

**HONG KONG BAPTIST UNIVERSITY (“University”)**  
**GENERAL CONDITIONS OF CONTRACT FOR SERVICES**

(The Contractor and the University are hereinafter referred to collectively as the “**Parties**” and individually as a “**Party**”)

**1. Contractor’s Acknowledgement and Contract Performance**

- 1.1 The Contractor acknowledges and agrees that it has been supplied with sufficient information to enable it to execute or perform the Services for the University, which shall comply fully with the requirements set out in the Technical Specifications and other provisions of the Contract. The Contractor shall not be entitled to any additional payment nor be excused from any liability under the Contract as a consequence of any misinterpretation by the Contractor of any matter or fact relating to the Technical Specifications or any other provisions of the Contract.
- 1.2 The Contractor further acknowledges that the University relies on the skill and judgment of the Contractor in the execution of the Services and the performance of the Contractor’s obligations under the Contract.
- 1.3 The Contractor undertakes to use its best endeavours to provide the Services to the University in a timely, safe, proper, skilful and workmanlike manner and shall perform its obligations under the Contract:
- (a) with appropriately experienced, qualified and trained personnel and with all due care, skill and diligence in accordance with the best methods and practices for such type of services; and
  - (b) in compliance with all applicable laws (including but not limited to The Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region), rules and regulations, the terms and conditions of the Contract, and any guidelines and/or requirements issued by the University from time to time.
- 1.4 The Contractor shall be responsible for the completeness and accuracy of all drawings, documents and information supplied by the Contractor to the University in connection with the Services. Without prejudice to any other provisions of the Contract, the Contractor shall fully indemnify, defend and hold harmless the University, its authorised users, employees, agents, assigns and successors-in-title from and against all losses, liabilities, actions, claims, demands, proceedings, charges and damages arising from, and costs and expenses incurred in connection with, any discrepancies, errors or omissions therein.
- 1.5 The Contractor shall not undertake any service, task or activity, or do anything whatsoever, which has interference with or adverse effect on the Contractor’s performance of, or the Contractor’s ability to perform, the Services or its obligations under the Contract.

**2. Warranties and Representations**

- 2.1 The Contractor warrants, represents and undertakes that:
- (a) the Services conform in all respects to the Technical Specifications and comply with the requirements specified in the Technical Specifications and any particulars or

conditions specified in the Contract;

- (b) all consents, approvals, licences, authorizations, permits, exemptions, requirements and certificates of any governmental, administrative or other authority or body in any relevant jurisdiction which are required to authorise the Contractor to execute, deliver and perform the Services and the Contractor's obligations under the Contract (including where the Contractor's procedures so require, the consent of its parent company) (collectively, "**Consents**") have been duly and unconditionally obtained and fulfilled and are in full force and effect, and the use of the Services by the University will not contravene any applicable laws or regulations or third party rights;
- (c) the Contractor has full power, capacity and authority to enter into the Contract and to perform its obligations under the Contract;
- (d) the Contract constitutes valid and legally binding obligations of the Contractor enforceable in accordance with its terms and conditions;
- (e) all costs, charges and expenses that may be incurred in obtaining and maintaining the Consents throughout the Contract Period shall be fully borne by the Contractor;
- (f) all information and documents supplied, and statements and representations made by or on behalf of the Contractor in or in relation to its Tender and the Contract are genuine, true, accurate and complete;
- (g) no claim is being made and no litigation, arbitration or administrative proceedings are presently in progress, or to the best of the Contractor's knowledge and belief, pending or threatened against it or any of its assets which will or may have a material adverse effect on its ability to perform its obligations under the Contract;
- (h) it is not subject to any contractual obligation, court judgment, court ruling, court order or arbitration decision, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- (i) no proceedings or other steps have been taken and not discharged (nor to the best of its knowledge, are threatened) for the winding up or bankruptcy of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar office in relation to any of the Contractor's assets or revenue;
- (j) it owns, has obtained or is able to obtain valid licences of all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- (k) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or on its ability to fulfil its obligations under the Contract; and
- (l) it shall keep the University informed of all matters related to the Contract within the actual or constructive knowledge of the Contractor and shall answer all enquiries received from the University.

2.2 The warranties, representations and undertakings, expressed or implied, contained in Clause 2.1 and other provisions of the Contract and those made by the Contractor from time to time in the course of performance of the Contract (collectively, "**Warranties**" and each, a

“**Warranty**”) shall be true without limitation in time and shall be true on each day of the Contract Period as if such Warranties were repeated on each such day.

- 2.3 Each of the Warranties shall be separate and independent and without prejudice to any other Warranty, and shall not be limited by reference to or inference from any other Warranty or any other provision of the Contract.
- 2.4 Unless otherwise expressly excluded from or provided to the contrary in the Contract, the rights, duties and liabilities imposed on a service supplier and the rights conferred on the party contracting with the service supplier under the Supply of Services (Implied Terms) Ordinance (Chapter 457 of the Laws of Hong Kong) and the Trade Descriptions Ordinance (Chapter 362 of the Laws of Hong Kong) apply to bind the Contractor and the University respectively.

### **3. Total Services and Variation**

- 3.1 The Services to be performed under the Contract shall be as laid down in the Technical Specifications and Special Conditions of Contract (if any) and shall be carried out in accordance with the timetable as set out in the Contract; or for those Services which are to be performed on demand, as and when required, to the satisfaction of the Inspecting Officer. For those Services to be performed on demand, all orders placed under the Contract shall be issued in writing and the University will not be responsible for or pay for Services performed on oral instructions issued by any person whomsoever.
- 3.2 The Contractor shall not extend the Services beyond the requirements specified in the Technical Specifications and Special Conditions of Contract (if any) except as directed in writing by the University; but the University may at any time during the Contract Period by notice in writing direct the Contractor to alter, amend, omit, add to, or otherwise vary any of the Services and/or the Contract Period, and the Contractor shall carry out such variations, and be bound by the same conditions, so far as are applicable, as though the said variations were stated in the Schedule, provided that no such variation shall involve a net addition to or deduction from the Contract Price of more than 20% or the Contract Period of more than six (6) months, unless otherwise mutually agreed in writing by the Contractor and the University.
- 3.3 Where a variation has been made to the Contract, the amount to be added to or deducted from the Contract Price in accordance with that variation shall be determined in accordance with the rates specified in the Price Schedule so far as the same may be applicable and where rates are not contained in the Price Schedule, or are not applicable, such amount shall be such sum as is reasonable in the circumstances.
- 3.4 Due account shall be taken of any partial execution of the Services which are rendered useless by any such variation.
- 3.5 Subject to the ordering and arrangement of provision of Services specified in the Special Conditions of Contract for the Services, for any Services which are stated to be provided upon demand, whenever required by the University by a written order issued to the Contractor during the Contract Period (“**Order**”), the Contractor shall provide to the University the Services so specified in the Order in accordance with the Order and the provisions of the Contract.
- 3.6 Notwithstanding any provision of the Contract, due provision of any Services to the University shall not be regarded to have taken place unless and until such Services are accepted by the University in writing.

#### **4. Quality of Services and Materials Provided by University**

- 4.1 The Services performed under the Contract shall conform to the specifications or terms as specified in the Price Schedule and shall fulfil all the conditions and terms in Technical Specifications, Special Conditions of Contract (if any), any drawings and specifications (if any) supplied to the Contractor or other provisions of the Contract.
- 4.2 Any drawings and specifications reasonably required for the Contractor's guidance in the execution of the Contract shall be provided by the University free of charge but shall be returned to the University forthwith upon completion, expiry or termination of the Contract or upon request by the University.

