

Planning Department

The Government of the

Hong Kong Special Administrative Region

**TERM CONSULTANCIES FOR
AIR VENTILATION ASSESSMENT SERVICES
(Agreement No. PLN AVA 2024)**

**Category A - Term Consultancy for Expert Evaluation and
Advisory Services on Air Ventilation Assessments**

**Category B - Term Consultancy for Air Ventilation Assessments
by Computational Fluid Dynamics**

ARTICLES OF AGREEMENT AND CONDITIONS OF CONTRACT

TABLE OF CONTENTS

1. Definitions and Interpretation
2. Term
3. Language
4. Consultancy Services
5. Consultant's Acknowledgement, Obligations and Consultancy Services Performance
6. Conduct of the Consultancy Services
7. Consulting Team
8. Warranties and Representations
9. Costs and Expenses
10. Deliverables and Project Documents
11. Defects in the Deliverables
12. Acceptance of the Deliverables and the Consultancy Services
13. Delay
14. Terms of Payment
15. Changes in the Scope of the Consultancy Services
16. Force Majeure
17. Confidentiality
18. Assignment and Sub-contracting
19. Liability and Indemnities
20. Probity
21. Publicity
22. Intellectual Property Rights
23. Intellectual Property Rights Indemnities
24. Software Asset Management
25. Termination
26. Termination Consequences
27. Service of Notices
28. Variations

29. Governing Law and Jurisdiction
30. Waiver
31. Relationship of the Parties
32. Conflict of Interest
33. Retention of Records
34. Use of the Government's Name
35. Ownership of Plans or Specialised Equipment or Software or Hardware or Research Materials
36. Insurance
37. Concurrent Remedies
38. Severability
39. United Nations Convention on Contracts for the International Sale of Goods not applicable
40. Order of Precedence
41. Entire Agreement
42. Consent to Disclosure
43. Company/Business Organisation Status
44. Personal Data Provided
45. Warning against Bribery
46. Environmental Protection
47. Government Discretion
48. Documents of Unsuccessful Bidders
49. Contracts (Rights of Third Parties) Ordinance

Annex A Assignment Brief (not enclosed)

Annex B Technical Proposal (not enclosed)

Annex C Selection and Management of Term Consultants for Air Ventilation Assessment Services (not enclosed)

THIS AGREEMENT is made on _____.

BETWEEN:

- (1) **THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION** as represented by the Assistant Director/Special Duties of Planning Department (hereinafter referred to as the "Government"); and
- (2) [**THE CONSULTANT'S NAME**] whose registered office is situated/whose principle place of business is at **HONG KONG** (hereinafter referred to as "the Consultant").

WHEREAS:

- (A) The Government wishes to engage a consultant to provide one or more of the 2 categories of term consultancy services, namely (i) Category A to provide expert evaluation services on air ventilation assessment (AVA) for government projects and professional comments/advices on AVA submissions or associated matters and (ii) Category B to provide services for undertaking AVA for government projects by computational fluid dynamics as hereinafter mentioned.
- (B) The Government has agreed to engage the Consultant to provide certain Consultancy Services in respect of (A)(i) & (ii) [**to include as appropriate**] in connection with such Assignment and the Consultant has agreed to accept such engagement and to submit deliverables on the terms and conditions hereinafter contained.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement and the recitals hereto, unless the context requires otherwise or expressly provides, the following expressions shall have the following meanings respectively -
 - (a) "associate" of 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" 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, a person at (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 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 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 other person.

- (d) "director" means any person occupying the position of director by whatever name called and includes a de facto or shadow director.
- (e) "person" includes any individual, firm, body corporate or unincorporate (wherever established or incorporated).
- (f) "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 parent and the step parent.
- (g) "this Agreement" means the Articles of Agreement and Conditions of Contract, the Assignment Brief, the Agreed Technical Proposal, the Scope of Services, the Fee Proposals and Terms of Quotation as submitted and agreed subsequently for any instructed projects awarded to the Consultant, the Letter of Acceptance, and the notes on Reporting and Management of Consultants.
- (h) "Assignment Brief" means the document contained in Annex A.
- (i) "Contract Price" means the price payable to the Consultant by the Government under this Agreement for the full and proper services of the concerned instructed project carried out by the Consultant of its obligations under the provisions of this Agreement.
- (j) "Consultancy Services" means all the services and ancillary works to be provided by the Consultant pursuant to this Agreement.
- (k) "Deliverables" means all drawings, plans, data, models, recommendations/advice, technical notes, research findings and reports, and other reports and papers, including those in electronic format, which the Consultant is required to produce for performing the Consultancy Services.
- (l) "Director" means the Assistant Director/Special Duties (AD/SD) or Assistant Director(s) responsible for the concerned instructed project of Planning Department or such other person as may be nominated and authorized by the Government as Director by notice in writing to the Consultant.
- (m) "Director's Representative" means the Chief Town Planner/Urban Design & Landscape (CTP/UD&L) or Chief Town Planner(s) responsible for the concerned instructed project of Planning Department or such other person as may be nominated and authorized by the Director as Director's Representative by notice in writing to the Consultant.

- (n) "Force Majeure Event" means
 - (i) any outbreak of war, hostilities (whether war be declared or not), invasion, acts of foreign enemies, rebellion, revolution affecting Hong Kong, overthrow (whether by external or internal means) of the Government; or
 - (ii) any event which is not caused or contributed to by, and is beyond the control of, the Consultant, its related persons (as defined in Clauses 46.6 and 46.7 of the Terms of Tender) or any employee or agent or ex-employee or ex-agent of the Consultant and none of them can prevent the consequences of such event from happening;

and which, in any case of (i) or (ii) above, materially prevents the performance of the duties and obligations of any Party hereunder; for the avoidance of doubt, any change of law and regulation of whichever jurisdiction shall not be treated as a Force Majeure Event;

- (o) "Hong Kong" means the Hong Kong Special Administrative Region of the People's Republic of China.
- (p) "instructed project" means the carrying out of the Consultancy Services by the Consultant as may be instructed by the Government to meet the requirements described in the Assignment Brief, Scope of Services and Letter of Acceptance for Fee Proposal of a project as may be awarded to the Consultant, during the Term of this Agreement.
- (q) "Parties" (in upper or lower case) means the Government and the Consultant; and "Party" (in upper or lower case) means any one of them.
- (r) "PRC" means the People's Republic of China.
- (s) "Project Materials" means all Deliverables, any and all works of authorship and materials developed, written or prepared by the Consultant, its employees, agents or sub-contractors in relation to the instructed projects (whether individually, collectively or jointly with the Government and on whatever media) including, without limitation, any and all reports, studies, data, diagrams, charts, photographs, drawings, plans, specifications, models, software, computerised model, pre-contractual and contractual documents and all drafts thereof and working papers, including those in electronic format, relating thereto.
- (t) "Term of this Agreement" means the period specified in Clause 2.1.

1.2 Unless otherwise expressly stated to the contrary, the following rules of interpretation shall apply:

- (a) references to statutes or statutory provisions shall be construed as references to those statutes or statutory provisions as replaced, amended, modified or re-enacted from time to time; and shall include all subordinate legislation made under those statutes;
- (b) words importing the singular shall include the plural and vice versa; words importing a gender shall include all other genders; references to any person shall include any individual, firm, body corporate or unincorporate (wherever

- established or incorporated);
- (c) headings are inserted for ease of reference only and shall not affect the construction of the Invitation to Proposal or this Agreement;
 - (d) references to a document shall:
 - (i) include all schedules, appendices, annexures and other materials attached to such document; and
 - (ii) mean the same as from time to time amended or supplemented;
 - (e) references to “Bidder” or “Consultant” shall include its permitted assigns, successors-in-title, or any persons deriving title under them;
 - (f) references to “Government” shall include its assigns, successors-in-title and persons deriving title under them, regardless of whether or not any of these persons are mentioned separately in the relevant provisions;
 - (g) references to a Clause, Sub-clause, Section or Paragraph in or a Schedule, Appendix or any other attachment to a document are to a clause, sub-clause, section or paragraph in or a schedule, appendix or attachment to that document;
 - (h) references to “laws” and “regulations” shall include any constitutional provisions, treaties, conventions, ordinances, subsidiary legislation, orders, rules and regulations having the force of law and rules of civil and common law and equity, regardless of the jurisdiction;
 - (i) any word or expression to which a specific meaning has been attached in any part of the Agreement Documents shall bear such meaning whenever it appears in the same and other parts of the Agreement Documents;
 - (j) a time of a day shall be construed as a reference to Hong Kong time;
 - (k) references to “normal business hours” mean 0900 to 1800 hours;
 - (l) references to a day mean a calendar day;
 - (m) references to a month mean a calendar month;
 - (n) any negative obligation imposed on any Party shall be construed as if it were also an obligation not to permit or suffer the act or thing in question, and any positive obligation imposed on any Party shall be construed as if it were also an obligation to procure that the act or thing in question be done;
 - (o) any act, default, neglect or omission of any employee, licensee, agent or sub-contractor of the Consultant shall be deemed to be the act, default, neglect or omission of the Consultant;
 - (p) words importing the whole shall be treated as including a reference to any part of the whole;
 - (q) the expressions “include” and “including” shall be construed without limitation to the words following;

- (r) words and expressions extend to their grammatical variations and cognate expressions where those words and expressions are defined in the Agreement Document or by reference to any other definition;
- (s) references to “writing” include typewriting, printing, lithography, photography, facsimile and the printed out version of a communication by electronic mail and other modes of representing and reproducing words in a legible form;
- (t) where a general obligation in the Invitation to Proposal or this Agreement is followed by more specific obligations, the general obligation shall not be construed restrictively by reference to the specific obligations or deemed to be fully performed by reason only that the specific obligations have been performed; and
- (u) the expressions “public body” and “public officer” have the meanings given to them in the Interpretation and General Clauses Ordinance (Chapter 1 of the Laws of Hong Kong). The expression “officer” has the meaning given to it in the Companies Ordinance (Chapter 622 of the Laws of Hong Kong).

1.3 The headings in this Agreement are intended for ease of reference only and shall not affect, limit or extend the interpretation or construction of this Agreement.

1.4 The provision of this Agreement may only be waived by written agreement executed by the Director.

1.5 Each of the parties shall exercise all such powers as are available to it and shall do all such things and make and sign all such documents as may be necessary to give effect to the provisions hereof.

1.6 Time shall be of the essence in all respects pursuant to this Agreement.

2. TERM

2.1 This Agreement is a term agreement and shall commence from _____ for two years with an option for the Director (AD/SD) or the Director’s Representative (CTP/UD&L) to extend the agreement for another year.

