MODEL SOLUTIONS TO SE-ITL SAMPLE QUESTIONS

SECTION A

Question 1   *(Total: 20 Marks)*

a.

Clause	Description/Justification
Company's Obligation	Describes what information and software that the company must provide the Beta tester with. Also the company must describe what output is expected from the Beta testers and what format the Beta testers output must be in
Beta Testers Obligations	The Beta tester shall test Software as they would anticipate users with their designated role would behave during the test period. The Beta tester shall gather and report test steps and test results to the Company. Beta tester will also compile list of suggested improvements to the software. Tester shall allow Company access to Software for inspection, modifications and maintenance.
Trade Secret	The Software is proprietary to, and a valuable trade secret of, Company. It is entrusted to Beta tester only for the purpose set forth in this contract. Beta tester shall maintain Software in the strictest confidence. Beta tester will not, without Company's prior written consent: • disclose any information about Software, its design, its code, and the existence of the beta test and its results to anyone other than the other Beta tester who are also performing the testing and who shall be subject to nondisclosure restrictions at least as protective as those set forth in this Agreement; • Copy any portion of Software or documentation, except to the extent necessary to perform beta testing; • Reverse engineer, decompile or disassemble Software or any portion of it
Security Precautions	Beta tester shall take reasonable security precautions to prevent Software from being seen by unauthorized individuals
Term of Agreement	• The period of the active work of the contract

Clause	Description/Justification
	• Any restrictions or obligations that will persist after the contract has completed, e.g. preservation of trade secrecy
Costs and Payment	Description of the financial compensation due to the Beta tester, the dates on which it will be paid , and any conditions (such as satisfactory completion of work) payment may be dependent on
Return of Software and Materials	Upon the conclusion of the testing period or at Company's request, Tester shall s return the original and all copies of Software and all related materials to Company and delete all portions of Software from their computer memory
Disclaimer of Warranty	Software is a test product and its accuracy and reliability are not guaranteed. The Beta tester • Shall not rely exclusively on Software for any reason. • Waives any and all claims Tester may have against Company arising out of the performance or nonperformance of Software
Limitation of Liability	Company shall not be responsible for any loss or damage to the Beta tester or any third parties caused by Software.
Assignment	This Contract and associated work is personal to the Beta tester. The tester shall not assign work or otherwise transfer any rights or obligations under this Agreement
General Clauses	Such as governing laws, rights of waiver etc….

Marking Scheme:
- *2 marks for each clause named and detailed as above*
- *leading to a maximum of 16 marks*
- *Other intelligent and justified solutions by candidates considered*

(16 Marks)

b.   There are at least two ways in which this contract could be improved:

- Firstly the way the Beta testers will test the software seems to be highly arbitrary, and very unstructured. It might be suggested that the Beta testers be asked to prepare individual test plans for review by *Mahayana pte Ltd*

(2 Marks)

- Secondly it may not be such a good idea for the work to parceled out as a series of individual contracts to specific gamers, as this means each gamer may take his own individualized approach to testing and reporting results. This could lead to extra work on the part of Mahayana *pte Ltd* to combine together the results of beta testing. It may be better to let out a single contract to the entire group of Beta testers, or maybe the *Upper Serangoon Computer Gaming Club,* and pass the responsibility for coordinating and managing the beta testing process

(2 Marks)

Question 2   *(Total: 15 Marks)*

a.   In order to protect your ownership and IPR of this software you must;
   - Rely on the copyright associated with the software, this is probably the main protection associated with the software

                                                                           (2 Marks)

   - Also the End User License would specify very clearly the limitations placed on the user when he purchased the software. In fact you would ensure that
        - Clauses stating that the software could only be used with one PC, and the license could not be resold or transferred would be part of the License
        - Clauses stating that the software cannot be reverse engineered, modified, or copied must also be part of the license

                                                                           (2 Marks)

   - You may consider patenting the algorithms that package data for transmission, and also algorithms that will compress and package images for transmission as these are innovative methods that you may want to protect

                                                                           (1 Mark)

b.   It may be advisable here to seek a patent for the *Business Success Innovation Pathfinder* as quite clearly a new method or process that
   - Is non-obvious and novel
   - Has practical application
   - Brings about some benefit

                                                                           (2 Marks)

   Patenting would bring the advantage that the method would be exclusively PA's for at least 20 years. After 20 years it is almost certain that it will have been succeeded by newer methodologies. However it is also certain that a widespread general knowledge of this *Business Success Innovation* methodology will be known, as it will be used in many different companies and business areas. Patenting will protect you from copying given this situation. It will also allow you to license other organizations to use it, and also to train other companies in using it.