#### **5. Inspection and Acceptance**

All Services performed in pursuance of the Contract shall be subject to inspection by the University, the Inspecting Officer and/or other person or entity appointed by the University and shall not be deemed to have been accepted unless either:

- (a) the University or the Inspecting Officer shall so certify; or
- (b) the Services (or any part thereof) are not rejected or regarded as being unsatisfactory within twenty-one (21) days from the date upon which the Services are fully executed.

#### **6. Rejections**

- 6.1 Without prejudice to any other rights, powers and remedies, the Inspecting Officer or the University may reject any Services performed (or part thereof) which do not strictly conform to the terms and conditions of the Contract.
- 6.2 Within 24 hours from being notified in writing of the rejection of any Services performed (or part thereof), the Contractor shall be required to take necessary actions to rectify such rejected Services at its sole costs and expenses. The rectification shall be completed within such time as may be stipulated by the University in that notice.
- 6.3 The University shall be entitled to withhold payment of the Contract Price until such rejected Services are fully rectified by the Contractor.

#### **7. University Property**

When a property of the University is issued to the Contractor under the Contract, the Contractor shall be responsible for the due return of all such property to the University forthwith upon completion, expiry or termination of the Contract or upon request by the University. Should any such property be lost or damaged from any cause whatsoever while in the possession or control of the Contractor or its servants, workmen, employees, sub-contractors or agents, the Contractor shall pay the University for the same at the rate of total original cost of such property plus 20%. A count of the articles, documents, property or materials in the possession of the Contractor may be made at any time by the University and the Contractor shall render all such assistance as is necessary for this purpose.

#### **8. University Premises / Contractor's Premises**

- 8.1 The Contractor shall ensure that all persons and entities engaged by it in carrying out its obligations under the Contract remain at such parts of University premises as are necessary for the due discharge of the Contractor's obligations under the Contract.
- 8.2 Where the Services are carried out on the Contractor's premises, such premises shall be open to inspection by the University or Inspecting Officer at all reasonable times.
- 8.3 The safety of any craft, vessel and vehicle used by the Contractor and brought alongside or onto University's premises shall be the responsibility of the Contractor, which shall fully indemnify, defend and hold harmless the University, its authorised users, employees, agents, assigns and successors-in-title in respect of, from and against any loss or damage to such University's premises.

## 9. Intellectual Property Rights

- 9.1 The Contractor warrants that the execution of and the use of the Services under the Contract do not and will not infringe the Intellectual Property Rights or any other rights of any party.
- 9.2 The Contractor shall notify the University in writing immediately if any claim for infringement or alleged infringement of any Intellectual Property Rights is lodged against it whether during or after the expiry of the Contract Period in respect of the Services and shall render all assistance to the University for defending against or responding to such claim.
- 9.3 All Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs, documents, records, equipment, works, and other materials and property (collectively, "**IP Materials**"):
- (a) furnished to or made available to the Contractor by or on behalf of the University are and shall remain the property of the University at all times, and shall be returned to the University forthwith upon completion, expiry or termination of the Contract or upon request by the University; and
  - (b) prepared, made, created or developed by, on behalf of or for the Contractor for use, intended use or otherwise arising from or in relation to the performance by the Contractor of its obligations under the Contract shall solely belong to the University.
- 9.4 The Contractor hereby assigns to the University, absolutely and with full title guarantee, all Intellectual Property Rights of or which may subsist in the IP Materials referred to in Clause 9.3(b) ("**Assignment**"). The Assignment shall take effect on the date of the Contract or as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by, on behalf of or for the Contractor arising from or in relation to the performance of the Services or its obligations under the Contract. The Contractor shall forthwith execute all documents and do or procure the doing of any further things as may be reasonably required by the University and co-operate with the University to the fullest extent possible to give effect to the Assignment, including without limitation the provision of assistance in any proceedings taken place before the court or intellectual property office in any jurisdiction. The Contractor further represents, warrants and undertakes that:
- (a) all the IP Materials referred to in Clause 9.3(b) shall be original and shall not contain anything which is libellous of or defamatory against, or which infringes any Intellectual Property Rights or any other rights of, any person or entity;

- (b) the Contractor has not granted, assigned or licensed, and will not grant, assign or license, any rights, title and interest of any nature in the IP Materials referred to in Clause 9.3(b) to any third party whatsoever in any part of the world;
  - (c) the Contractor shall not use or allow to be used directly or indirectly the IP Materials except for the performance of its obligations under the Contract or except with the prior written approval of the University. For the purpose of this Clause, “use” includes any acts restricted by copyright (including reproduction) set out in sections 22 to 29 of the Copyright Ordinance (Chapter 528 of the Laws of Hong Kong); and
  - (d) the exercise of any of the rights, title and interest granted under the Contract and the use of the Services by the University, its authorised users, employees, agents, licensees, assigns and successors-in-title will not infringe the Intellectual Property Rights or any other rights of any person or entity and shall be free of any royalty or other payment to any party.
- 9.5 The Contractor irrevocably waives and shall procure an irrevocable waiver of all moral rights (whether past, present or future) subsisting in copyright produced by, on behalf of or for the Contractor in the performance of the Contract. Such waiver shall operate in favour of the University, its authorised users, assigns and successors-in-title and shall take effect upon creation of such IP Materials referred to in Clause 9.3(b). In this Clause, “moral rights” means the moral rights referred to in the Copyright Ordinance (Chapter 528 of the Laws of Hong Kong).
- 9.6 The Contractor further undertakes to procure that each third party owner of any Intellectual Property Rights which are or may be used to perform the Contract grants to the University, its authorised users, assigns and successors-in-title a non-exclusive licence, or if it is a licensee of those rights, shall grant to the University, its authorised users, assigns and successors-in-title an authorised sub-licence, to use (including doing any of the acts restricted by copyright set out in sections 22 to 29 of the Copyright Ordinance (Chapter 528 of the Laws of Hong Kong)), reproduce, modify, develop and maintain such Intellectual Property Rights for all purposes contemplated by the Contract. The said licence or sub-licence shall be non-exclusive, irrevocable, worldwide, perpetual, royalty-free, transferable and sub-licensable. Without prejudice to the foregoing, the University may novate, transfer or assign the said licence or sub-licence, or further sub-licence it to any replacement contractor or any other third party supplying services to the University free of any royalty or other payment to any party.
- 9.7 Without prejudice to any other provision of the Contract, the Contractor shall fully indemnify, defend and hold harmless the University, its authorised users, employees, agents, assigns and successors-in-title and keep them fully and effectively indemnified from and against all claims, actions, proceedings, liabilities, losses, damages, demands, charges, costs and expenses of whatsoever nature (including legal fees and costs) arising from or in relation to any infringement or alleged infringement of any Intellectual Property Rights in connection with the Services or any IP Materials therein.
- 9.8 In the event of a claim being received by the University alleging or the University having grounds to believe that the Services executed hereunder or any IP Materials therein or arising therefrom are infringing or have otherwise infringed the Intellectual Property Rights of a third party, the University may:
- (a) forthwith terminate the Contract in respect of the Services not yet executed; or

- (b) suspend the performance of the Contract until the claim in question is resolved to the satisfaction of the University provided that the election to suspend performance under this Clause shall not preclude the University from terminating the Contract at any time thereafter.
- 9.9 The University shall not be liable to pay any cost or compensation to the Contractor by reason of any termination under Clause 9.8 irrespective of whether the Services or any IP Materials therein are later found by a court of law to have infringed any person's Intellectual Property Rights or not.
- 9.10 The rights of the University under Clauses 9.8 and 9.9 shall be without prejudice to the provisions of Clauses 9.2 and 9.7.