3. LANGUAGE

3.1 The text of this Agreement herein written in the English language is the text of this Agreement and any difficulties or uncertainties in interpretation shall be resolved solely by reference to this text.

4. CONSULTANCY SERVICES

4.1 The Government hereby agrees to engage the Consultant and the Consultant hereby agrees and undertakes to perform and complete the Consultancy Services in accordance with all and singular the terms and conditions of this Agreement.

5. CONSULTANT’S ACKNOWLEDGEMENT, OBLIGATIONS AND CONSULTANCY SERVICES PERFORMANCE

5.1 The Consultant acknowledges that the Government relies on the skill and judgment of the Consultant in the provision of the Consultancy Services and the performance of its obligations under this Agreement.

- 5.2 The Consultant shall perform its obligations under this Agreement:
- (a) with appropriately experienced, qualified and trained personnel and with all due care, skill and diligence;
 - (b) in accordance with Good Industry Practice; and
 - (c) in compliance with all applicable laws and regulations.
- 5.3 The Consultant shall, through the Director's Representative, keep the Government informed of all matters related to this Agreement within the actual or constructive knowledge of the Consultant and shall answer all enquiries received from the Government Representative.
- 5.4 The Consultant shall remain responsible for performing this Agreement, and be liable to the Government under this Agreement.
- 5.5 The Consultant shall comply with all applicable laws and regulations. In particular, the Consultant shall:
- (a) comply with the Employment Ordinance (Chapter 57 of the Laws of Hong Kong) and the Immigration Ordinance (Chapter 115 of the Laws of Hong Kong). The Consultant shall not employ any persons who are forbidden by the laws of Hong Kong or are not entitled for whatever reasons to undertake any employment in Hong Kong;
 - (b) make its own arrangements to provide Mandatory Provident Fund Schemes to its employees in accordance with the provisions of the Mandatory Provident Fund Schemes Ordinance (Chapter 485 of the Laws of Hong Kong); and
 - (c) comply with the requirements of the Occupational Safety and Health Ordinance (Chapter 509 of the Laws of Hong Kong) and any other legal provisions pertaining to the health and safety of the personnel, Government staff and others who may be affected by its performance of Services.
- 5.6 The Consultant shall:
- (a) duly and unconditionally secure, obtain and maintain throughout the Term of the Agreement all and any authorisations, approvals, consents, licences, permits, exemptions and other requirements of any governmental, administrative or other authority or body in any relevant jurisdiction which are or may be required or necessary to authorise the Consultant to execute, deliver and perform the Consultant's obligations under the Contract (including where the Consultant's procedures so require, the consent of its parent company) ("Consents");
 - (b) ensure that the Consents are in full force and effect, and the use of the Services by the Government will not contravene any applicable laws, throughout the Term of the Agreement; and
 - (c) bear all costs, charges and expenses that may be incurred in obtaining and maintaining the Consents throughout the Term of the Agreement.
- 5.7 The Consultant shall pay all taxes, duties, fees, charges, assessments of any nature levied by relevant governmental authorities and to pay the fines and penalties imposed for any offence or infringement by the Consultant under any laws or regulations in connection

with the performance of this Agreement.

- 5.8 The Consultant shall be responsible for the completeness and accuracy of all Deliverables supplied by the Consultant to the Government in connection with the Consultancy Services. Without prejudice to any other provisions of this Agreement, the Consultant shall indemnify the Government in connection with any discrepancies, errors or omissions therein.
- 5.9 Any drawings and specifications reasonably required for the Consultant's guidance in the execution of this Agreement shall be provided by the Government free of charge but shall be returned to the Government on completion of this Agreement.
- 5.10 The Consultant acknowledges that it does not have the right to provide the Consultancy Services to the Government on an exclusive basis and nothing in this Contract confers any such exclusive right. Nothing in this Agreement shall preclude the Government from procuring any Consultancy Services from any other person.
- 5.11 If at the request of the Consultant assistance of any Government staff is provided after normal business hours, the Consultant will be responsible for the overtime remuneration, subsistence allowances and travelling expenses of such Government staff directly engaged in such assistance.

6. CONDUCT OF THE CONSULTANCY SERVICES

- 6.1 The Consultant shall exercise all necessary skill, care and diligence in its conduct of the Consultancy Services.
- 6.2 The Consultant shall take instructions and directions and, where appropriate, receive Government's decisions only from the Government or the Director.
- 6.3 The Consultant shall comply with all reasonable instructions of the Government or the Director in so far as they are applicable to the Consultancy Services and shall use its best endeavours to promote the interests of the Government in relation to the instructed projects. Nothing in this clause shall be deemed to affect the responsibility of the Consultant in connection with the duties undertaken by it under this Agreement.
- 6.4 The Consultant shall, whenever so requested by the Director, submit to him for his approval such reports, drawings, models, designs, plans, computerised model and other documents, matters or things prepared by it for the purposes of this Agreement as the Director may specify or require but no such approval shall affect the responsibility of the Consultant in connection with duties undertaken by it under this Agreement.
- 6.5 The Consultant shall attend all meetings convened or requested by the Director to which they may be summoned; and shall advise and assist the Government on all matters relating to the duties it has assumed under this Agreement. Meetings shall be held at such places and times as may be specified by the Government.
- 6.6 Without prejudice to any other provisions of this Agreement, the Consultant shall, without additional costs or expenses, and at the request of the Government, communicate to the Director promptly all information that the Government deems pertinent to the Consultancy Services.
- 6.7 The Consultant shall, on the written request of the Government made at any time, permit, free of charge, any officer or agent authorized by the Government to examine any

material, paper, document, drawing, data, record, report, plan, chart, diagram, computerised model, software, information in storage or retrieval device or other means of storing or collating information relating to the Consultancy Services and developed or created by the Consultant for the purposes of this Agreement, or any model, prototype or apparatus relating to the Consultancy Services written, drawn, processed, collated or created by the Consultant for the purposes of this Agreement.

- 6.8 To the extent that the Government considers it reasonably necessary and that the information (in whatever media) is in the possession of the Government and is not subject to any confidentiality restriction, the Government may at the request initiated by the Consultant (but not otherwise required in this Agreement), provide all such information for the Consultant's guidance free of charge to enable it to perform its obligations hereunder provided such request from the Consultant is made in a timely manner to avoid any delay on the part of the Consultant to perform the Consultancy Services. If required by the Government, the Consultant shall return all such information (in whatever media) to the Government after completion of the Consultancy Services or upon the expiry or early termination of this Agreement.

7. CONSULTING TEAM

- 7.1 The Consultant shall, throughout the period during which it is performing the Consultancy Services, obtain, engage, maintain, use and deploy as the case may be the individuals referred to by their names in the Technical Proposal for the purpose of undertaking, performing and completing the Consultancy Services.
- 7.2 Such individuals shall not be replaced unless prior written approval has been given by the AD/SD. Such approval may only be given under the following circumstances:-
- (a) such individuals are prevented from performing the Consultancy Services by ill-health or death or injury or incapacity; or
 - (b) the contract of appointment or employment of such individual is terminated either by the Consultant or such individual; or
 - (c) the AD/SD directs the Consultant to replace such individual for reason of unsatisfactory performance or breach of any of his obligations under this Agreement.
- 7.3 In the event that any of the circumstances mentioned in (a), (b) and (c) of Clause 7.2 occurs, the Consultant shall, at its own expense, forthwith or within such period as may be granted by the AD/SD, appoint another substitute to replace the individual to be replaced and appointed under Clause 7.1 provided such substitute is:
- (a) an employee of the Consultant;
 - (b) no less well qualified in terms of experience and qualifications than the outgoing individual; and
 - (c) available at the relevant time to act as such substitute.
- 7.4 The Consultant shall without delay forward a curriculum vitae of the proposed substitute to the AD/SD and shall warrant that it is complete and accurate in all material respects. In the event that the AD/SD reasonably objects to or is not reasonably satisfied with the proposed substitute, the Consultant shall forthwith forward a curriculum vitae of another

substitute who shall be no less qualified or experienced as aforesaid and so on until a suitable substitute satisfactory to the AD/SD is made available.

- 7.5 The appointment or replacement of any member of the Consulting Team to undertake any part of the Consultancy Services shall not relieve the Consultant from any liability or obligation under this Agreement and the Consultant shall be responsible for the acts, omissions, defaults and neglects of any member of the Consultant Team, his agents, servants or workmen as fully as if they were the acts, omissions, defaults or neglects of the Consultant.
- 7.6 The death or incapacity of any member of the Consulting Team shall not constitute a Force Majeure Event.

8. WARRANTIES AND REPRESENTATIONS

8.1 The Consultant warrants, represents and undertakes that:-

- (a) the Consultant and its sub-contractors, their employees and agents shall have the necessary training, skill, experience, qualifications and expertise specified in the Technical Proposal to provide the Consultancy Services on the terms and conditions as set out in this Agreement;
- (b) the Consultant shall carry out the Consultancy Services with all due diligence and in an impartial, timely, safe, proper, skilful and workmanlike manner and that the Consultant, each member of the Consulting Team and any and every person employed, used or engaged by the Consultant shall use all the experience, skill, care and diligence in the performance of the Consultancy Services and the discharge of all its duties and obligations under this Agreement as may be expected from a person who is an expert in providing services of a kind similar to the Consultancy Services;
- (c) the Consultancy Services shall conform in all respects to the conditions under this Agreement;
- (d) the Consultant will provide independent and unbiased advice to the Government in relation to the instructed projects;
- (e) it shall not employ any illegal workers to carry out its obligations under this Agreement;
- (f) the Consultant has full power, capacity and authority to enter into this Agreement and to perform all its obligations under this Agreement;
- (g) this Agreement constitutes valid, legally binding obligations of the Consultant enforceable in accordance with its terms;
- (h) throughout the Term of this Agreement, the Consultant shall comply with all laws and regulations in the performance of this Agreement including all of its obligations under this Agreement; as at the time of acceptance, each instructed project shall comply with all laws and regulations prevailing at the time of acceptance;
- (i) all information and documents supplied, and statements and representations from time to time made by or on behalf of the Consultant in or in relation to the Consultancy Services and the instructed projects are genuine, true, accurate and

complete;

- (j) 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 Consultant to execute, deliver and perform the Consultant's obligations under this Agreement (including where its procedures so require, the consent of its parent company) have been duly and unconditionally obtained prior to commencement of this Agreement and are in full force and effect; and will continue to be maintained and if necessary renewed throughout the Term of this Agreement and the use of the Services by the Government will not contravene any applicable laws;
- (k) the Project Materials will, so far as they do not comprise material originating from the Government, its employees, agents or the approved sub-contractors, be original works of authorship and the use or possession thereof by the Government or the Consultant will not subject the Government or the Consultant to any claim for infringement of any proprietary rights of any third party;
- (l) no announcement or publicity concerning this Agreement, the Consultancy Services or the instructed projects, or any matter ancillary thereto shall be made by the Consultant without the prior written consent of the Government;
- (m) throughout the Term of this Agreement, no claim is being made and no litigation, arbitration or administrative proceeding is presently in progress, or to the best of the Consultant'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 this Agreement;
- (n) throughout the Term of this Agreement, it is not subject to any contractual obligation, or court judgment or ruling order or arbitration decision, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Agreement;
- (o) throughout the Term of this Agreement, 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 Consultant 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 Consultant's assets or revenue;
- (p) 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 this Agreement; and
- (q) throughout the Term of this Agreement, 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 this Agreement.

