

# **HONG KONG BAPTIST UNIVERSITY**

## **GENERAL CONDITIONS OF CONTRACT FOR SERVICES (TWO ENVELOPES)**

### **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 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 its obligations under the Contract.
- 1.3 The Contractor shall perform its obligations under the Contract:
- (a) with appropriately experienced, qualified and trained personnel and with all due care, skill and diligence; and
  - (b) in compliance with all applicable laws.
- 1.4 The Contractor shall be responsible for the 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 indemnify the University against all losses and damages arising from, and costs and expenses incurred in connection with, any discrepancies, errors or omissions therein.

### **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 correspond with the requirements of the Technical Specifications and any particulars specified in the Contract;
  - (b) all consents, approvals, licences and certificates have been duly obtained for the execution of the Services and use of the Services by the University will not contravene any applicable laws;
  - (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, legally binding obligations of the Contractor enforceable in accordance with its terms;
  - (e) all authorisations, approvals, consents, licences, exemptions and other requirements 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 Contractor's obligations under the Contract (including where its procedures so require, the consent of its parent company) have been duly and unconditionally obtained and are in full force and effect;
  - (f) all information supplied, and statements and representations made by or on behalf of the Contractor in or in relation to its Tender and the Contract are true, accurate and complete;
  - (g) no claim is being made and no litigation, arbitration or administrative proceeding is 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 might have a material adverse effect on its ability to perform its obligations under the Contract;
  - (h) it is not subject to any contractual obligation, 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 and is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract; and
  - (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.
- 2.2 The warranties, representations and undertakings, expressed or implied, contained in Clause 2.1 and other provisions of the Contract (collectively, "**Warranties**" and each, a "**Warranty**") shall be true without limitation in time, save that in case of any Warranty expressed to be effective during the Contract Period, it shall be true on each day of the Contract Period as if it is 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 seller and the rights conferred on a buyer 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, as and when required, to the satisfaction of the Inspecting Officer. All orders placed under the Contract shall be issued in writing and the University will not be responsible 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 Representative; but the University Representative may, subject to the proviso hereinafter contained, 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, except with the consent in writing of the Contractor, involve a net addition to or deduction from the Contract Price of more than 20% or the Contract Period of more than 6 months, unless otherwise mutually agreed 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.

#### **4. Quality of Services**

4.1 The Services shall be 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 on completion of the Contract.

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

All Services performed in pursuance of the Contract shall be subject to inspection and shall not be deemed to have been accepted unless either:

- (a) the University Representative or the Inspecting Officer shall so certify; or
- (b) the Services are not rejected as being unsatisfactory within 21 days of the date upon which they were executed.

#### **6. Rejections**

6.1 Without prejudice to any statutory rights, the Inspecting Officer or the University Representative may reject any Services (or part thereof) which do not strictly conform to the conditions of Clause 4.1 hereof.

6.2 Within 24 hours of being notified in writing of the rejection of any Services the Contractor shall be required to take the necessary action to rectify such rejected Services.

#### **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. 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 or agents, the Contractor shall pay for the same at total original cost [plus 20%]. A count of the articles or material in the possession of the Contractor may be made at any time by the University Representative and the Contractor shall render such assistance as is necessary for this purpose.

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

8.1 The Contractor, shall ensure that all persons engaged by him in carrying out the Contract keep to 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 Representative 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 Government premises, piers or wharves, as the case may be, shall be the responsibility of the Contractor, which shall indemnify the University in respect of any loss or damage to such University premises, piers or wharves.

#### **9. Intellectual Property Rights**

9.1 The Contractor warrants that the execution of and the use of the Services under the Contract do not infringe the Intellectual Property Rights of any third 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.