## **10. Payment for Services**

- 10.1 In consideration of the Contractor's due and proper performance of all its obligations in accordance with the Contract, the University shall pay the Contractor the Contract Price in accordance with the payment timetable set out in the Price Schedule.
- 10.2 Notwithstanding any provision in the Contract, unless otherwise agreed in writing by the University, in respect of any Services provided to the University, the University shall not have any obligation to pay the Contractor any Contract Price for such Services unless and until the Services have been accepted by the University in the manner prescribed in the Contract, and the University shall pay the Contractor the Contract Price for such Services within thirty (30) days after the date of University's acceptance of the Services.
- 10.3 The Contractor shall render to the University:
- (a) an itemised account on or before the 10th day of each month of the charges which it considers due to it for Services completed under the Contract; or
  - (b) on completion of any separate portion of the Services (in respect of which a charge is laid down in the Price Schedule) an account for such portion.
- 10.4 All such accounts shall be signed by the University or the Inspecting Officer. Unless otherwise agreed by the University, such accounts shall be paid within thirty (30) days from the date upon which:
- (a) the said accounts are signed by the University or Inspecting Officer, or
  - (b) the Services have been accepted pursuant to Clause 5,
- whichever date is the earlier.
- 10.5 The Contractor agrees and acknowledges that it is the Contractor's own responsibility to report and pay any local and foreign taxes arising from any payment made by the University to the Contractor under the Contract.
- 10.6 Unless specifically stated in the Contract, apart from the Contract Price, no other money shall be payable by the University to the Contractor or any other person under the Contract, and the Contractor shall perform, comply with and observe all provisions of the Contract at its own

costs and expenses and shall not be entitled to any adjustment in the Contract Price for any reason.

- 10.7 Notwithstanding any provision of the Contract, the University is entitled to withhold payment of all or any part of the Contract Price and any other sum payable by the University to the Contractor under the Contract if:
- (a) the Contractor fails to observe or perform any provision of the Contract;
  - (b) the University disputes on any reasonable ground its obligation to pay the amount in question;
  - (c) the University has reasonable grounds to believe that the Contractor is or will be liable to the University under any provision of the Contract for the loss or damage suffered by the University; or
  - (d) withholding of payment is required by any applicable law or regulation.
- 10.8 No payment made by the University under the Contract shall prejudice or carry any implication whatsoever on any rights or cause of action which has accrued or may accrue, or any remedy available, to the University in respect of any breach of the Contract by the Contractor.

## **11. No Employment of Illegal Workers and Employees' Statutory Entitlements**

The Contractor undertakes (a) not to employ illegal workers in the execution of the Contract, and (b) to offer to all employees who participate in the discharge of the obligations of the Contractor under the Contract all the relevant statutory entitlements under the applicable laws in Hong Kong including but not limited to those prescribed under the Employment Ordinance (Chapter 57 of the Laws of Hong Kong), Factories and Industrial Undertakings Ordinance (Chapter 59 of the Laws of Hong Kong), Employees' Compensation Ordinance (Chapter 282 of the Laws of Hong Kong), Occupational Safety and Health Ordinance (Chapter 509 of the Laws of Hong Kong) and Minimum Wage Ordinance (Chapter 608 of the Laws of Hong Kong).

## **12. Contract Deposit**

- 12.1 If and when required by the University, as security for the due and faithful performance of the Contract by the Contractor, the Contractor shall deposit with the University (via the Director of Finance) within twenty-one (21) days from the date of Tender Acceptance an amount equivalent to 2% of the Contract Price (“**Contract Deposit**”).
- 12.2 The Contractor shall pay the Contract Deposit either in cash or in the form of a banker's guarantee. If the Contractor pays the Contract Deposit by way of a banker's guarantee, the banker's guarantee must comply with the following:
- (a) it must be issued by a bank that holds a valid banking licence granted under the Banking Ordinance (Chapter 155 of the Laws of Hong Kong) and acceptable to the University for the purpose of issuing banker's guarantee for the Contract Deposit;
  - (b) unless otherwise agreed by the University, it must be on the terms set out at Part II of



the Terms of Tender (Supplement) (if any); and

- (c) the banker's guarantee shall come into effect on the date of commencement of the Contract Period unless another date is specified in the Tender Acceptance as the date on which the banker's guarantee is to take effect. In the event that another date is so specified, the banker's guarantee shall take effect no later than such date.

12.3 If the Contractor fails to comply with Clause 12.1 or 12.2, the University may terminate the Contract immediately without any liability for compensation or damages.

12.4 Without prejudice to Clause 12.3, if the Contractor fails to comply with Clause 12.1 or 12.2, the University may withhold from any sum due or payable by the University to the Contractor from time to time such amount(s) which in aggregate do not exceed the amount of Contract Deposit payable to the University under Clause 12.1. The University may apply the amount(s) so withheld to satisfy the Contractor's obligation under Clause 12.1 in full or in part, and the amount(s) so applied shall be treated as Contract Deposit (or part thereof) paid in cash pursuant to Clause 12.1.

12.5 If:

- (a) the Contractor fails to comply with any provision of the Contract, the University may deduct from the Contract Deposit paid in cash, or call on the banker's guarantee, to recover the amount of costs, losses, damages or expenses suffered or incurred by the University arising from or relating to such failure; or
- (b) any amount is due or payable by the Contractor to the University under the Contract, the University may deduct from the Contract Deposit paid in cash, or call on the banker's guarantee, to recover the amount due or payable,

in each case irrespective of whether or not a demand for payment has been made against the Contractor.

12.6 The Contract Deposit (whether paid in cash or in the form of the banker's guarantee) may be deducted or called on by the University without the University first having recourse to any other security or rights or taking any other steps or proceedings against the Contractor or any other person, and may be enforced for any balance due after resorting to any one or more of other means of obtaining payment or discharge of the monies, obligations and liabilities owing by the Contractor to the University.

12.7 If any deduction is made by the University from the Contract Deposit or a call is made on the banker's guarantee any time prior to the expiry or termination of the Contract, the Contractor shall, within twenty-one (21) days after the date of the written demand by the University, deposit a further sum or provide a further banker's guarantee, in a sum equal to the amount so deducted or so called, which further sum shall be added to the residue and form part of the Contract Deposit. If the Contractor is required to provide a further banker's guarantee under this Clause, the further banker's guarantee must comply with the requirements in Clauses 12.2(a) and (b) and shall come into effect on the date of its execution.

12.8 If the Contractor fails to comply with Clause 12.7, the University may terminate the Contract immediately.

12.9 Upon the expiry or termination of the Contract:

- (a) if the Contract Deposit is paid in cash, on the condition that the Contractor has performed and discharged all its obligations and liabilities under the Contract to the University's satisfaction, the University shall, after deducting the sums due from the Contractor to the University, return the balance of the Contract Deposit in cash and without interest to the Contractor within three (3) months after the expiry or termination of the Contract; or
- (b) if the Contract Deposit is paid by way of a banker's guarantee, the banker's guarantee shall be discharged and released in accordance with its terms.

### 13. Variations

Subject to the provisions of the Contract, no waiver, cancellation, alteration or amendment of or to the provisions of the Contract shall be valid unless made by an instrument in writing and duly signed by the Contractor and the University.

### 14. Liability and Indemnities

14.1 Neither the University nor any of its employees, authorised users, assigns, successors-in-title or agents shall be under any liability whatsoever for or in respect of:

- (a) any loss of or damage to any of the Contractor's property or that of its employees, sub-contractors or agents however caused (whether by any Negligence of the University or any of its employees, authorised users, assigns, successors-in-title or agents or otherwise); or
- (b) any injury to or death of the Contractor (in the case where the Contractor is a natural person) or any of its employees, sub-contractors or agents, save and except any such injury or death caused by the Negligence of the University or any of its employees or agents.