8.2 The warranties, representations and undertakings, expressed or implied, contained in Clause 8.1 above and in Clause 22.4 and in other provisions of this Agreement, and those made by the Consultant in the Technical Proposals for this Agreement including all Schedules, during the evaluation of the Technical Proposals, and those from time to time made in the Term of this Agreement (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 term of this Agreement, it shall be true on each day of the term of this Agreement as if it is repeated on each such day.

8.3 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 this Agreement.

8.4 Unless otherwise expressly excluded from or provided to the contrary in this Agreement, the rights, duties and liabilities imposed on a service provider and the rights conferred on the party contracting with the service provider under the Supply of Services (Implied Terms) Ordinance (Chapter 457 of the Laws of Hong Kong) apply to bind the Consultant and the Government respectively.

9. COSTS AND EXPENSES

9.1 Save as otherwise expressly provided for in this Agreement, the Consultant shall comply with all provisions of this Agreement and its obligations under this Agreement at its own costs and expenses.

10. DELIVERABLES AND PROJECT DOCUMENTS

10.1 The Consultant shall prepare and submit to Government in the manner herein mentioned the Deliverables and other documents described in the Assignment Brief, Scope of Services and Letter of Acceptance for Fee Proposal of the concerned instructed projects.

10.2 The Deliverables and other documents as referred to in the Assignment Brief of this Agreement shall be submitted to the Director's Representative in accordance with the time as specified in the Scope of Services and the Letter of Acceptance of Fee Proposal for the concerned instructed project, or at such other time as may be agreed in writing with the Director's Representative.

10.3 The Deliverables to be prepared and furnished by the Consultant shall, when submitted to the Government, be the detailed drawings, plans and report of the Consultant's findings and recommendations and shall be accompanied by all such plans, specifications, models, software, computerised model and other documents as may be necessary or required by the Government for the examination and consideration of the instructed projects.

10.4 Notwithstanding any provision of this Agreement, due provision of any Deliverables to the Government shall not be regarded to have taken place unless and until such Deliverables are accepted by the Government.

11. DEFECTS IN THE DELIVERABLES

11.1 In the event that any of the Deliverables or the Consultancy Services fails to achieve the requirements of the Assignment Brief, Scope of Services and Letter of Acceptance, or to comply with the specifications specified in this Agreement, or in the event that there is a breach of or non-compliance with any warranty, undertaking or obligation on the part of the Consultant to observe and perform which is capable of remedy, the Government may by notice in writing to the Consultant at any time require the Consultant to make good the defect, deficiency or remedy the breach at its sole costs and expenses within such time as may be stipulated by the Government in the notice.

12. ACCEPTANCE OF THE DELIVERABLES AND THE CONSULTANCY SERVICES

- 12.1 Acceptance of each and every Deliverable shall only occur when the Government gives written notice to the Consultant advising it of the satisfactory completion of such Deliverable. If neither such written notice is given nor any request is made under Clause 11 within thirty (30) days after the receipt of the Deliverable or corrected Deliverable by the Government, the said Deliverable or corrected Deliverable shall be deemed to be accepted by the Government.
- 12.2 Acceptance by the Government of the satisfactory completion of the Consultancy Services for an instructed project shall occur on a date on which the Government gives written notice to the Consultant to this effect, provided that subject to Clause 11, if such written notice is not given within thirty (30) days of the date of the acceptance of the Final Report or Executive Summary as may be specified by the Director, in accordance with Clause 12.1 and the Government shall not have given the Consultant any notice of any defects, inadequacy or incompleteness of the Final Report or Executive Summary as may be specified by the Director, there shall be deemed acceptance by the Government of the Consultancy Services for the instructed project.

13. DELAY

- 13.1 In the event that the Consultant fails to provide any of the Deliverables specified in the Agreement within thirty (30) days after the time for that Deliverable, then notwithstanding anything else contained in the Annexes of this Agreement, the Government shall be entitled to terminate this Agreement forthwith on giving written notice to the Consultant and to recover from the Consultant the amount of all damages and loss suffered by the Government resulting from such failure. Upon such termination, the Consultant shall (without prejudice to the Government's right to recover the amount of such damages and loss as aforesaid) forthwith refund to the Government all moneys previously paid to the Consultant under this Agreement for the instructed project.
- 13.2 If the Consultant is prevented or delayed from performing its obligations under this Agreement by reason of any act or omission of the Government (other than a delay caused by Force Majeure) then any services or deliverables affected by such delay shall be extended by the period of such delay and the Consultant shall be entitled to recover from the Government any additional costs incurred as a result of such delay provided that
- (a) the Consultant shall as soon as reasonably practicable re-schedule the members of the Consulting Team to undertake any other part of the Consultancy Services or any other works or services so as to minimise any additional costs; and
 - (b) in any event the total additional costs occasioned by such delay shall not exceed 5% of the Contract Price of the instructed project.

14. TERMS OF PAYMENT

- 14.1 In consideration of the Consultant's due and proper performance of all its obligations in accordance with this Agreement and subject always to all and any set-off, deductions or withholding, payments under this Agreement shall become payable upon acceptance of each and every Deliverable in accordance with Clause 12 of this Agreement.

- 14.2 All payments payable by the Government under this Agreement shall be paid within thirty (30) days after the receipt of the invoice from the Consultant (which has included all necessary deductions set-off and withholding) and satisfactory acceptance of the Deliverable therefor. For the purpose of this sub-clause, the period of thirty (30) days shall not start to run until any such payment is payable.
- 14.3 Apart from the fees quoted in the Fee Proposal, no other money shall be payable by the Government to the Consultant or any other person under this Agreement. Save as otherwise expressly provided for in this Agreement, the Consultant shall perform, comply with and observe all provisions of this Agreement and its obligations under this Agreement at its own costs and expenses. All things done by the Consultant and all things supplied by the Consultant shall be deemed as things done and supplied within the scope of this Agreement. No additional money shall be payable by the Government in the absence of any express provision specifically for the relevant subject matter.
- 14.4 Without prejudice to Clause 14.3 above, the fees quoted in the Fee Proposal for the concerned instructed project shall be inclusive of all labour, materials and expenses incurred in carrying out the duties under this Agreement. Save as otherwise expressly provided for in this Agreement, the Consultant shall not be entitled to any adjustment in the fees for any reason (including foreign exchange fluctuations).
- 14.5 Unless provided otherwise, payment shall be made in Hong Kong Dollars.
- 14.6 The Consultant shall invoice the Government for any payment of the fees quoted in the Fee Proposal. In respect of the Consultancy Services or Deliverables which has been accepted and that the fee is payable, the Consultant shall deliver to the Director's Representative responsible for the relevant instructed project at the location(s) or at such other address specified in this Agreement or such other address stipulated by the Government any time by notice in writing, an invoice setting out the particulars of the Consultancy Services and/or Deliverables provided, the amount of fee payable for the Consultancy Services and/or Deliverables after taking into account all applicable deductions, set-off and withholding, and such other information as the Director's Representative may require from time to time. The delivery address will be provided when fee proposal is invited from the shortlisted Consultants for the relevant instructed project.
- 14.7 The Government shall not be held responsible for any delay in payment and no interest or other surcharge or any other payment howsoever described shall be charged to the Government due to (a) invoices not having been issued in accordance with this Clause 14, or (b) the invoices not having been duly calculated in accordance with the provisions of the agreed Fee Proposal (including without limitation not having taken into account all applicable deductions, set-off or withholding), or (c) the Consultant disputing any deductions or set-off or withholding made by the Government pursuant to this Agreement, or (d) any invoice or correspondence being improperly addressed contrary to the requirements stipulated in this Agreement. Each invoice shall include all deductions, set-off and withholding which may be made pursuant to the terms of this Agreement and shall show the net amount payable. If the Consultant does not render an invoice charging a correctly stated net amount due to its failure to take into account all appropriate deductions, set-off or withholding or otherwise, the Government may, but is not obliged to, pay the net amount which duly takes into account all appropriate deductions, set-off and withholding.
- 14.8 Notwithstanding any provision of this Agreement, the Government is entitled to withhold payment of all or any part of the Contract Price and any other sum payable by

the Government to the Consultant under the Contract if:

- (a) the Consultant fails to observe or perform any provision of the Contract;
- (b) the Government disputes on any reasonable ground its obligation to pay the amount in question;
- (c) the Government has reasonable grounds to believe that the Consultant is or will be liable to the Government under any provision of the Contract for the loss or damage suffered by the Government; or
- (d) withholding of payment is required by any applicable law or regulation for tax or otherwise.

14.9 No payment made by the Government under this Agreement 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 Government in respect of any breach of this Agreement by the Consultant.

15. CHANGES IN THE SCOPE OF THE CONSULTANCY SERVICES

15.1 The Government or the Director may at any time during the term of this Agreement by giving seven (7) days written notice to the Consultant vary or make changes to the scope of the Consultancy Services to be carried out under this Agreement. In such event, and notwithstanding anything to the contrary herein, the cost of the change (if any) and the impact of the change on the provisions of this Agreement shall be negotiated between the Government and the Consultant to their mutual agreement prior to the Consultant being obliged to carry out the work occasioned by the change and pending agreement in writing, the rights, duties, powers and obligations conferred and imposed by this Agreement shall not be abrogated, suspended, modified, varied or affected. All such written notices of change and the said cost of the same (if any) shall be deemed to be and form a part of this Agreement when negotiated and agreed as aforesaid.

16. FORCE MAJEURE

16.1 If the Consultant becomes aware of any matter likely to constitute a Force Majeure Event, the Consultant shall forthwith notify the Government in writing such matter and provide the Government with all relevant information as the Government may request.

16.2 Within seven (7) days after the occurrence of a Force Majeure event or earlier, the Consultant shall notify the Government in writing of the full particulars of the Force Majeure Event including its nature, extent, how the Force Majeure Event has and/or will materially prevent it from performing the Contract or such part thereof, and likely duration of such material prevention.