                                                                           (2 Marks)

   Alternatively you may wish to patent the *Business Success Innovation* methodology itself, and either patent, or rely on copyright to protect the *Business Success Innovation Pathfinder*

                                                                           (1 Mark)

c.   The database, or more accurately the information within the database is quite clearly a <u>trade secret</u>, as it falls within the definition of:

"A trade secret is a formula, practice, process, design, instrument, pattern, or compilation of information used by a business to obtain an advantage over competitors or customers". It is therefore protected by law if

- It is not public knowledge, or general industrial knowledge
- You have made reasonable attempts to protect this knowledge

(2 Marks)

As part of these attempts you must

- Create a Non-disclosure agreements with your employees who are involved in the "Cincture of Grace" production
- Create a Non-disclosure agreements with "Good Health" before serious technical discussions begin
- Ensuring that the database is physically and electronically protected

(3 Marks)

SECTION B

Question 3   *(Total: 15 Marks)*

a.   The Copyright exists in the map.

(1 Mark)

Bennett is the author of the maps. Before the map was published, it was unclear whether copyright exist or not, since we do not know Bennett's nationality. If Bennett is a Singapore citizen or a citizen of a country member of the WTO or Berne Convention, then copyright exists in respect of the unpublished map.

(2 Marks)

If copyright is jointly authored by Alfian, Bennett and Cassia, then copyright exists in respect of the unpublished work, since Alfian is a Singapore citizen and thus a qualified person.

(1 Mark)

The maps were eventually first published in Singapore. Copyright subsists in respect of the published maps since they were first published in Singapore.

(1 Mark)

b.   Bennett is the author of the maps. Thus, by default he would be the owner of the copyright.

(2 Marks)

However, it is possible that Bennett's company owns the maps, since it was a term of the employment contract that Bennett's company shall own all intellectual property

(2 Marks)

However, the drawing of the maps were not made pursuant to the Bennett's employment, but was an "extra curricular" activity. Thus, it is possible that Bennett's owns copyright in the maps even though he used company resources and time to draw the maps.

(2 Marks)

It is possible also that A, B and C jointly or together own the maps as joint authors.

(1 Mark)

c.   Since the maps were published or made available to the public before the date of patent application, the patent is invalid because the invention is not new at the time of application of the patent.

(1 Mark)

d.   By entering an agreement to state that Alfian, Bennett and Cassia are joint copyright owners.

(1 Mark)

e.   DD Enterprise infringed Artistic works copyright

(1 Mark)

Question 4   *(Total: 20 Marks)*

a.   It is possible that the Bank can sue for breach of confidence, even though there is no express confidentiality agreement between the parties.

(2 Marks)

The Bank does not have to sue for breach of contract.

(1 Mark)

The bank can sue for breach of confidence, provided the Bank can show four matters:

i.   Bank to identify information;
ii.   Bank handed over info in circumstances of confidence;
iii.   Information was of a confidential nature;
iv.   Information was used without permission.

(2 Marks)

b.   It is possible that the Bank can sue for breach of contract.

(1 Mark)

The Bank can sue for damages for breach of contract for delay.

(1 Mark)

The Bank can also sue for damages for breach of contract for errors in the computer system.

(1 Mark)

However, the Bank is unlikely to be able to terminate the contract on the ground of delay unless it time is of the essence.

(1 Mark)

It is also unlikely that the Bank can terminate the contract on the ground of error in the system, unless the error is a major error.

(1 Mark)

c.   The Bank probably cannot sue for copyright infringement.

(1 Mark)

Serious Software is a vendor/contractor. Between a contractor and a client/employer, the contractor owns the copyright in the system, unless the agreement provides for it otherwise.

(1 Mark)

Since Serious Software is the contractor and the agreement does not provide that the Bank shall own the copyright, Serious Software would own the intellectual property/copyright produced by Serious Software pursuant to their terms of engagement.

(2 Marks)

Besides, the owner now is Competitive Bank of Malaysia. Serious Software has by agreement transferred ownership of the copyright to Competitive Bank of Malaysia.

(1 Mark)

d.   The Bank probably cannot sue for patent infringement.

(1 Mark)

Between a contractor and a client/employer, the contractor owns the invention, unless the agreement provides for it otherwise.

(1 Mark)

Since Serious Software is the contractor and the agreement does not provide that the Bank shall own the patent, Serious Software would own the intellectual property produced by Serious Software pursuant to their terms of engagement. Serious Software is entitled to register itself as the registered proprietor of the patent.

(1 Mark)

The owner of a patent is the registered proprietor of the patent.

(1 Mark)

Besides, the patent has not yet been granted. A person can sue for patent infringement only after the patent is granted.

(1 Mark)