14.2 Without prejudice to any other provision of the Contract, the Contractor shall fully indemnify, defend and hold harmless each of the University and its employees, authorised users, assigns, successors-in-title and agents (each an "**Indemnified Person**") from and against:

- (a) any and all claims (whether or not successful, compromised, settled, withdrawn or discontinued, in whole or in part), actions, investigations, demands, arbitrations, proceedings or judgments, joint or several, threatened, brought or established against an Indemnified Person ("**Claims**"); and
- (b) any and all liabilities, losses, damages, costs, charges or expenses (including (i) all legal fees and other awards, costs, payments, charges and expenses and (ii) any loss or damage sustained by or from any injury to or death of any person or any loss of or damage to property) which an Indemnified Person may pay or incur as a result of or in relation to any Claims,

which in any case arise directly or indirectly from, in connection with, out of or in relation to:

- (i) the performance or breach of any provisions of the Contract by the Contractor, or its employees, agents or sub-contractors;

- (ii) the negligence, recklessness, tortious acts or wilful act or omission of the Contractor, or its employees, agents or sub-contractors;
- (iii) any default, unauthorised act or wilful misconduct of the Contractor, or its employees, agents or sub-contractors; or
- (iv) the non-compliance by the Contractor, or its employees, agents or sub-contractors with any applicable law, rule or regulation, order or requirement of any government agency or authority.

14.3 In the event of any person suffering any injury or death in the course of or arising out of the Contract and whether there be a claim for compensation or not, the Contractor shall verbally inform the University Representative as early as practicable and deliver to the University a written report specifying the full particulars of such injury or death within seven (7) working days after the occurrence of the injury or death, or on an earlier date specified by the University Representative.

14.4 For the purposes of this Clause, “**Negligence**” shall have the same meaning as that assigned to it in section 2(1) of the Control of Exemption Clauses Ordinance (Chapter 71 of the Laws of Hong Kong).

14.5 The indemnities, payment and compensation given in pursuance of the Contract by the Contractor shall not be affected or reduced by reason of any failure or omission of the University in enforcing any of the terms and conditions of the Contract.

## **15. Termination**

15.1 If:

- (a) the Contractor fails or is unable to carry out all or any of the Services provided for in the Contract within the Contract Period or such extended period as may be agreed in accordance with the terms in the Tender Document or is in the reasonable opinion of the University grossly negligent or incompetent in the performance of the Services;
- (b) any part of Services are rejected pursuant to the Contract;
- (c) the Contractor fails to rectify any rejected Services as required to the satisfaction of the University within the time period prescribed by the University;
- (d) the Contractor commits a fundamental breach of any term of the Contract;
- (e) the Contractor is in breach of any provision of the Contract which in the opinion of the University is not capable of remedy;
- (f) the Contractor commits a breach of any provision of the Contract which is capable of remedy and fails to remedy the same to the satisfaction of the University within seven (7) days from the date of service of notice by the University (or such period as specified in the notice) requiring such remedy;
- (g) the Contractor has made a material misrepresentation (including submission of false statement or inaccurate or incomplete information) during the tendering process or

negotiation or performance of the Contract, or any warranty, undertaking or representation given by the Contractor is incorrect, inaccurate, incomplete or misleading;

- (h) the Contractor or any officer (including director), employee, sub-contractor or agent of the Contractor commits an offence under the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong) or any law of a similar nature or has breached any other applicable laws, rules or regulations in relation to the Contract or any other contract made by the Contractor with the University;
- (i) the Contractor has committed a breach of any provision in the Confirmation Letter for Compliance with Anti-Collusion Provisions in Tender and Certificate relating to Bona Fide Tender in Appendix 3 of Part 8 of the Tender Form, or any representation or warranty in the Contract regarded to be given under paragraph 14.1 of the Terms of Tender;
- (j) the Contractor has employed illegal workers in breach of the undertaking under Clause 11;
- (k) the Contractor assigns or transfers, or purports to assign or transfer, all or any part of the Contract or all or any of its rights or obligations thereunder without the prior written consent of the University;
- (l) the Contractor is guilty of fraud, dishonesty or serious misconduct, or the Contractor or any of its officers (including directors), employees, sub-contractors or agents has engaged in any conduct whether in relation to the duties hereunder or not which, in the opinion of the University, is regarded as prejudicial or materially adverse to the interests of the University or which may bring the University into disrepute; or
- (m) termination of the Contract is required by a competent authority,

the University may by written notice to the Contractor terminate the Contract immediately.

15.2 The University may also by written notice to the Contractor terminate the Contract immediately upon the occurrence of any of the following events:

- (a) a proposal is made for a voluntary arrangement or any other composition, scheme or arrangement with, or assignment for the benefit of, the Contractor's creditors;
- (b) if the Contractor is an incorporated body, a shareholders or members meeting is convened for the purpose of considering a resolution that it be wound up or dissolved or a resolution for its winding-up or dissolution is passed (other than voluntarily for the purpose of bona fide reconstruction or solvent amalgamation);
- (c) a petition is presented for the winding up, dissolution or bankruptcy of the Contractor, which is not dismissed within fourteen (14) days after the petition is presented;
- (d) the Contractor is or becomes insolvent, or any order is made for the Contractor's bankruptcy, winding up or dissolution;
- (e) an administrator, administrative receiver, receiver or similar officer is appointed over the whole or any part of the Contractor's business or assets;

- (f) the Contractor suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
  - (g) the Contractor has engaged or is engaging in acts or activities that are likely to constitute or cause the occurrence of offences against the laws of Hong Kong, including but not limited to offences endangering national security, or that would otherwise be contrary to the interest of national security;
  - (h) the continued engagement of the Contractor or the continued performance of the Contract is contrary to the interest of national security; or
  - (i) the University reasonably apprehends that any of the events mentioned above is about to occur.
- 15.3 Where there is a Force Majeure Event, the University may terminate the Contract in part or in whole pursuant to Clause 27.7. Further, notwithstanding anything herein to the contrary, the University may at any time during the Contract Period, at its discretion and without cause, suspend or terminate the Contract or any part thereof by giving the Contractor one month's written notice of such suspension or termination.
- 15.4 If the Contract is terminated or suspended under Clause 15.1, Clause 15.2 or Clause 15.3, the Contractor is not entitled to claim any compensation, loss, damages, costs or expenses arising from or in relation to such termination or suspension. Subject to the aforesaid, upon the expiry or termination of the Contract, the Contract shall be of no further force and effect, but without prejudice to any accrued rights or liabilities of either Party prior to or at the date of such expiry or termination or the continued existence and validity of any provisions of the Contract which are expressly stated to or which in their context by implication survive such expiry or termination or continue to be in force after such expiry or termination. In case of suspension, the written notice shall specify the period(s) of suspension (which shall not be more than six (6) months in aggregate) and the scope of the suspension.
- 15.5 Without prejudice to the other rights and claims of the University, if the Contract is terminated under Clause 15.1 or Clause 15.2 and the University assigns the uncompleted Services to another contractor or contractors, the Contractor shall be liable for all losses, damages, costs and expenses incurred by the University arising from the termination including without limitation any sums so incurred in excess of the Contract Price, all costs and expenses incurred in making such assignment (including the costs and expenses incurred in conducting any tender or quotation as appropriate for procurement of the uncompleted Services) and any additional expenditure incurred by the University in connection with a default by the Contractor referred to in Clause 15.1 or Clause 15.2. If the Contract is so terminated, until the University has established the final cost of making other arrangements contemplated under this Clause, no further payments shall be payable by the University to the Contractor for the Services executed by the Contractor prior to termination and in accordance with the Contract for which payment has yet to be made by the University.
- 15.6 On the expiry or termination of the Contract for any reason or upon the request of the University, the Contractor shall at its sole costs and expenses:
- (a) immediately return to the University all Confidential Information, personal data and such other information, property and materials (including any drafts and copies thereof) in the possession or under the control of the Contractor or any of its suppliers,

employees, sub-contractors and agents, which was obtained or produced in the course of executing the Services or for the purposes of or in relation to the Contract;

- (b) assist and cooperate with the University to ensure an orderly transition of the execution of the Services to such person specified by the University and/or the completion of any work in progress, and at the request of the University, enter into and perform all deeds of assignment, transfer or novation in favour of the University or in favour of any person whom the University may designate, for the assignment, transfer or novation of any contract, arrangement or other subject matter whatsoever (including without limitation licences in relation to any Intellectual Property Rights) on such terms and conditions as the University may stipulate; and procure any other third party whom the University considers necessary for effecting or perfecting such assignment, transfer or novation to enter into and perform any such deeds of assignment, transfer or novation; and
- (c) promptly provide all information concerning the execution of the Services which may be requested by the University for the purposes of adequately understanding the manner in which the Services have been executed or the purpose of allowing the University or a replacement contractor to conduct due diligence.