16.3 Provided the Government is satisfied with the Consultant's claim of a Force Majeure Event which has materially prevented and/or will continue to materially prevent it from performing its obligations under this Agreement or such part thereof, this Agreement or such part thereof strictly to the extent of such prevention shall be suspended during the subsistence of such Force Majeure Event commencing from a date to be agreed between the Parties ("Suspension due to Force Majeure"). Where the Government is not so satisfied about any alleged claim of a Force Majeure Event, there shall be no Suspension due to Force Majeure. The Consultant may not allege or claim any event as a Force Majeure Event. Any failure by the Consultant to perform any obligation under this

Agreement shall be treated as default and entitles the Government to terminate the Contract under any applicable Sub-clause of Clause 25.1 or Clause 25.2 of this Agreement or partially terminate the Contract under Clause 25.4 of this Agreement.

- 16.4 Without prejudice to the generality of Clause 16.3 above, whilst the Suspension due to the Force Majeure subsists:
- (a) the Consultant shall not be required to perform any part of its obligations under this Agreement strictly to the extent it is materially prevented from doing so by the Force Majeure Event (“Affected Obligations”) but it shall use its best endeavours to remove or mitigate the effect of the Force Majeure Event on the Affected Obligations;
 - (b) the Government may make alternative arrangements for the performance of the Affected Obligations, whether by another person or otherwise, without compensation to the Consultant;
 - (c) the Consultant shall not be entitled to any payment of money in respect of the Affected Obligations (if any money would have been payable in the first place);
 - (d) notwithstanding anything in this Agreement to the contrary, no compensation shall be payable by either Party to the other due to any losses or damage arising from the Suspension due to the Force Majeure; and
 - (e) the Consultant 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 this Agreement including those obligations which are not Affected Obligations, and to that extent, all terms and conditions of this Agreement shall continue to apply and be in full force and effect.
- 16.5 Following the issue of a notice by the Consultant under Clause 16.1 above which has led to Suspension due to Force Majeure under Clause 16.3 above, the Consultant shall keep the Government informed once every week or at such longer frequency as may be allowed by the Government, and in any event from time to time upon the request of the Government, of:
- (a) the likely duration of the relevant Force Majeure Event and of its effect of materially preventing the Consultant from performing the Affected Obligations;
 - (b) the actions taken or proposed to be taken by the Consultant to mitigate or minimise the effects of that Force Majeure Event (“Mitigation Actions”); and
 - (c) any other matters relevant to that Force Majeure Event or the Consultant’s performance affected by that Force Majeure Event.
- 16.6 As soon as the relevant Force Majeure Event has terminated or otherwise that the Government considers that the Mitigation Actions have minimised the effect of the Force Majeure Event on the ability of the Consultant to perform the Affected Obligations, the Consultant shall forthwith notify the Government, or the Government may on its own, after consultation with the Consultant, by notice in writing to the Consultant, or the Government may on its own, after consultation with the Consultant, by notice in writing to the Consultant, determine the appropriate date for resuming the performance of the Affected Obligations (“Resumption Date”). The Contractor shall immediately after the

termination of the Force Majeure Event or with effect from Resumption Date as determined by the Government in the aforesaid manner, resume performance of the Affected Obligations in accordance with the terms and conditions of this Agreement. In the event of any disagreement between the Government and the Consultant on the appropriate Resumption Date, the Government's decision shall be final in the absence of manifest error.

- 16.7 Should a Suspension due to Force Majeure subsists for more than thirty (30) days, the Government shall be entitled to, but is not obliged to, terminate this Agreement pursuant to Clause 25.3 of this Agreement or partially terminate this Agreement pursuant to Clause 25.4 of this Agreement.
- 16.8 The Consultant shall ensure that provisions similar to this Clause 16 are incorporated in all its contracts with sub-contractors made pursuant to this Agreement.

17. CONFIDENTIALITY

17.1 The Consultant shall not disclose and shall treat as proprietary to the Government and confidential all Government Data, any other information, report, document, plan, record, Project 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)), database, code or particulars (a) furnished or disclosed by or on behalf of the Government or by any other person to the Consultant; or (b) otherwise be accessible by or available or communicated to the Consultant or may come to the Consultant's knowledge for the purposes of or in the course of performing this Agreement; or (c) any Deliverable, advice, recommendations, reports, documents, materials and data or any other materials containing information belonging to the Government or specifically relating to or relevant to the Consultancy Services provided to the Government (collectively "Confidential Information") in whatever form or media. The restrictions on disclosure contained in this Clause 17.1 shall not apply to the disclosure of any Confidential Information if:

- (a) such disclosure to any person employed, used or engaged by the Consultant in performing this Agreement is made in circumstances where such disclosure is necessary in the reasonable opinion of the Consultant for the performance of the Consultant's duties and obligations under the Consultant, provided that the Consultant has imposed on the said person employed, used or engaged an absolute and legally binding obligation to the Consultant to refrain from disclosing the Confidential Information to a third party;
- (b) such Confidential Information is already known to the recipient other than as a result of disclosure by the Consultant or any other member of the Restricted Group; or
- (c) such Confidential Information is or becomes public knowledge other than as a result of disclosure by the Consultant or any other member of the Restricted Group;
- (d) such disclosure is made in circumstances where such disclosure is required pursuant to any laws of Hong Kong or an order of a court of Hong Kong; or
- (e) with the prior consent in writing of the Government.

17.2 Without prejudice to any other provision of this Agreement, the Consultant shall

indemnify and keep each of the Government, its assigns, successors-in-title and authorised users from and against everything stated in Clauses 19.2(a) and 19.2(b) which the Government (or any of its assigns or successors-in-title or authorised users) may suffer or incur directly or indirectly as a result of or arising from or in connection with or in relation to:

- (a) a breach of confidence (whether under this Agreement or general law) by the Consultant or any other member of the Restricted Group;
- (b) any actions or claims made in respect of information subject to the Personal Data (Privacy) Ordinance (Chapter 486 of the Laws of Hong Kong), which action and/or claim would not have arisen but for the act, negligence or omission of the Consultant or any of its employees, agents or sub-contractors in connection with the performance of this Agreement; and
- (c) any act done or omission in the performance of this Agreement that contravenes the Unsolicited Electronic Messages Ordinance (Chapter 593 of the Laws of Hong Kong).

17.3 The Consultant shall use the Confidential Information solely for the purposes of this Agreement. The Consultant shall not, at any time whether during the term of this Agreement or after the expiry or termination (howsoever occasioned) of this Agreement, use, disclose, publish or reproduce, and shall procure and ensure each person who may be imparted with any Confidential Information in accordance with Clause 17.1 above shall not use, disclose, publish or reproduce, the Confidential Information for any other purposes without the Government's prior written consent.

17.4 When requested by the Government, the Consultant shall forthwith require any of its officers or employees or agents or sub-contractors as the Government may stipulate, and such other persons to whom disclosure is made pursuant to Clause 17.1 above, to execute a written undertaking in favour of the Consultant and the Government in a form to be determined by the Government agreeing to the restrictions attached to the Confidential Information set out in this Clause 17 and the Consultant agrees to provide certified true copies of any such undertakings to the Government within fourteen (14) days from the date of request by the Government. The Contractor further agrees that, if so required by the Government, it will, at its own cost and expense, take such actions and steps as are lawful and necessary to enforce such undertaking in the event of any breach thereof by anyone who has executed such undertaking.

17.5 The Consultant shall establish and maintain all necessary security measures and procedures for the safe custody of the Confidential Information in the Consultant's possession or under its control and to prevent unauthorised access thereto or use thereof.

17.6 The Consultant shall not, and shall ensure that no other member of the Restricted Group will, save to the extent necessary for performing this Agreement, peruse, retain possession or control of, or duplicate, any Confidential Information or any copy thereof (in whatsoever media or format).

17.7 The Consultant shall ensure that each of its employees, agents, sub-contractors, and any other persons involved in the performance of this Agreement are aware of and comply with the provisions of this Clause 17 and the Official Secrets Ordinance (Chapter 521 of the Laws of Hong Kong).

17.8 The Consultant shall promptly notify the Government of, and give the Government all

reasonable assistance in connection with, any proceedings which the Government may institute against any such persons pursuant to any of the provisions in this Clause 17.

- 17.9 The Consultant acknowledges that any unauthorised disclosure or use of the Confidential Information can cause irreparable harm and significant injury to the Government, the degree of which may be difficult to ascertain or that damages may not be an adequate remedy. Accordingly, the Consultant agrees that the Government shall have the right to obtain and be immediately granted an injunction prohibiting any breach of this Clause 17 and/or specific performance ensuring the compliance of this Clause 17 in light of any threatened or actual breach of this Clause 17, without prejudice to its other rights and claims including those available under this Agreement or at law arising from such breach.
- 17.10 Without prejudice to the generality of the foregoing provisions, the Consultant further undertakes that it will not at any time itself or through any associate or associated person or employee, sub-contractor or agent use, sell, license, sub-license, create, develop or otherwise deal in any Confidential Information.
- 17.11 The Government may request the Consultant in writing at any time that any Confidential Information disclosed pursuant to the terms of this Clause 17 and any copies, analyses, compilations and extracts thereof whether in hard copies, 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 Consultant shall comply with any such request from the Government within seven (7) days of receipt of such request.

18. ASSIGNMENT AND SUB-CONTRACTING

- 18.1 Unless otherwise provided for in this Agreement, the Consultant shall not, without the prior written consent of the Government, assign, transfer, sub-contract or otherwise dispose of any of its interests, rights, benefits or obligations under this Agreement. The performance of this Agreement by the Consultant shall be personal to it. Any person purportedly appointed by the Consultant as agent shall be treated as sub-contractors for the purpose of this Clause 18 and for the whole of this Agreement.
- 18.2 The Consultant shall submit the proposed sub-contract to the Government for approval. The Government reserves the right to grant permission for sub-contracting and determine the terms and conditions of the sub-contract. The Government may also impose conditions either to be complied with by the Consultant and/or any proposed sub-contractors before giving any approval under Clause 18.1 above including without limitation the execution of a sub-contractor's undertaking by the proposed sub-contractor in favour of the Government in such form and substance to be prescribed by the Government. Where the Government requests the same, a certified copy of the sub-contract shall be deposited with the Government within seven (7) days after the effective date of the sub-contract.
- 18.3 The Consultant shall remain fully liable and shall not be relieved from any of its obligations hereunder by entering into any sub-contract for the performance of any part of this Agreement. The Consultant shall be responsible for all acts, defaults, omissions and neglects of any of its officers, employees, agents, sub-contractor (at whatever level), and employees and agents of any such sub-contractor as if they were its own.

19. LIABILITY AND INDEMNITIES

19.1 Neither the Government 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 Consultant's property or that of its employees or agents however caused (whether by any Negligence of the Government or any of its employees or agents or otherwise); or
- (b) any injury to or death of the Consultant (in the case where the Consultant 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 Government or any of its employees (in the course of employment).