9.3 All Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs and other material (collectively, "IP Materials"):

- (a) furnished to or made available to the Contractor by or on behalf of the University shall remain the property of the University; and
  - (b) prepared by or for the Contractor for use, or intended use, in relation to the performance by the Contractor of its obligations under the Contract shall belong to the University.
- 9.4 The Contractor hereby assigns to the University, with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials referred to in Clause 9.3(b). 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 the Contractor. The Contractor shall execute all documents reasonably required by the University to give effect to the assignment.
- 9.5 The Contractor waives and shall procure a waiver of all moral rights (whether past, present or future) subsisting in copyright produced by the Contractor in the performance of the Contract. 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 that are or which may be used to perform the Contract grants to the University a non-exclusive licence, or if it is a licensee of those rights, shall grant to the University an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. The 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 licence or sub-licence, or further sub-licence it to any replacement contractor or any other third party supplying services to the University.
- 9.7 Without prejudice to any other provision of the Contract, the Contractor shall indemnify the University and keep the University fully and effectively indemnified against all claims, actions, proceedings, liabilities, losses, damages, demands, charges, costs and expenses of whatsoever nature 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 are infringing or have otherwise infringed the Intellectual Property Rights of a third party, the University may:
- (a) forthwith terminate the Contract by the University 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 the Clause shall not preclude the University from terminating the Contract 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 The Contractor shall render to the University Representative:
- (a) an itemised account on or before the 10<sup>th</sup> day of each month of the charges which it considers due to him 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.
- 10.2 All such accounts shall be signed by the University Representative or the Inspecting Officer. Unless otherwise agreed by the University Representative such accounts shall be paid within 30 days of the date upon which:
- (i) where the said accounts are signed by the University Representative or Inspecting Officer, or
  - (ii) where the Services have been accepted pursuant to Clause 5,
- whichever date is the earlier.

## **11. Illegal Workers**

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 law in Hong Kong including but not limited to those prescribed under the Employment Ordinance (Chapter 57), Factories and Industrial Undertakings Ordinance (Chapter 59), Employees’ Compensation Ordinance (Chapter 282), Occupational Safety and Health Ordinance (Chapter 509) and Minimum Wage Ordinance (Chapter 608).

## **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 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 Contract Deposits;
  - (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.
- 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 which in aggregate does not exceed the amount of Contract Deposit payable to the University under Clause 12.1. The University may apply the amount so withheld to satisfy the Contractor's obligation under Clause 12.1 in full or in part, and to the extent that the amount is so applied, the latter amount shall be treated as Contract Deposit 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 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 operation 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 condition that the Contractor has performed and discharged all its obligation 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 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 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 or agents however caused (whether by any Negligence of the University or any of its employees 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 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 indemnify each of the University and its employees and agents (each an "**Indemnified Person**") against:
- (a) any and all claims (whether or not successful, compromised, settled, withdrawn or discontinued, in whole or in part), actions, investigations, demands, 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 any injury to or death of any person in consequence of any

Negligence of the Contractor or any of its employees, sub-contractors or agents) 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 in connection with, out of or in relation to:

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

14.3 The indemnity under Clause 14.2 shall not apply to any injury or death caused by the Negligence of an Indemnified Person.

14.4 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 within 7 working days after the occurrence of the injury or death, or on an earlier date specified by the University Representative.

14.5 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).

14.6 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 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;
- (b) any part of Services are rejected pursuant to the Contract;
- (c) the Contractor fails to rectify any rejected Services as required;
- (d) the Contractor commits a fundamental breach of any term of the Contract;
- (e) the Contractor is in breach of any other provision of the Contract which in the opinion of the University is not capable of remedy;
- (f) the Contractor commits a breach of any other provision of the Contract which is capable of remedy and fails to remedy the same within 7 days of service of notice by the University (or such longer period as specified in the notice) requiring such remedy;
- (g) the Contractor has made a material misrepresentation (including submission of false statement or inaccurate information) during the tendering process of the Contract;
- (h) the Contractor or any officer (including director), employee 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 in relation to the Contract or any other contract made by the Contractor with the University;
- (i) it is found that 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 10.1 of the Terms of Tender;
- (j) it is found that the Contractor has employed illegal workers in breach of the undertaking under Clause 11; or
- (k) the University is given the right to terminate the Contract under any other provision of the Contract,