15.7 The University shall not be responsible for any claim, legal proceedings, liability, loss (including any direct or indirect loss, or any loss of revenue, profit, business, contract or anticipated saving), damages (including any direct, special, indirect or consequential damages of whatsoever nature) or any cost or expense suffered or incurred by the Contractor arising out of or in relation to the early termination or suspension of the Contract.

## **16. Recovery of Sums Due**

Where the Contractor has incurred any liability to the University, whether at law or in equity and whether such liability is liquidated or unliquidated, the University may set off, whether by way of equitable set off or at common law, the amount of such liquidated liability and a reasonable estimate of the amount of any unliquidated liability against any sum then due or which at any time thereafter may become due from the University to the Contractor under the Contract or any other contract made between the University and the Contractor.

## **17. Conflict of Interest**

17.1 The Contractor shall during the Contract Period and for three (3) months thereafter:

- (a) ensure that it (including each and every employee, officer and agent of the Contractor) and each of its sub-contractors and each of their respective employees, officers and agents engaged in the discharge of the obligations under the Contract, and each of their respective associates and associated persons, shall not undertake any service, task, or job or do anything whatsoever for its own account or for or on behalf of any third party (other than in the proper performance of the Contract) which conflicts or which may be seen to conflict with the Contractor's duties or obligations under the Contract without the prior written approval of the University (which approval shall not be unreasonably refused or delayed); and
- (b) forthwith notify the University in writing of all or any facts which may reasonably be considered to give rise to a situation where the financial, professional, commercial, personal or other interests of the Contractor or any of the Contractor's sub-contractors or any of their respective employees, officers and agents deployed for the performance

of the Contractor's obligations under the Contract or their respective associates or associated persons, conflict or compete, or may be seen to conflict or compete, with the Contractor's duties or obligations under the Contract.

17.2 The Contractor shall keep itself informed, and shall ensure that each of its associates and associated persons, each of its sub-contractors and each of their respective employees, officers and agents deployed in the performance of the Contractor's obligations under the Contract and their respective associates and associated persons shall keep themselves informed and shall inform the Contractor and keep it informed promptly, of all facts which may reasonably be considered to give rise to a situation in which the financial, professional, commercial, personal or other interests of such persons, conflict or compete, or may be seen to conflict or compete, with the Contractor's obligations under the Contract.

17.3 In the Contract:

(a) **“associate”** of a person means:

- (i) a relative or partner of that person; or
- (ii) a company one or more of whose directors is/are in common with one or more of the directors of that person;

(b) **“associated person”** of a person means:

- (i) any person who has control, directly or indirectly, over the second-mentioned person;
- (ii) any person who is controlled, directly or indirectly, by the second-mentioned person; or
- (iii) any person who is controlled by, or has control over, the person mentioned in (i) or (ii) above;

(c) **“control”** over another person (**“person under control”**) means the power of a person to secure:

- (i) by means of the holding of shares or interests or the possession of voting power in or in relation to that person under control or any other person;
- (ii) by virtue of powers conferred by any constitution, memorandum or articles of association, partnership, agreement or arrangement (whether legally enforceable or not) affecting that person under control or any other person; or
- (iii) by virtue of holding office as a director in that person under control or any other person;

that the affairs of the person under control are conducted in accordance with the wishes of that person exercising control;

(d) **“director”** means any person occupying the position of a director by whatever name called and includes a de facto or shadow director; and

- (e) “**relative**” means the spouse, parent, child, brother or sister of the relevant person, and, in deducing such a relationship, an adopted child shall be deemed to be a child both of the natural parents and the adopting parents and a step child to be a child of both the natural parents and the step parents.

## 18. Confidentiality

- 18.1 The Contractor shall treat as proprietary and confidential all information, documents, materials and data (including any personal particulars records and personal data (as defined in the Personal Data (Privacy) Ordinance (Chapter 486 of the Laws of Hong Kong) (the “**PDPO**”))), in whatever form or media, which the University or its employees, officers, agents or representatives have for the purposes of or in the course of performing the Contract, supplied, made available or communicated to the Contractor, whether or not it is labelled or identified as confidential (collectively, “**Confidential Information**”). The Contractor’s obligations under this Clause 18 shall not extend to any information which was rightfully in the possession of the Contractor prior to the commencement of the negotiations leading to the Contract or which is already in the public knowledge or becomes so at a future date otherwise than as a result of a breach of this Clause 18.
- 18.2 Without prejudice to any other provision of the Contract, the Contractor shall fully and effectively indemnify, defend, hold harmless and keep indemnified the University, and its authorised users, employees, agents, assigns and successors-in-title from and against any and all actions, damages, costs, claims, demands, expenses, proceedings, losses, liabilities, charges of whatsoever nature (including the fees and disbursements of lawyers, agents and expert witnesses) and any awards and costs which may be agreed to be paid in settlement of any proceedings and liabilities of any nature arising from or incurred by reason of:
  - (a) a breach of confidence (whether under the Contract or general law) by the Contractor or any of its employees, agents, officers, representatives or sub-contractors or their respective associates or associated persons;
  - (b) any actions or claims made in respect of information subject to the PDPO, which action and/or claim would not have arisen but for the act, negligence or omission of the Contractor or any of its employees, agents, officers, representatives or sub-contractors or their respective associates or associated persons in connection with the performance of the Contract; and
  - (c) any act done or omission in the performance of the Contract that contravenes the Unsolicited Electronic Messages Ordinance (Chapter 593 of the Laws of Hong Kong) or the PDPO.
- 18.3 The Contractor shall use the Confidential Information solely for the purpose of performing the Contractor’s obligations under the Contract. The Contractor shall not, at any time whether during the Contract Period or after the expiry or termination (howsoever occasioned) of the Contract, use (or allow to be used) the Confidential Information for any other purposes without the University’s prior written consent.
- 18.4 The Contractor shall not disclose the Confidential Information to any third parties except in confidence to such of the Contractor’s employees, agents or sub-contractors who need to know the same for the purposes of performance of the Contract, provided that such Contractor’s employees, agents or sub-contractors are bound by written and binding confidentiality obligations with the Contractor which are no less restrictive than those stipulated in this Clause 18.