19.2 Without prejudice to any other provision of this Agreement, the Consultant shall indemnify each of the Government, its assigns, successors-in-title, and authorised users (including the employees and agents of the Government) (each an "Indemnified Party") from and against :

- (a) all and any liabilities and indebtedness (including liabilities to pay damages or compensation), losses, damage, costs, charges and expenses incurred or suffered by an Indemnified Party of whatsoever nature (including all legal and expert costs, charges and expenses on a full indemnity basis); and
- (b) all and any demands, claims, actions, arbitrations, proceedings, threatened, brought or instituted by any person against an Indemnified Party or by an Indemnified Party against any person (regardless of whether or not they have been settled or compromised) (collectively, "Claims" and each a "Claim") and everything stated in Sub-clause (a) above incurred or suffered by an Indemnified Party in all and any such Claims,

which arise directly or indirectly as a result of or in connection with, or which relate in any way to, all or any of the following:

- (i) the breach of any provisions of this Agreement by the Consultant;
- (ii) the negligence, recklessness, tortuous acts or wilful act or omission of the Consultant, its employees, agents or sub-contractors;
- (iii) any Warranty which is incorrect, inaccurate, incomplete or misleading;
- (iv) the non-compliance by the Consultant, its employees, agents or sub-contractor(s) with any applicable law or regulation, order or requirement of any government agency or authority;
- (v) any act or omission of the Consultant, or its employees, agents or sub-contractors, in the performance of this Agreement notwithstanding that the Consultant is authorised or obliged to do or commit any such act or omission under this Agreement;
- (vi) any loss, damage, injury or death referred to in Clause 19.1 above save and except injury or death caused by the Negligence of the Government or any of its employees (in the course of employment);
- (vii) any injury or death of any third party, or any loss or damage to property

sustained by any third party, in consequence of any act, omission, default, or negligence of the Consultant or any of its employees, agents and sub-contractors; or

- (viii) any claim or allegation that the use or possession of the Project Materials or third party materials infringes the Intellectual Property Rights or any other rights of any person.

Each of the above is separate and shall be construed independently and shall not prejudice or be limited by reference to or inference from the other of them or other provisions of this Agreement.

- 19.3 In any event of any person suffering any injury or death in the course of or arising out of this Agreement and whether there be a claim for compensation or not, the Consultant shall verbally inform the Director's Representative as early as practicable and deliver to the Government a written report within seven (7) working days after the occurrence of the injury or death, or on an earlier date specified by the Director's Representative.
- 19.4 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).
- 19.5 The indemnities, payment and compensation given in pursuance of this Agreement by the Consultant shall not be affected or reduced by reason of any failure or omission of the Government in enforcing any of the terms and conditions of this Agreement.

20. PROBITY

- 20.1 The Consultant acknowledges it has been reminded that:
 - (a) dishonesty, theft and corruption on its part or that of its officers, 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.
- 20.2 The Consultant 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 (Chapter 201 of the Laws of Hong Kong)) is not permitted. The Consultant shall also caution its officers (including directors), 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.
- 20.3 The Government shall have the right to terminate this entire Agreement pursuant to Clause 25.1 or partially terminate this Agreement pursuant to Clause 25.4 depending on the election of the Government in the event that the Consultant or any of its employees, agents and sub-contractors is convicted of an offence under the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong), the Theft Ordinance (Chapter 210

of the Laws of Hong Kong) or the Crimes Ordinance (Chapter 200 of the Laws of Hong Kong).

21. PUBLICITY

- 21.1 Whether before, during or after the expiry or termination of the term of this Agreement, the Consultant shall not use the Government's name in any document, publication, advertisement or publicity material without the prior written consent of the Government.
- 21.2 Subject to Clause 21.1, the Consultant shall submit to the Director for approval all the proposed advertising or other publicity material relating to this Agreement, the Consultancy Services or other services provided or other work done in connection with this Agreement wherein the Government's name is mentioned or language used from which a connection with the Government can reasonably be inferred or implied.
- 21.3 Notwithstanding any consent or approval given under Clause 21.1 or 21.2, whenever required by the Government, the Consultant shall remove all advertisement and publicity material relating to this Agreement wherein the Government is mentioned or language used from which a connection with the Government can reasonably be inferred or implied and the Consultant must comply with such request.
- 21.4 The Government undertakes not to arrange press releases or other forms of publicity about work undertaken under this Agreement wherein the Consultant's name is mentioned or language used from which a connection with this Agreement can reasonably be inferred or implied, without prior consultation with the Consultant.

22. INTELLECTUAL PROPERTY RIGHTS

- 22.1 The Government shall be the exclusive owner of the Project Materials. All the Intellectual Property Rights in the Project Materials shall vest in the Government at time they are created. Subject to Clause 22.3, the Consultant warrants that such Project Materials are original works developed by or on behalf of the Consultant.
- 22.2 The Consultant shall not use or allow to be used directly or indirectly the Project Materials except for the performance of its obligations under this Agreement or except with prior written approval of the Government. "Use" includes any acts restricted by copyright (including reproduction) as set out in sections 22 to 29 of the Copyright Ordinance (Chapter 528 of the Laws of Hong Kong).
- 22.3 If materials from other copyright works or Intellectual Property Rights from other sources (except those originating from the Government) are included in the Project Materials or any software and materials are supplied or used by the Consultant in the performance of this Agreement and the Intellectual Property Rights are vested in a third party, the Consultant shall identify such materials to the Government and keep the Government informed in writing of such third party materials.

Warranties and Representations

- 22.4 The Consultant warrants and represents that:
- (a) it has or shall have a valid and continuing licence under which it is entitled to use or sub-license such third party materials and the third party Intellectual Property Rights for itself and for the Government and its authorised users to use such third party materials;

- (b) prior to the use and incorporation of such third party materials, the Consultant shall have obtained the grant of all necessary clearances for itself and for the Government and its authorised users authorising the use of such third party materials for the purposes contemplated under this Agreement;
- (c) the provision of the Consultancy Services by the Consultant and the use or possession by the Government and its authorised users of the Project Materials including the third party materials for any of the purposes contemplated by this Agreement does not and will not infringe any Intellectual Property Rights of any person;
- (d) the exercise of any of the rights granted under this Agreement by the Government and its authorised users will not infringe any Intellectual Property Rights of any person; and
- (e) it is not aware of and has no reason to believe that in relation to the use of licences and materials (i) there is any judgment or order or ruling or decision from any court of competent jurisdiction or from any arbitration body that such licences or materials infringe the Intellectual Property Rights of any person; or (ii) any claims, actions or proceedings or arbitration have been initiated or threatened against the Consultant, its officers, employees, agents and sub-contractors for infringement of any Intellectual Property Rights of any person; or (iii) any agreement having been entered into to settle any such claims, actions, proceedings or arbitration. Each of the events mentioned in (i) to (iii) above shall be referred to as “Infringement Event”.

Notification

- 22.5 Within seven (7) days of the first written request from the Government, the Consultant shall provide all such documentary evidence to the satisfaction of the Government to prove compliance with the Warranties specified in Clause 22.4 above.
- 22.6 In the event that there is any Infringement Event (as defined in Clause 22.4(e) above) which has not already been notified to the Government during the Invitation to Proposals stage under Clause 46 of this Agreement, without prejudice to the rights and claims of the Government, the Consultant shall immediately notify the Government concerning such Infringement Event, and continue to update the Government concerning the progress and status thereof. In addition, the Consultant shall provide all such information and documents to the Government concerning such Infringement Event as the Government may request.

Licence to use the Deliverables and materials

- 22.7 Without prejudice to the Consultant’s obligations under this Agreement including this Clause 22 and Clause 17, unless and to the extent otherwise specified in this Agreement, the Government does not claim ownership of any Intellectual Property Rights which may subsist in any of the Deliverables (if any).
- 22.8 The Consultant hereby grants, or in case it is not empowered to do so, shall at its own costs and expense procure that there will be granted to the Government and each of its authorised users, assigns and successors-in-title (collectively “licensees” and each a “licensee”) the licences which are non-exclusive (except that ownership and rights as an owner including right to possession shall be on an exclusive basis), royalty-free sub-licensable, irrevocable, transferable, effective throughout the world and throughout the

Licence Term for all purposes as stated in this Agreement and as and how the licensee sees fit:

- (a) to use, make copies, modify and make adaptations or customisations of the Deliverables or any part thereof; and
- (b) to the extent any Intellectual Property Rights subsist in the Deliverables or in any part of the Deliverables, to use, possess, distribute and if required as part of the work to be performed by the Consultant under this Agreement, modify, adapt or customise, the Deliverables and any part of the Deliverables,

(all of the rights mentioned above in Sub-clauses (a) and (b) above and those as mentioned in the provisions of this Agreement supplementing this Clause 22) shall be collectively referred to as “Licensed Rights”; and the licences as provided for in this Clause 22.8 and in the aforesaid provisions of this Agreement shall be collectively referred to as “Licences”).

22.9 The Consultant hereby undertakes to procure, obtain and produce for inspection by the Government within seven (7) working days upon request, at its own cost and expense, all proper licences clearances and releases in writing and completion of all other formalities and requirements necessary to ensure that the Licences have been validly and legally granted to each licensee in accordance with Clause 22.8 above.

22.10 Reference to the Licence Term in Clause 22.9 above shall mean

- (a) in the case of the Licence referred to in Clause 22.8(a) above, the full remaining period (as from time to time extended, renewed or revived) during which all or any of the respective Intellectual Property Rights in the Deliverables continue to subsist under all and any applicable laws (including the laws of Hong Kong), counting from the date the relevant Deliverable is created; and
- (b) in the case of the Licence referred to in Clause 22.8(b) above or any other Licence in relation to any other subject matter as specified in the provisions of this Agreement supplementing this Clause 22, the full remaining period (as from time to time extended, renewed or revived) during which all or any of the respective Intellectual Property Rights in the Deliverables (or such subject matter as specified in the aforesaid provisions of this Agreement) continue to subsist under all and any applicable laws including the laws of Hong Kong, counting from the date the Deliverables (or the relevant subject matter) are submitted to the Government.

22.11 Apart from the agreed Fee Proposal, under no circumstances whatsoever shall the Government or any other licensee be liable or responsible to pay to the Consultant or any other person any money (whether on a recurrent or non-recurrent basis) for all or any of the Licences or for the Licensed Rights.