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 a resolution for its winding-up is passed (other than voluntarily for the purpose of bona fide reconstruction or solvent amalgamation);
- (c) a petition is presented for the winding up or bankruptcy of the Contractor, which is not dismissed within 14 days after the petition is presented;
- (d) the Contractor is or becomes insolvent, or any order is made for the Contractor’s bankruptcy;
- (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 University reasonably apprehends that any of the events mentioned above is about to occur; or
  - (h) a Force Majeure Event occurs in such manner entitling the University to terminate the Contract under Clause 27.7.
- 15.3 On termination of the Contract for any reason, the University is under no further obligation to the Contractor under the Contract without thereby releasing the Contractor from any of its liabilities under the Contract, or affecting any rights and powers conferred upon the University by the Contract.
- 15.4 If the Contract is terminated under Clause 15.1, the Contractor is not entitled to claim any compensation arising from such termination. Subject to the aforesaid, the expiry or termination of the Contract shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision of the Contract which is expressly or by implication intended to come into or continue in force on or after such expiry or termination.
- 15.5 If the Contract is terminated under Clause 15.1 and the University assigns the balance of the uncompleted Services to another contractor or contractors, the Contractor shall be liable for 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. 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, the Contractor shall:
- (a) immediately return to the University all confidential information, personal data and such other information, property and materials in the possession or under the control of the Contractor or any of its suppliers, sub-contractors and agents, which was obtained or produced in the course of executing the Services;
  - (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 Representative and/or the completion of any work in progress; and
  - (c) promptly provide all information concerning the execution of the Services which may reasonably 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 Save as otherwise expressly provided for in the Contract, no compensation whatsoever (including compensation for any loss or expense arising from any consequential loss or damage, or loss of opportunity, suffered or incurred by the Contractor) shall be payable by the University to the Contractor as a result of any suspension or early termination of the Contract by the University.

## 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 3 months thereafter:
- (a) ensure that it (including each and every employee 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 hereunder, and each of their respective associates and associated persons, shall not undertake any service, task, or job or do anything whatsoever 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 hereunder 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 ensure that each of its associate and associated person, each of its sub-contractors and each of their respective employees, officers and agents deployed in the performance of the Contractor's obligations hereunder and their respective associates and associated persons shall keep themselves informed and inform the Contractor and keep it informed regularly 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 this Contract.
- 17.3 In the Contract:
- (a) "associate" in relation to any person means:
    - (i) a relative or partner of that person; or
    - (ii) a company one or more of whose directors is in common with one or more of the directors of that person;

- (b) “**associated person**” in relation to another person means:
  - (i) any person who has control, directly or indirectly, over the other;
  - (ii) any person who is controlled, directly or indirectly, by the other; or
  - (iii) any person who is controlled by, or has control over, a person at (i) or (ii) above;
- (c) “**control**” in relation to another person 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 or any other person;
  - (ii) by virtue of powers conferred by any constitution, articles of association, partnership, agreement or arrangement (whether legally enforceable or not) affecting that or any other person; or
  - (iii) by virtue of holding office as a director in that or any other person;
 that the affairs of the first-mentioned person are conducted in accordance with the wishes of that other person;
- (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 parent and a step child to be a child of both the natural parents and the step parent.

## 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)), in whatever form or media, which the University has for the purposes of or in the course of performing the Contract, supplied, made available or communicated to the Contractor (“**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).
- 18.2 Without prejudice to any other provision of the Contract, the Contractor shall indemnify and keep the University, its authorised users, assigns and successors-in-title fully and effectively indemnified against any and all action, damages, costs, claims, demands, expenses (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 or sub-contractors;
  - (b) any actions or claims made in respect of information subject to the Personal Data (Privacy) Ordinance, 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 or sub-contractors 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).
- 18.3 The Contractor shall use the Confidential Information solely for the purposes of 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 the Contract.
- 18.5 The Contractor undertakes to take all necessary measures for the protection of the Confidential Information and to prevent any unauthorised disclosure or leakage of the Confidential Information.
- 18.6 The Contractor undertakes, if so requested by the University, to deliver to the University on such date as specified by the University, separate non-disclosure and/or confidentiality agreements duly executed by the Contractor and/or each person 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 confidentiality agreement is executed on terms prescribed by the University.
- 18.7 The Contractor further agrees that it will not at any time whether by itself or through any subsidiary or agent use, sell, license, sub-license, create, develop or deal with any Confidential Information otherwise than in accordance with the Contract.
- 18.8 If the Contractor becomes aware of any breach of confidence by any of its employees, agents or sub-contractors, it shall promptly notify the University and give the University all reasonable assistance in connection with any action or proceedings which the University may take or institute against any such persons.
- 18.9 The provisions of this Clause 18 shall survive the expiry or termination of the Contract and shall continue in full force and effect notwithstanding such expiry or termination.