- 18.5 The Contractor undertakes to take and maintain all necessary measures and comply with all applicable laws and regulations including without limitation the PDPO for the protection of the Confidential Information and to prevent any unauthorised disclosure, use or leakage of the Confidential Information by applying at least the same level of security measures and the same degree of care as the Contractor exercises to protect its own information of similar type and importance, but no less than a reasonable level of security measures and a reasonable degree of care.
- 18.6 The Contractor undertakes, if so requested by the University, to deliver to the University on or before such date as specified by the University, separate non-disclosure and/or confidentiality agreements duly executed by the Contractor and/or each person or entity to whom any Confidential Information is to be disclosed by the Contractor in accordance with the Contract. The Contractor shall not be regarded to have complied with this Clause unless each such non-disclosure and/or confidentiality agreement is executed on terms prescribed or approved by the University. The Contractor further agrees to, if so required by the University and at the Contractor's own cost and expense, take such actions and steps as are lawful and necessary to enforce such non-disclosure and/or confidentiality agreements in the event of any breach thereof.
- 18.7 The Contractor shall not reproduce, or make copies or summaries of, the Confidential Information save as strictly necessary to perform the Contractor's obligations under the Contract, which shall be clearly marked or identified as confidential. The Contractor further agrees that it will not at any time whether by itself or through any subsidiary or agent use, sell, license or sub-license any Confidential Information, or create or develop information based on the Confidential Information, or deal with any Confidential Information otherwise than in accordance with the Contract. The Contractor further agrees that it will keep the terms of the Contract confidential and will not divulge its terms to any third party except with the prior written consent of the University.
- 18.8 The Contractor shall procure that each person or entity to whom any Confidential Information is disclosed by the Contractor in accordance with the Contract are to comply with the confidentiality obligations under this Clause 18 and any breach by such persons or entities of such confidentiality obligations shall be deemed to be a breach of the Contractor for which the Contractor shall remain fully liable to the University. If the Contractor becomes aware of any actual, suspected or threatened breach of confidence by any of its employees, agents, officers, representatives or sub-contractors or their respective associates or associated persons, it shall promptly notify the University in writing and at no charges to the University, give the University all reasonable assistance in connection with any action or proceedings which the University may take or institute against any such persons or entities, or which the University may be claimed against as a result of such breach.
- 18.9 All Confidential Information is provided by the University on "as is" basis. The University makes no warranty, guarantee, undertaking or representation of any kind, whether express, implied, statutory or otherwise, relating to or arising under the Confidential Information, including without limitation the warranties as to adequacy, accuracy, sufficiency, title or freedom from defects or that the use or reproduction of any information shall be free from any patent, trade secret, trademark or copyright infringement. The University shall not be liable for damages, costs, expenses, risks or liabilities of any kind as a result of the Contractor's receipt or use of, or reliance on, any Confidential Information.
- 18.10 Except as expressly granted herein, no other license or right is granted to the Contractor by implication, estoppel or otherwise. The Contract does not provide for any transfer of title or

ownership of Confidential Information or any intellectual property arising therefrom which is and will remain the sole and exclusive property of the University.

- 18.11 If the Contractor is required to disclose Confidential Information by order of a court of competent jurisdiction or other competent administrative body, the Contractor shall (a) provide the University with a prompt written notice of such possible disclosure prior to its disclosure in order to give the University an opportunity to contest such disclosure; (b) reasonably cooperate with the University in its efforts to contest such disclosure; and (c) disclose only that portion of the information as is legally required in a confidential manner, and use reasonable efforts to request for confidential treatment for any Confidential Information that is so disclosed.
- 18.12 The Contractor acknowledges that any unauthorised disclosure or use of the Confidential Information can cause irreparable harm and significant injury to the University, the degree of which may be difficult to ascertain or for which damages may not be an adequate remedy. Accordingly, the Contractor agrees that the University shall have the right to obtain and be immediately granted an injunction prohibiting any breach of this Clause 18 and/or specific performance ensuring the compliance of this Clause 18 in light of any threatened or actual breach of this Clause 18, without prejudice to its other rights and claims including those available under the Contract or at law arising from such breach.
- 18.13 The University may request the Contractor in writing at any time that any Confidential Information disclosed pursuant to the Contract and any copies, analyses, compilations and extracts thereof whether in hardcopies, electronic format or other media be returned, destroyed and/or deleted with a written statement to the effect that upon such return, destruction and/or deletion it has not retained in its possession or under its control, either directly or indirectly, any Confidential Information in whatever form and medium. The Contractor shall comply with any such request from the University within seven (7) days from receipt of such request.

## **19. Probity**

- 19.1 The Contractor acknowledges that it has been reminded that:
- (a) dishonesty, theft and corruption on its part or that of its employees, agents, officers or sub-contractors are criminal offences and may lead to prosecution under section 9 of the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong), sections 17, 18D and 19 of the Theft Ordinance (Chapter 210 of the Laws of Hong Kong) and section 161 of the Crimes Ordinance (Chapter 200 of the Laws of Hong Kong); and
  - (b) the soliciting or accepting of advantages, as defined in the Prevention of Bribery Ordinance, is not permitted.
- 19.2 The Contractor shall inform its officers, employees (whether permanent or temporary), agents and sub-contractors that the soliciting or accepting of advantage (as defined in the Prevention of Bribery Ordinance) is not permitted. The Contractor shall also caution its officers, employees, agents and sub-contractors against soliciting or accepting any hospitality, entertainment or inducement which may impair their impartiality in relation to the selection of its sub-contractors, if any, or the supervision of the work of the sub-contractors.
- 19.3 The University may terminate the Contract immediately if the Contractor or any of its employees, agents, officers, representatives and sub-contractors is convicted of an offence under the Prevention of Bribery Ordinance, the Theft Ordinance or the Crimes Ordinance.

## **20. Insurance**

- 20.1 The Contractor shall effect and maintain with an insurance company a policy of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor in connection with the performance or attempted performance of its obligations under the Contract, including death, personal injury, loss of or damage to property or any other loss. Such policy shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor. Such insurance shall be maintained throughout the Contract Period and for a minimum period of six (6) years after the expiry or sooner termination of the Contract.
- 20.2 Without prejudice to Clause 20.1, the Contractor shall effect and maintain employer's liability insurance in respect of all its employees and other staff in accordance with all applicable legal requirements.
- 20.3 If required by the University, the Contractor shall deliver to the University copies of all insurance policies required under the Contract together with receipts or other evidence of payment of the latest premium due under the policies.
- 20.4 If the Contractor fails to give effect to or maintain any insurance policy required under the Contract, the University may make such alternative arrangements as it considers appropriate to protect its interests and may recover from the Contractor the costs of putting such in place and maintaining such arrangements.
- 20.5 No provision in any insurance policy and no amount of insurance cover shall relieve the Contractor of any liability under the Contract or be construed as a cap on the liability of the Contractor under the Contract. It is the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability under the Contract.
- 20.6 For all insurance policies required under the Contract, the Contractor shall comply with and observe duly and punctually all terms and conditions set out in these policies. The Contractor shall be responsible for lodging claims with the insurance company and shall notify the insurance company within the time period specified in the policy of the occurrence of any event liable to give rise to a claim covered by the relevant insurance policy.

## **21. Process Agent**

If the Contractor is not a Hong Kong resident or if the Contractor is a company that does not have a place of business in Hong Kong, the Contractor irrevocably appoints the person whose name and address are set out in Appendix 1 of Part 8 of the Tender Form as its process agent to receive on its behalf service of process of any legal action or proceedings arising out of or in connection with the Contract in Hong Kong. Service upon the process agent shall be good service upon the Contractor whether or not it is forwarded to and received by the Contractor. If, for any reason, the process agent ceases to be or ceases to be able to act as process agent, or no longer has an address in Hong Kong, the Contractor hereby agrees to appoint a substitute process agent with an address in Hong Kong acceptable to the University and to deliver to the University a copy of the substitute process agent's acceptance of that appointment within thirty (30) days. In the event that the Contractor fails to appoint a substitute process agent, or fails to notify the University of the name and address for service of that substitute process agent, it shall be effective service for the University to serve the process upon the last known address in

Hong Kong of the last known process agent for the Contractor notified to the University notwithstanding that such process agent is no longer found at such address or has ceased to act or has ceased to be able to act.