Waiver of Moral Rights

22.12 The Consultant hereby irrevocably waives and undertakes to procure, at its own costs and expense, all relevant authors of the Deliverables and Project Materials to irrevocably waive all the moral rights therein (whether past, present or future).. Such waiver shall operate in favour of the Government, its assigns, authorised users and successors-in-title and shall take effect upon submission of the Deliverables and delivery of the relevant Project Materials or the grant of the relevant Licence (as the case may be).

22.13 References to “authorised users” in this Clause 22 and Clause 23 of this Agreement and other parts of this Agreement shall include, without limitation, customers of or persons receiving services from the Government or other authorised users of the Deliverables and/or Project Materials.

22.14 The provision of this Clause shall survive the expiry or termination of this Agreement and shall continue in full force and effect notwithstanding such expiry or termination.

23. Intellectual Property Rights Indemnities

23.1 In addition to, and without prejudice to Clause 19.2 of this Agreement and the remaining provisions of this Clause 23, the Consultant shall indemnify and keep indemnified each of the Government, its authorised users, employees, agents, assigns, and successors-in-title (collectively “IP Indemnified Parties”) from and against

- (a) all and any liabilities and indebtedness (including liabilities to pay damages or compensation), losses, damage, costs, charges and expenses incurred or suffered by an IP Indemnified Party of whatsoever nature (including all legal and expert costs, charges and expenses on a full indemnity basis); and
- (b) all and any demands, claims, actions, arbitrations, proceedings, threatened, brought or instituted by any person against an IP Indemnified Party or by an IP Indemnified Party against any person (regardless of whether or not they have been settled or compromised) (collectively, “Claims” and each a “Claim”) and everything stated in (a) above incurred or suffered by an IP Indemnified Party in all and any such Claims,

which arise directly or indirectly as a result of or in connection with, or in relation to the infringement or alleged infringement of any Intellectual Property Right of any person by the Contractor or an IP Indemnified Party due to all or any of the following:

- (i) the exercise of the Licensed Rights;
- (ii) the performance by the Consultant of this Agreement or the provision of the Consultancy Services in the manner provided for or contemplated under this Agreement;
- (iii) the enjoyment or exercise by that IP Indemnified Party of any of its right or powers under this Agreement;
- (iv) (whether or not involving any element of fault or negligence on the part of the Consultant) any act, omission or default by the Consultant in the performance of this Agreement;
- (v) the breach of any Warranties concerning Intellectual Property Rights (including those set out in Clause 22.4 of this Agreement); or
- (vi) any Infringement Event (as defined in Clause 22.4(d) of this Agreement).

(Each of the above is an “infringing act” and is separate and shall be construed independently and shall not prejudice, or be limited by reference to or inference from, the other of them or other provisions of this Contract.)

- 23.2 In the event that there is an infringing act or an alleged infringing act, the Consultant shall as soon as it becomes aware of the same, but in any event within seven (7) days of the first written request of the Government or such longer period as the Government may allow, at its own costs and expenses, without prejudice to any other rights and claims of an IP Indemnified Party (including in particular those under Clauses 19 and 23 of this Agreement):
- (a) procure the consent and licence of all relevant persons on such terms to the satisfaction of the Government to permit the infringing act or alleged infringing act, failing which the Government shall have the right, but not the obligation, to procure the same, and any costs incurred by the Government shall be recovered from the Consultant on a full indemnity basis; or
 - (b) replace or modify the Deliverables so as to avoid infringement or alleged infringement of any third party's Intellectual Property Rights (in which event the Consultant shall compensate the Government for the full amount of any loss and damage sustained or incurred by the Government arising from such replacement or modification) provided always that any suggestion to make any replacement or modification must first be raised by the Government in writing, and then proposed by the Consultant for the Government's acceptance and be subject to the same acceptance criteria as the Government may stipulate in accordance with Clause 12 and other applicable terms and conditions of this Agreement. If the Government does not raise any suggestion or refuses acceptance in relation to any proposed modification or replacement, the Consultant must seek the consent and licence pursuant to Clause 23.2(a) above.
- 23.3 Without prejudice to any other rights and claims that the Government may have under this Agreement or at law (including without limitation to claim indemnity from the Contractor in light of any Claims against the Government pursuant to Clause 19 and/or Clause 20.1 above), where neither Clause 23.2(a) nor 23.2(b) above can be accomplished or elected to be exercised by the Government (in the case of Clause 23.2(b) above),
- (a) the Government may reject all or any Deliverables (regardless of whether they have been delivered or accepted) ("IP Infringing Deliverables"); and
 - (b) the Government shall have the right to terminate the entire Agreement pursuant to Clause 25.1 of this Agreement or partially terminate this Agreement pursuant to Clause 25.4 of this Agreement depending on the election of the Government. Upon such rejection and termination, the Consultant shall forthwith refund to the Government with interest, all monies previously paid to the Consultant under this Agreement in respect of all IP Infringing Deliverables. Interest may be applied to accrue from the date of payment by the Government to the date of actual refund by the Consultant.
- 23.4 As and when the Government may require, and regardless of whether all or any of Deliverables and/or Consultancy Services have been submitted/provided and accepted by the Government, the Consultant shall, at its cost, forthwith upon receiving written directions and instructions from time to time of the Government, take all such actions (including initiating or defending a legal action in its name or in such other manner as the Government deems fit), or provide to the Government all such documents or information in the possession or under the control of the Consultant, to cause all and any claims, demands, or actions instituted against the Government and/or the Consultant to be withdrawn, resisted, disputed, counter-claimed, settled or compromised in such

manner as the Government may direct.

24. SOFTWARE ASSET MANAGEMENT

- 24.1 The Consultant shall at all times during the contract period exercise due diligence in software asset management and as and when required by the Government, furnish to the Government satisfactory evidence that this Clause has been complied with.
- 24.2 The Consultant warrants and undertakes that the use of any software by the Consultant for the purpose of or otherwise in connection with the performance of this Agreement shall not infringe any intellectual property rights (including without limitation any patent, copyright, registered design and trademark) of any third party.
- 24.3 The Consultant shall notify the Government immediately in writing of any allegations, claims, actions and/or proceedings in respect of such infringement and any progress thereof from time to time.
- 24.4 If the Consultant's use of the software for the purpose of or otherwise in connection with the performance of this Agreement is held by a court to constitute an infringement of a third party's intellectual property rights (including without limitation any patent, copyright, registered design or trademark), the Government may terminate this Agreement forthwith by giving notice in writing to the Consultant and recover from the Consultant the amount of any loss or damage sustained or incurred by the Government as a consequence of such termination.

25. TERMINATION

- 25.1 In the event that:
- (a) the Consultant fails to provide to the Government any Consultancy Services specified in this Agreement;
 - (b) any Consultancy Services are rejected pursuant to this Agreement;
 - (c) the Consultant fails to provide to the Government rectified Deliverables by the date specified by the Government Representative pursuant to Clause 11.1;
 - (d) the Consultant is in breach of any provision of this Agreement which in the opinion of the Government is not capable of remedy;
 - (e) the Consultant commits a breach of any provision of this Agreement which is capable of remedy and fails to remedy the same within fourteen (14) days from the date of service of notice by the Government (or such longer period as specified in the notice) requiring such remedy;
 - (f) any Warranty is incorrect, inaccurate, incomplete or misleading;;
 - (g) the Consultant has made a material misrepresentation (including submission of false statement or inaccurate information) during the quotation process of this Agreement;
 - (h) the Consultant, any officer (including director), employee, agent or sub-contractor of the Consultant 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 this Agreement or any other, contract made by the Consultant

with the Government;

- (i) the Consultant abandons this Agreement in whole or in part;
- (j) the Consultant assigns or transfers or purports to assign or transfer all or any part of this Agreement or all or any of its rights or obligations thereunder without the prior written consent of the Government; or
- (k) any event or circumstance occurs which enables the Government to terminate this Agreement under any one of the following provision of this Agreement:
 - (i) Clause 13 (Delay);
 - (ii) Clause 16.7 (Force Majeure);
 - (iii) Clause 20.3 (Probity);
 - (iv) Clause 23.3(b) (Intellectual Property Rights Indemnities); or
 - (v) Paragraph 5(d)(iii) of the Terms of Quotation (Warranty against Collusion),

the Government may by seven (7) days' written notice to the Consultant terminate this Agreement immediately.

25.2 The Government may immediately terminate this Agreement 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 Consultant's creditors;
- (b) if the Consultant is an incorporated body, a shareholders or members' resolution has been passed that it be wound up or dissolved (other than voluntarily for the purpose of bona fide reconstruction or solvent amalgamation the terms of which have been approved by the Government in advance);
- (c) a petition is presented for the winding-up or dissolution or bankruptcy of the Consultant, which is not dismissed within fourteen (14) days after the petition is presented;
- (d) the Consultant is or becomes insolvent, or any order is made for the Consultant's bankruptcy or winding up or dissolution;
- (e) an administrator, administrative receiver, receiver or similar officer is appointed over the whole or any part of the Consultant's business or assets;
- (f) the Consultant suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
- (g) if the Consultant, without reasonable excuse, has failed to commence the Consultancy Services or has suspended or terminated the performance or progress of the Consultancy Services or has failed to resume performance of the Consultancy Services within seven (7) days after service of a notice by the Government upon the Consultant requiring it to proceed;
- (h) if the Consultant is not executing the Consultancy Services in accordance with this Agreement or is persistently or flagrantly neglecting to carry out its duties and obligations under this Agreement and notice of such breach shall have been

given to the Consultant and such breach has not been remedied within a period of fourteen (14) days;

- (i) if the Consultant has without the written consent of the Government assigned or purported to assign the whole or any part of this Agreement or any interest, benefit or obligation herein;
 - (j) if the Consultant has subcontracted the whole or any part of this Agreement without the prior written consent of the Government;
 - (k) the Consultant has engaged, is engaging, or is reasonably believed to have engaged or be engaging in acts or activities that are likely to cause or constitute the occurrence of offences endangering national security or otherwise the exclusion is necessary in the interest of national security, or is necessary to protect the public interest of Hong Kong, public morals, public order or public safety; or
 - (l) the Government reasonably believes that any of the events mentioned above is about to occur.
- 25.3 Separate from the event mentioned in Clause 25.1(k)(ii) above and Clause 16.3 of this Agreement, where there is a Force Majeure Event, the Government may terminate the Contract in part or in whole pursuant to Clause 16.7 of this Agreement.
- 25.4 Instead of terminating this Agreement in relation to all Consultancy Services pursuant to Clause 25.1 or 25.2 or 25.3 above, the Government may elect, but is not obliged, to terminate this Agreement in relation to one or more Deliverables or any part of the Consultancy Services only (“Partial Termination”). The Deliverables and Consultancy Services to which the Partial Termination relates are referred to as “Terminated Deliverables/Services”. The Terminated Deliverables/Services may cover all or any Deliverables and/or Consultancy Services which have not been accepted up to time of termination.
- 25.5 The Government may at any time suspend or terminate this Agreement by giving the Consultant thirty (30) days prior written notice. In the event of such suspension or termination occurring before submission of the Deliverables and other documents for an instructed project, the Consultant shall furnish such Deliverables and documents as may be reasonable in the circumstances and such other information as it shall have been able to obtain prior to such suspension or termination.
- 25.6 Each of the grounds entitling the Government to terminate the Contract as specified in Clauses 25.1 to 25.5 above and in each Sub-clause of Clauses 25.1 and 25.2 shall be construed independently and shall not be limited or restricted by reference to or inference from any other ground or any other provision of this Agreement.

