, meaning, construction, performance, enforcement, termination or effect of the Recording Document and/or these Standard T&Cs or any issue arising, whether directly or indirectly, therefrom ("**Dispute**").
- 17.3 In the absence of settlement through negotiation, any Dispute 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 SIAC for the time being in force, which rules are deemed to be incorporated by reference in this clause. The tribunal shall consist of one (1) arbitrator. The place of arbitration shall be Singapore and the arbitration shall be conducted wholly in the English language.

18. NOTICES

- 18.1 Any notice to be issued pursuant to the Recording Document and/or these Standard T&Cs shall be in writing and in English.
- 18.2 Any notice to be given by a Party shall be in writing and shall be deemed duly served if delivered personally or by prepaid registered post, or by e-mail to the addressee or sent to the address of that Party as set out in the Recording Document, or at such other refreshed address as may be informed by one Party to the other.
- 18.3 Any notice given pursuant to Clause 18.2 shall be deemed to have been received:
- (a) in the case of delivery by hand, when delivered; or
 - (b) in the case of sending by post:
 - (i) where posted in the country of the addressee, on the third (3rd) Business Day following the day of posting; and
 - (ii) where posted in any other country, on the seventh (7th) Business Day following the day of posting; or
 - (c) if sent by email on a Business Day and at a time which is during business hours on a Business Day, at the time it is transmitted to the relevant email box specified above.

19. INDEPENDENT PROFESSIONAL ADVICE

The Donor acknowledges that the University has no responsibility to provide any advice or recommendations to the Donor in connection with the Gift, the Recording Document and/or these Standard T&Cs and, accordingly, the Donor acknowledges and agrees that (a) it has had, or has had the opportunity to obtain, independent legal and other professional advice in connection with the Gift, the Recording Document and/or these Standard T&Cs and (b) it will not rely on any advice or recommendations made or purported to be made by the University (including its officers, employees, agents and contractors) in connection with the Gift, the Recording Document and/or these Standard T&Cs.

20. SEVERANCE

If, at any time, any provision of the Recording Document and/or these Standard T&Cs is or becomes illegal, invalid or unenforceable in any respect, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision will in any way be affected or impaired.

21. ENTIRE AGREEMENT

The Recording Document, together with these Standard T&Cs and the University's Statutes and Regulations, constitutes the entire agreement of the Donor and the University in relation to the subject matter of the Recording Document.

22. NO PARTNERSHIP

Nothing in the Recording Document and/or these Standard T&Cs is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute any Party the agent of another Party, or authorise any Party to make or enter into any commitments for, or on behalf of, the other Party.

23. SUCCESSORS AND ASSIGNS

These Standard T&Cs shall be binding upon the Donor, estate, trusts, heirs, legal representatives and successors and assigns and upon the successors and assigns of the University.

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