## **22. Relationship of the Parties**

The Contractor enters into the Contract with the University as an independent contractor only and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership, or a joint venture, franchise or fiduciary relationship between the University and the Contractor. The Contractor is not and shall not represent itself as an employer, employee, servant, agent or partner of the University. Unless otherwise expressly provided for in the Contract, neither Party is authorised to act in the name of, or on behalf of, or otherwise bind the other Party.

## **23. Assignment and Sub-contracting**

23.1 Unless otherwise provided for in the Contract, the Contractor shall not, without the prior written consent of the University, assign, transfer, sub-contract or otherwise dispose of any of its interests, rights, benefits or obligations under the Contract. The performance of the Contract by the Contractor shall be personal to it. Any person purportedly appointed by the Contractor as agent shall be treated as sub-contractor for the purpose of this Clause 23 and for the whole of the Contract.

23.2 A sub-contracting of the Contract or any part of it shall not relieve the Contractor of any of its obligations or duties under the Contract, and the Contractor shall remain fully liable to the University and be responsible for the acts, defaults, neglect and omissions of its employees, officers, agents, representatives, sub-contractors (at whatever level) and employees, officers, representatives and agents of any such sub-contractors as though they were its own.

## **24. Non-exclusive Contract**

Nothing in the Contract shall preclude the University from procuring any services (whether within or outside the coverage of the Contract) from any other person or entity.

## **25. Disclosure of Information**

The Contractor hereby irrevocably authorises, consents and agrees that the University may, whenever it considers appropriate or upon request by any person (written or otherwise) and without any further reference to the Contractor, disclose to any person in such form and manner as the University considers fit:

- (a) the Services executed or to be executed by the Contractor;
- (b) the Contract Price and any other fees, cost and expense payable to the Contractor pursuant to the Contract;
- (c) the price proposal submitted (whether prior to the date of the Contract or otherwise) by the Contractor to the University in relation to the Services; and
- (d) the engagement by the University of the Contractor under the Contract, the date of the Contract, the address of the Contractor, and the names of the Contractor and persons

appointed or engaged by the Contractor to assist in the performance of the Contract.

## 26. Publicity

- 26.1 Whether before, during or after the expiry or termination of the Contract Period, the Contractor shall not use the University's name, logo, emblem, symbol, trade name, trademark or visual identity or any variation or derivation thereof, whether in any document, publication, advertisement, activity, publicity material or otherwise, without the prior written consent of the University.
- 26.2 Subject to Clause 26.1, the Contractor shall submit to the University for approval all the proposed advertising or other publicity materials relating to the Contract or any products supplied or other work done in connection with the Contract wherein the University's name, logo, emblem, symbol, trade name, trademark or visual identity or any variation or derivation thereof is mentioned or used, or language is used from which a connection with the University can reasonably be inferred or implied.
- 26.3 Notwithstanding any consent or approval given under Clause 26.1 or 26.2, whenever required by the University, the Contractor shall promptly remove or procure to remove all advertisements, documents, publication and publicity or other materials relating to the Contract wherein the University's name, logo, emblem, symbol, trade name, trademark or visual identity or any variation or derivation thereof is used, or language is mentioned or used from which a connection with the University can reasonably be inferred or implied and the Contractor must comply with such request.

## 27. Force Majeure

- 27.1 If the Contractor becomes aware of any matter likely to constitute a Force Majeure Event, the Contractor shall forthwith notify the University in writing of that matter and all relevant particulars.
- 27.2 Within three (3) days after the occurrence of a Force Majeure Event, the Contractor shall notify the University in writing of the full particulars of the Force Majeure Event including its nature, extent, effect on the Contractor's ability to perform the Contractor's obligations under the Contract and likely duration of such effect. In the event of an occurrence of a Force Majeure Event, the University may on its own issue a notice to the Contractor noting the occurrence of the Force Majeure Event and requiring the Contractor to suspend all or any of its obligations under the Contract. A notice issued by the Contractor or the University pursuant to this Clause is hereinafter referred to as the "**Suspension Notice**".
- 27.3 Following the issuance of a Suspension Notice by the Contractor or the University, the Contractor shall keep the University informed in writing at reasonable intervals or upon the request of the University of:
- (a) the likely duration of the relevant Force Majeure Event and of its effect on the Contractor's ability to perform the Contractor's obligations under the Contract;
  - (b) the actions taken or proposed to be taken by the Contractor to mitigate or minimise the effects of that Force Majeure Event; and
  - (c) any other matters relevant to that Force Majeure Event or the Contractor's performance of the Contract affected by that Force Majeure Event.

- 27.4 To the extent that the performance of obligations by the Contractor under the Contract is prevented by a Force Majeure Event, the Contractor's performance of such obligations will, subject to Clause 27.5, be suspended to that extent from the date that the Contractor or the University gives a Suspension Notice in respect of that Force Majeure Event until the Contractor ceases to be so prevented ("**Cessation Date**"). Notwithstanding anything in the Contract to the contrary, as soon as the University issues a Suspension Notice to the Contractor, the Contractor shall forthwith suspend the performance of its obligations under the Contract to the extent specified in the Suspension Notice.
- 27.5 During the suspension of any obligations under Clause 27.4:
- (a) the Contractor shall use its best endeavours (including incurring any reasonable expenses and re-deploying its manpower and resources) to remove or mitigate the effect of each Force Majeure Event on the Contractor's performance of its obligations under the Contract;
  - (b) the University may make alternative arrangements for the performance of any suspended obligations, whether by another person or otherwise, without compensation to the Contractor;
  - (c) the Contractor shall not be entitled to any payment of money, cost, fee, compensation, expense or charge or such pro rata portion thereof in respect of the suspended obligations for the suspended period, or in respect of any loss or damage arising from such suspension of obligations, or in respect of the costs or expenses incurred or actions taken by the Contractor to remove or mitigate the effect of the Force Majeure Event; and
  - (d) the Contractor shall continue to fully and punctually perform and observe all of its other obligations which are not affected by the Force Majeure Event in full accordance with the requirements of the Contract including those obligations which are not suspended, and to that extent, all the terms and conditions of the Contract shall continue to apply and be in full force and effect.
- 27.6 As soon as the relevant Force Majeure Event has terminated, the Contractor shall forthwith notify the University in writing of the Cessation Date, or the University may on its own, or after consultation with the Contractor, by notice in writing to the Contractor, determine the appropriate Cessation Date. The Contractor shall immediately after the Cessation Date resume performance of the suspended obligations in accordance with the terms and conditions of the Contract. In the event of any disagreement between the University and the Contractor on the appropriate Cessation Date, the University's decision shall be final in the absence of manifest error.
- 27.7 Should suspension of the performance by the Contractor of its obligations under the Contract persist or be likely to persist as a result of a Force Majeure Event, the University shall be entitled to terminate the Contract pursuant to Clause 15.3.
- 27.8 The Contractor shall ensure that provisions similar to this Clause 27 are incorporated in all its contracts with its sub-contractors made for the performance of its obligations under the Contract.

## **28. Audit**

The Contractor shall keep and maintain until seven (7) years after the expiry or termination of the Contract, or such longer period as may be agreed by the Parties, full and accurate records in relation to the Contract including the Services executed under it, all expenditure reimbursed by the University, and all payments made by the University. If requested by the University, the Contractor shall afford the University or its representatives, free of any charge, access to the records and to make and retain copies thereof as may be requested by the University or its representatives.