26. TERMINATION CONSEQUENCES

- 26.1 Upon expiry or suspension or early termination of this Agreement (howsoever occasioned) (“Termination”):
- (a) this Agreement shall be of no further force and effect, but without prejudice to:
 - (i) the Government’s rights and claims under this Agreement or otherwise at law against the Consultant arising from antecedent breaches of this

Agreement by the Consultant (including any breach(es) which entitle the Government to terminate this Agreement);

- (ii) the rights and claims which have accrued to a Party prior to the Termination;
 - (iii) the continued existence and validity of those provisions which are expressed to or which in their context by implication survive the Termination (however occasioned) (including Clauses 5, 8, 14.8, 14.9, 15 to 48 of this Agreement, the Interpretation, the Interpretation (Supplement) and such other provisions as specified in this Agreement); and
 - (iv) the obligations of the Consultant in respect of the Consultancy Services which has not been accepted before Termination but also have not been rejected by the Government before or upon Termination; and the Consultant shall continue to perform all obligations in full accordance with all applicable provisions of this Agreement (but not just those provisions mentioned in Sub-clause (iii) above);
- (b) the Government shall not be responsible for any claim, legal proceeding, liability, loss (including any direct or indirect loss, 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 Consultant arising out of or in relation to the Termination;
- (c) without prejudice to the other rights and claims of the Government including the right to seek indemnity under Clause 19.2 of this Agreement, in the event of the Termination under Clause 25.1 or 25.2 of this Agreement, the Consultant shall be liable for all losses, damage, costs and expenses incurred by the Government arising from the Termination including without limitation (i) any amount in excess of the agreed Fee Proposal incurred by the Government in engaging another consultant to complete the uncompleted Consultancy Services and all costs and expenses incurred in making the arrangements for the same including conducting quotation for the uncompleted Consultancy Services; and (ii) any additional expenditure incurred by the Government in connection with a default by the Consultant referred to in Clause 25.1; If this Agreement is so terminated, until the Government has established the final cost of making other arrangements contemplated under this Clause, no further payments shall be payable by the Government to the Consultant for the Consultancy Services provided by this Agreement prior to Termination and in accordance with this Agreement for which payment has yet to be made by the Government
- (d) the Consultant shall immediately return to the Government all documents containing confidential information, personal data and such other information, property and materials in the possession or under the control of the Consultant or any of its sub-contractors and agents, which was obtained or produced in the course of providing the Consultancy Services;
- (e) the Consultant shall provide all such assistance as the Government may request from time to time request after the Termination to facilitate an orderly and effective handover of the work already completed under this Agreement to the Government or another consultant to be appointed by the Government and/or the completion of any work-in-progress;

- (f) within twenty-eight (28) days of the date of suspension or Termination compile and submit to the Government all drawings and plans and a report of all relevant information, facts, data, findings and conclusions obtained or reached as the case maybe in respect of the Consultancy Services up to the effective date of suspension or Termination; and
- (g) the Consultant shall promptly provide all information concerning the provision of the Consultancy Services which may reasonably be requested by the Government for the purposes of adequately understanding the manner in which the Consultancy Services have been provided or the purpose of allowing the Government or a replacement consultant to conduct due diligence.

26.2 In the event of suspension or Termination under Clause 25.1 the Consultant shall be entitled to such fee proportionate to the fee referred to in the agreed Fee Proposal for the concerned instructed project commensurate with the Deliverables completed by it up to the date of suspension or Termination.

Provided that :

- (a) if it is agreed that the Consultant should resume its duties under this Agreement then it should do so within a reasonable period and in such event any payments of fee made under this Subclause shall rank as payments on account towards the fee payable under this Agreement;
- (b) if the suspension is prolonged, or if substantial revision of the Consultancy Services is necessary on resumption, consideration shall be given to the re-negotiation of this Agreement;
- (c) in the event this Agreement is terminated by Government by reason of default by the Consultant (including the events listed out in Clause 25.2(c) to 25.2(l)), Government shall not be liable to pay to the Consultant any money under this Agreement and the Consultant shall pay to or reimburse the Government for all reasonable costs and expenses arising out of the suspension or termination including the cost of completion of the Consultancy Services within fifteen (15) days from the effective date of suspension or termination.

26.3 Upon a Partial Termination pursuant to Clause 25.4 of this Agreement:

- (a) the provisions in this Agreement to the extent they apply or concern or relate to the Terminated Deliverables/Services shall be of no further force and effect, but without prejudice to:
 - (i) the Government's rights and claims under this Agreement or otherwise at law against the Contractor arising from antecedent breaches of this Agreement by the Consultant;
 - (ii) the rights and claims which have accrued to a Party prior to the Partial Termination; and
 - (iii) the continued existence and validity of all remaining provisions of this Agreement; and
- (b) all of the consequences specified in Clause 26.1 above (apart from Clause 26.1(a) above, and in the case of Partial Termination under the circumstances mentioned

in Clause 25.3 of this Agreement, also apart from Clause 26.1(c) above) shall apply save that references to “Termination” shall mean “Partial Termination”; references to “Consultancy Services” shall mean the “Terminated Deliverables/Services”.

27. SERVICE OF NOTICES

- 27.1 Unless otherwise provided in this Agreement, each notice, demand, invoice, correspondence or other communication given or made under this Agreement shall be in writing and delivered or sent to the other party at the applicable postal address, facsimile number or email address mentioned in Clause 27.4 below (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).
- 27.2 Such notices, demands, invoice, correspondence or other communications shall be addressed as provided in Clause 27.1 above, 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, (regardless of whether during or outside normal business hours), 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 which is a working day;
 - (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 machines 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.
- 27.3 Notice, demand, invoice, correspondence or other communication to the Consultant from the Government in the prescribed manner specified in Clause 27.2 above shall be deemed to have been served provided that the notice, demand, invoice, correspondence or other communication has been sent to the correct applicable contact in accordance with Clause 27.4 below.
- 27.4 Notice, demand, correspondence or other communication to the Government shall be to the applicable contact(s) depending on the subject matter to which it relates. Invoices shall be issued to the addressee as specified in Clause 14.6 of this Agreement (whichever is applicable).
- 27.5 Nothing in this Clause 31 shall affect the validity of any notice, demand, invoice or communication despatched by personal delivery or by fax or by email outside normal business hours whether on a working day or a non-working day. Any such notice, demand, invoice, correspondence or other communication fulfilling the conditions specified in Clause 27.2 above shall be deemed to have been duly given or made on the next working day following from the date of personal delivery or fax or email. Where posting is not done on a working day, it shall be deemed to have been done on the next

working day after such day.

28. VARIATIONS

28.1 Subject to other provisions of this Agreement which provide for the power of the Government to make changes, no waiver, cancellation, alteration or amendment of or to the provisions of this Agreement shall be valid unless made by an agreement in writing and duly signed by the Consultant and the Government and in which agreement, the Parties expressly agree to the relevant waiver, cancellation, alteration or amendment of or to the provisions of this Agreement as specified therein.

29. GOVERNING LAW AND JURISDICTION

29.1 This Agreement shall be governed by and construed in accordance with the laws of Hong Kong.

29.2 The Parties hereby agree to submit to the exclusive jurisdiction of the courts of Hong Kong in relation to any matters or dispute arising out of or in connection with or in relation to this Agreement.

30. WAIVER

30.1 Time shall be of the essence of this Agreement but no failure, delay, forbearance or indulgence by any Party to this Agreement to exercise any right, power or remedy available to it under this Agreement 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 rights, power or remedy. A right or remedy of each party under this Agreement shall be cumulative and not exclusive of any other rights, power or remedies provided by this Agreement, 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 or that of any other provision hereof.

30.2 Without prejudice to the generality of Clause 30.1 above, any right of termination of this Agreement or any other right, power or remedy of whatsoever nature conferred upon the Government under this Agreement shall be exercisable by it in addition to and without prejudice to any other rights and remedies available to it under this Agreement or at law (and, without prejudice to the generality of the foregoing, shall not extinguish any right to damages to which the Government may be entitled in respect of the breach of this Agreement) and no exercise or failure to exercise a right of termination shall constitute a waiver by the Government of any other right, power or remedy.

31. RELATIONSHIP OF THE PARTIES

31.1 The Consultant enters into this Agreement with the Government as an independent consultant only and nothing in this Agreement shall create a contract of employment, a relationship of agency or partnership, or a joint venture between the Government and the Consultant. Unless otherwise expressly provided for in this Agreement, neither party is authorised to act in the name of, or on behalf of, or otherwise bind to the other party.

32. CONFLICT OF INTEREST

32.1 The Consultant shall during the term of this Agreement and for six (6) months thereafter :

- (a) ensure that it (including each and every officer, employee and agent of the Consultant) and each of its permitted 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 (collectively “Restricted Group”) shall not undertake any business, activity, service, task or job or do anything whatsoever for its own account (whether on its own or in conjunction with another person(s) in a joint venture or partnership or other business entity) or for or on behalf of another person (other than in the proper performance of this Agreement) which conflicts or which may be seen to conflict with the Consultant’s duties or obligations under this Agreement without the prior written approval of the Government; and
- (b) forthwith notify the Government in writing of all or any facts which may reasonably be considered to give rise to a situation where the interests (of whatsoever nature) of the Consultant or any member of the Restricted Group, conflict or compete, or may be seen conflict or compete, with the Consultant’s duties or obligations under this Agreement.

32.2 The Consultant shall ensure that itself and each other member of the Restricted Group, shall keep themselves informed and that each other member of the Restricted Group shall inform the Consultant and keep it informed regularly of all facts which may reasonably be considered to give rise to a situation in which its and/or their interests conflict or compete, or may be seen to conflict or compete, with the Consultant’s obligations under this Agreement.

33. RETENTION OF RECORDS

33.1 The Consultant shall keep and maintain until seven (7) years after the expiry of this Agreement, or such longer period as may be agreed by the parties, full and accurate records of the Consultant including Consultancy Services provided under it, all expenditure reimbursed by the Government, and all payments made by the Government. If requested by the Government, the Consultant shall afford the Government or its representative access to the records as may be requested by the Government or its representative or authorised person.