## **19. Probity**

19.1 The Contractor acknowledges it has been reminded that:

- (a) dishonesty, theft and corruption on its part or that of its employees, agents 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 advantages (as defined in the Prevention of Bribery Ordinance) is not permitted. The Contractor shall also caution its officers, employees and agents and sub-contractors against soliciting or accepting any excessive 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 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 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 referred to in 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 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 and no amount of insurance covered shall relieve the Contractor of any liability 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.

## **21. Process Agent**

If the Contractor is not a Hong Kong resident, 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 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 between the University and the Contractor. 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.

23.2 A sub-contracting of the Contract 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 and omissions of its 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 and outside the coverage of the Contract) from any other person.



## 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 prior to the date of the Contract by the Contractor to the University in relation to the Services; and
- (d) the engagement by the University of the Contractor under the Contract 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 in any document, publication, advertisement or publicity material without the prior written consent of the University.
- 26.2 Subject to Clause 26.1, the Contractor shall submit to the University Representative for approval all the proposed advertising or other publicity material relating to the Contract or any products supplied or other work done in connection with the Contract wherein the University's name is mentioned or language 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 remove all advertisement and publicity material relating to the Contract wherein the University is mentioned or language 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 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 and likely duration of its effect on the Contractor's ability to perform its obligation under the Contract. 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 the 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 issue of a Suspension Notice by the Contractor or the University, the Contractor shall keep the University informed at reasonable intervals, and 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 its 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 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 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 the obligations 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 the obligations under the Contract;
  - (b) the University may make alternative arrangements for the performance of any suspended obligations, whether by another person or otherwise; and
  - (c) the Contractor shall not be entitled to any cost, fee or charge or such pro rata portion thereof in respect of the suspended obligations for the suspended period.
- 27.6 As soon as the relevant Force Majeure Event has terminated, the Contractor shall forthwith notify the University of the Cessation Date, or the University may on its own, 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 15.2.
- 27.8 The Contractor shall ensure that provisions similar to this Clause 27 are incorporated in all its contracts with sub-contractors made pursuant to this Contract.

**28. Audit**

The Contractor shall keep and maintain until 7 years after the expiry of the Contract, or such longer period as may be agreed by the parties, full and accurate records of 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 representative access to the records as may be requested by the University.

**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 not less than 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, 2 days (for any place in Hong Kong) and 7 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, when actually received in a form readable by an individual.

**30. Entire Agreement**

30.1 The Contract constitutes the whole agreement between the parties thereto and supersedes any previous agreements 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.

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 Acceptance Note (except insofar as those obligations which have been fully performed).

**31. Governing Law**

The Contract shall be governed by and construed in accordance with the laws of Hong Kong and the parties hereby agree to submit to the exclusive jurisdiction of the courts of Hong Kong in relation to any matters arising out of the Contract.

**32. Severability**

If any provision of the Contract is found by any authority or court of competent jurisdiction to be illegal, invalid or unenforceable, 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 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 or 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. A right or a remedy of each party under the Contract shall be cumulative and not exclusive of any other rights, power or remedies provided by the Contract, at law or in equity. Without limiting the foregoing, no waiver by any 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 it in addition to and without prejudice to any other rights and remedies available to it under the Contract or at law (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 or failure to exercise a right of termination shall constitute a waiver by the University of any other right, power or remedy.

**34. Assistance in Legal Proceedings**

34.1 If and whenever requested to do so by the University Representative, the Contractor shall 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 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 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 Representative immediately in writing giving full details of such incident, accident or matter as the University Representative 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.