## **29. Notices**

- 29.1 Each notice, demand, invoice, correspondence or other communication given or made under the Contract by a Party shall be in writing and delivered or sent to the other Party at its postal address, facsimile number or email address set out in Appendix 1 of Part 8 of the Tender Form (or such other postal address, facsimile number or email address as the addressee has by no less than seven (7) working days' prior written notice specified to the other Party).
- 29.2 Such notices, demands or other communications shall be addressed as provided in Clause 29.1 and, if so addressed, shall be deemed to have been duly given or made as follows:
- (a) if sent by personal delivery during normal business hours on a working day, upon delivery at the address of the relevant Party;
  - (b) if sent by post, two (2) working days (for any place in Hong Kong) and seven (7) working days (for any place outside Hong Kong) after the date of posting;
  - (c) if sent by facsimile during normal business hours on a working day, when despatched with confirmed receipt as evidenced by the transmission report generated at the end of the transmission of such facsimile by the facsimile machine used for such transmission; or
  - (d) if sent by email during normal business hours on a working day, upon despatch unless the sender has received a non-delivery notification from his own computer system.
- 29.3 Nothing in Clause 29.2 shall affect the validity of any notice, demand or other communication despatched outside normal business hours. Any such notice, demand or other communication despatched outside normal business hours which fulfills the conditions specified in Clause 29.2 shall be deemed to have been duly given or made on the next working day following the date of such personal delivery, posting, facsimile or email.

## **30. Entire Agreement**

- 30.1 The Contract constitutes the whole agreement between the Parties with respect of the subject matter hereof and supersedes any previous agreements, discussions, representations, understandings or arrangements between them relating to the subject matter hereof. The Contractor acknowledges that in entering into the Contract, it has not relied on any statements, warranties or representations given or made by the University. On the other hand, the University has relied on the Warranties when entering into the Contract.
- 30.2 All of the provisions of the Contract shall remain in full force and effect notwithstanding the execution of the Services and the issuance of any written notice that the University has unconditionally accepted those Services (except insofar as those obligations which have been fully performed).

### **31. Governing Law and Jurisdiction**

The Contract and all matters arising from or connected with it shall be governed by and construed in accordance with the laws of the Hong Kong Special Administrative Region (“**Hong Kong**”) and the Parties hereby agree to submit to the exclusive jurisdiction of the courts of Hong Kong in relation to any matters or disputes arising out of or in connection with the Contract. Notwithstanding the foregoing, the Parties agree to first adopt non-litigation means to endeavor to settle such matter or dispute amicably in a collaborative manner by good faith negotiations.

### **32. Severability**

If any provision of the Contract is found or held by any authority or court of competent jurisdiction to be illegal, invalid or unenforceable, it will be rendered ineffective to the extent of such illegality, invalidity or unenforceability and such illegality, invalidity or unenforceability shall not affect the other provisions of the Contract, all of which shall remain in full force and effect.

### **33. Waiver**

33.1 Time shall be of the essence of the Contract but no failure, delay, forbearance or indulgence by any Party to the Contract to exercise any right, power or remedy available to it under the Contract, at law or in equity shall operate as a waiver thereof; nor shall any single or partial exercise of the same preclude any other or further exercise thereof or the exercise of any other right, power or remedy. Any right, power or remedy of each Party under the Contract shall be cumulative and shall not be exclusive of any other rights, powers or remedies provided by the Contract, at law or in equity. Without limiting the foregoing, no waiver by a Party of any breach by the other Party of any provision hereof shall be deemed to be a waiver of any subsequent breach of that or any other provision hereof.

33.2 Without prejudice to the generality of Clause 33.1, any right of termination of the Contract or any other right, power or remedy of whatsoever nature conferred upon the University under the Contract shall be exercisable by the University in addition to and without prejudice to any other rights, powers and remedies available to it under the Contract, at law or in equity (and, without prejudice to the generality of the foregoing, shall not extinguish any right to damages to which the University may be entitled in respect of the breach of the Contract) and no exercise of or failure or delay to exercise a right of termination by the University shall constitute a waiver by the University of such right of termination or any other right, power or remedy.

33.3 No waiver of any right, power or remedy of either Party shall be valid unless signed by that Party in writing and containing an express statement that it is a waiver pursuant to this Clause.

### **34. Assistance in Legal Proceedings**

34.1 If and whenever requested to do so by the University, the Contractor shall forthwith provide to the University all relevant information, documents (including documentation and statements from staff) and other assistance in connection with any inquiry, investigation, arbitration, tribunal hearings or court proceedings in which the University or its authorised users, employees, agents, assigns and successors-in-title may become involved or any internal



disciplinary hearing of the University that arises out of or in connection with the Contract or the Contractor's presence at the University's premises. If requested by the University, the Contractor shall arrange for relevant staff, agent and/or sub-contractor to give evidence at such inquiries, investigations, arbitrations, hearings or proceedings.

- 34.2 Where the Contractor or any employees, agents or contractors of the Contractor become aware of an incident, accident or other matter which may give rise to a claim or legal proceedings by a third party against the University or the Contractor or in respect of the Contract, it shall notify the University immediately in writing giving full details of such incident, accident or matter and promptly supply to the University the relevant documents as the University may require.

### **35. Order of Precedence**

In the event of, and only to the extent of, any conflict or inconsistency between the Clauses of the Contract, any document referred to in those Clauses and the Schedules, the following order of precedence shall be applied, but only in so far as is necessary to resolve that conflict or inconsistency:

- (a) Special Conditions of Contract;
- (b) Technical Specifications;
- (c) Schedules;
- (d) General Conditions of Contract; and
- (e) Any other materials which were submitted by the Contractor as part of its Tender and attached to the Contract.

### **36. Execution of Further Documents**

The Contractor shall at its own cost and expense do and execute any further things and document(s) (or procure that the same be done or executed) as may be required by the University to give full effect to the provisions of the Contract and shall provide all such documents and materials to the University within fourteen (14) days from the date of the University's written request or other period as may be specified by the University in writing.

### **37. Joint and Several Obligations**

Where the Contractor comprises more than one person or entity, each such person or entity assumes all obligations of the Contractor under or arising from or in connection with or in relation to the Contract on a joint and several basis. A reference to the Contractor in the Contract is a reference to each of the persons or entities constituting the Contractor.

### **38. United Nations Convention on Contracts for the International Sale of Goods not applicable**

The Parties hereby agree that the provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not apply to the Contract.

### **39. Term**

- 39.1 The Contract shall take effect during the Contract Period unless it is terminated earlier in accordance with the terms of the Contract.
- 39.2 Any clause, term or provision proposed by the Contractor purporting to automatically renew or extend the Contract Period at its expiry shall be void and shall not form part of the Contract. The University does not accept and shall not be deemed to have accepted any renewal or extension of the Contract Period, save and except with the University's prior written consent given explicitly for such purpose not more than two (2) months prior to the expiry of the Contract Period. The Contractor who desires to renew or extend the Contract Period has a duty to solicit such written consent from the University not more than two (2) months prior to the expiry of the Contract Period. If such written consent is not then given by the University, the Contract Period shall automatically expire at its original expiry date and the University shall not be liable for any charge which arises after the original Contract Period. If the Contract Period is renewed or extended with the University's written consent in accordance with the foregoing provisions, the requirements therein shall apply, with necessary modifications, to the next renewal or extension.

### **40. Exclusion of Third Party Rights**

The application of the Contracts (Rights of Third Parties) Ordinance (Chapter 623 of the Laws of Hong Kong) or other similar laws is expressly excluded. No person or entity who is not a party to the Contract shall have any rights to enforce any term of the Contract.

### **41. Counterparts**

The Contract may be made in separate equivalent counterparts. Each Contract counterpart when so executed and delivered shall be an original, but all the counterparts shall together constitute one and the same instrument.

### **42. Electronic Signature and Transmission**

Each Party agrees that the Contract may be electronically signed and that any electronic signatures appearing on the Contract are the same as handwritten signatures for the purposes of the Contract's validity, enforceability and admissibility. Further, a signed copy of the Contract transmitted by email or other means of electronic transmission shall be deemed to have the same legal effect, validity and enforceability as an original executed Contract for all purposes.