34. USE OF THE GOVERNMENT’S NAME

34.1 The Consultant agrees not to use the Government’s name in any speech, document, publication, advertisements or publicity material without the prior written consent of the Government and shall not disclose to the media any confidential information relating to the Consultancy Services (including, without limitation, the advice provided by it or the duties undertaken by it pursuant to this Agreement).

35. OWNERSHIP OF PLANS OR SPECIALISED EQUIPMENT OR SOFTWARE OR HARDWARE OR RESEARCH MATERIALS

35.1 For the avoidance of doubt, the Government shall become the exclusive owner of any drawings, plans, data, models, specialized equipment, software, computerised model, hardware, research materials, books and reports procured or supplied by or on behalf of the Consultant solely and exclusively for the purposes of this Agreement.

36. INSURANCE

36.1 Where and to the extent it is stated to be required in this Agreement, the Consultant shall

effect and keep in force, and renew upon expiry, throughout the Applicable Period (as defined in Clause 36.3 below):

- 36.1.1 a public liability insurance policy in the joint names of (i) the Consultant and (ii) the Government, (with appropriate cross-indemnity clause as if a separate policy has been issued to each of them) subject to a maximum indemnity amount in the sum of not less than an indemnity amount of HK\$10,000,000 or such other amount as stated in this Agreement for each claim or a series of claims arising from one event, but otherwise unlimited in the aggregate indemnity amount for all claims arising during the entire period of insurance (“public liability insurance policy”); and
- 36.1.2 any other insurance policies specified in this Agreement (if any):
 - (a) with an insurance company authorised under the Insurance Companies Ordinance (Chapter 41 of the Laws of Hong Kong) and on such terms and conditions as shall be approved by the Government; and
 - (b) (applicable to the public liability insurance policy under Clause 36.1.1 above) against liability to pay damages and compensation for injury or death of any person and loss or damage to any property.
- 36.2 For the purposes of obtaining the Government’s approval of the terms and conditions of the insurance policy, before taking out of the same, if required by the Government, the Consultant shall submit the draft insurance policy to the Government for review no later than one (1) week after the commencement of the Term of this Agreement.
- 36.3 The Applicable Period for the public liability insurance policy shall be the Term of this Agreement; and for other insurance policies specified to be required in this Agreement, such Applicable Period shall be as stated in this Agreement.
- 36.4 Without prejudice to Clause 36.1 and 36.3 above, the Consultant shall effect and maintain employer’s liability insurance in respect of all its employees and other staff in accordance with all applicable laws and regulations.
- 36.5 If required by the Government, the Consultant shall deliver to the Government copies of all insurance policies referred to in this Agreement together with receipts or other evidence of payment of the latest premium due under the policies.
- 36.6 For all insurance policies required under this Agreement, the Consultant shall comply with and observe duly and punctually all terms and conditions set out in these policies. The Consultant 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.
- 36.7 If the Consultant shall fail to give effect to or maintain any insurance required under this Agreement, the Government may make such alternative agreements as it considers appropriate to protect its interest and may recover from the Consultant the costs of putting such in place and maintaining such arrangements.
- 36.8 No provision including any indemnity limit specified in any insurance policy required under this Agreement shall relieve the Consultant of any liability under this Agreement. It is the responsibility of the Consultant to determine the amount of insurance cover that will be adequate to enable the Consultant to satisfy any liability under this Agreement.

37. CONCURRENT REMEDIES

37.1 No right or remedy conferred upon either party is exclusive of any other right or remedy contained in this Agreement or by law provided or permitted, but each shall be cumulative of every right or remedy given in this Agreement and now or hereafter existing and may be enforced concurrently therewith or from time to time.

38. SEVERABILITY

38.1 If any provision of this Agreement 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 this Agreement, all of which shall remain in full force and effect.

39. UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS NOT APPLICABLE

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

40. ORDER OF PRECEDENCE

40.1 The Articles of Agreement and Conditions of Contract, the Assignment Brief, the Agreed Technical Proposal, the Scope of Services, the Fee Proposals and Terms of Quotation as submitted and agreed subsequently for any instructed projects awarded to the Consultant, the Letter of Acceptance, and the notes on Reporting and Management of Consultants shall form and be an integral part of this Agreement for all purposes.

40.2 In the event that there is any conflict or inconsistency between any documents which form part of this Agreement, the Consultant shall take instructions from the Director and the Director's instructions shall be final.

41. ENTIRE AGREEMENT

41.1 This Agreement constitutes the whole agreement between the parties and supersedes any previous agreements or arrangements between them relating to this subject matter hereof. The Consultant acknowledges that in entering into this Agreement, it has not relied on any statements, warranties or representations given or made by the Government. On the other hand, the Government has relied on the Warranties when entering into this Agreement.

41.2 All of the provisions of this Agreement shall remain in full force and effect notwithstanding the completion of the Services (except insofar as those obligations which have been fully performed).

42. CONSENT TO DISCLOSURE

42.1 The Government may disclose, whenever it considers appropriate, to the public or upon request by any member of the public (which may have been a Bidder) without any further reference to or consent from the Consultant, the Consultancy Services provided or to be provided by the Consultant,

- (a) a brief description of the Consultancy Services to be provided by the Consultant;

- (b) the fee proposal submitted prior to the date of award of instructed projects by the Consultant to the Government in relation to the Consultancy Services and the Consultancy Fee and any other fees, costs and expenses payable to the Consultant pursuant to this Agreement.
- (c) the engagement by the Government of the Consultant under this Agreement and the name and address of the Consultant and persons appointed or engaged by the Consultant to assist in the performance of this Agreement; and
- (d) the date of the award of this Agreement and the instructed project.

42.2 Nothing in Clause 42.1 above shall prejudice the Government's power to disclose whenever it considers appropriate information of any nature whatsoever (whether or not information is specified in Clause 42.1 and including information recorded in whatever media) if the disclosure is made under any one of the following circumstances (even if disclosure may also mean the information will at the same time, or subsequently, become public information):

- (a) the disclosure of any information to any public officer or public body, as defined in the Interpretation and General Clauses Ordinance (Chapter 1 of the Laws of Hong Kong) or any other person employed, used or engaged by the Government (including agents, advisers, sub-contractors and consultants);
- (b) the disclosure of any information already known to the recipient;
- (c) the disclosure of any information which is public knowledge (including because of any disclosure under Clause 42.2(a) above);
- (d) the disclosure of any information in circumstances where such disclosure is required pursuant to any law of Hong Kong, or an order of a court of Hong Kong or an order of a court of Hong Kong or a court or tribunal with competent jurisdiction;
- (e) the disclosure of any information regarding anti-competitive collusive conduct to the Competition Commission of Hong Kong (and other authorities as relevant); or
- (f) without prejudice to the power of the Government under Clause 42.1, to the extent the information relates to or concerns a Bidder, with the prior written consent of that Bidder.

43. COMPANY/BUSINESS ORGANISATION STATUS

43.1 A Bidder shall provide the following details relating to itself in the Information Schedule at **Annex to Attachment A**:

- (a) a copy of a valid Business Registration Certificate issued under the Business Registration Ordinance (Chapter 310 of the Laws of Hong Kong) or copies of other documents evidencing its business status or if the Bidder does not carry on business in Hong Kong, the equivalent document issued by the authority of place of business of the Bidder;
- (b) if the Bidder is a company or body corporate, its Memorandum (if any) and Articles of Association, Certificate of Incorporation, Certificate of Change of Name (if any), or if the Consultant was not incorporated under the Companies

Ordinance (Chapter 622 of the Laws of Hong Kong) (or its predecessor Ordinance), the equivalent documents issued by the authority of the place of incorporation of the Consultant;

- (c) if the Bidder is a company incorporated in Hong Kong or is a registered non-Hong Kong company under the Companies Ordinance (Chapter 622 of the Laws of Hong Kong), a copy of the latest annual return filed with the Companies Registry and all subsequent filings since the latest annual return; or if the Bidder was not incorporated or registered under the Companies Ordinance (Chapter 622 of the Laws of Hong Kong) (or its predecessor Ordinance), the equivalent documents issued by the authority of the place of incorporation of the Tenderer;
- (d) place and date of its incorporation or formation;
- (e) documentary evidence proving that the authorised person(s) who sign(s) this Agreement and Offer to be Bound has/have the authority to sign it for and on behalf of the Consultant if the signatory is not the partner (in the case of partnership), or sole proprietor (in the case of sole proprietorship), or a director (in the case of company); in addition to the foregoing, in the case that the Bidder is a company, if the Offer to be Bound is not signed by two directors (or one director and one company secretary), the Government reserves the right to request certified extract board resolution authorising and approving the submission of the Technical and Fee Proposals; and
- (f) names and addresses of banks which are prepared to provide references or other relevant financial data which indicate the financial viability of the Bidder.

43.2 If a Bidder is incorporated, formed or established outside Hong Kong, a legal opinion in form and substance satisfactory to the Government and issued by a lawyer duly qualified to practise the laws of the place of incorporation, formation or establishment (as the case may be) of the Bidder and acceptable to the Government may be requested by the Government. The legal opinion, if required, should be made available upon request sometime during the Invitation Period. Upon such request, the Bidder shall provide such legal opinion covering the following issues and any other issues as may be required by the Government:

- (a) the Bidder is duly incorporated, formed or established and validly existing and in good standing under the laws of the place of the Consultant's incorporation, formation or establishment and that the Consultant has full power, capacity and authority to carry on the business as it is now conducting and to provide the Consultancy Services to the Government on the terms and conditions of this Agreement; by "validly existing and in good standing", it is meant that no event mentioned in any of the Clauses 25.2(a) to (e) of this Agreement or any event which has an equivalent effect to any such event has occurred in relation to the Consultant based on the searches with independent local authorities conducted by the lawyer shortly before the legal opinion;
- (b) the Bidder has the full power, authority and legal capacity to:
 - (i) execute and submit its Proposals and to incur the liabilities and perform the obligations under the Invitation to Proposal; and
 - (ii) enter into and execute this Agreement and to incur the liabilities and perform the obligations thereunder;

- (c) this Agreement will, upon its formation pursuant to Paragraph 6 of the Terms of Quotation, constitute the legal, valid and binding obligations of the Bidder in the place of its incorporation, formation or establishment and is enforceable against the Tenderer in accordance with its terms;
- (d) the execution, delivery and performance of its Proposals and the proposed mode of execution, delivery and performance of this Agreement (if awarded to the Bidder) have been duly authorised by all necessary corporate action of the Bidder, and does not violate any provision of any applicable law, regulation or decree of the Bidder's place of incorporation, formation or establishment, or the Memorandum (if any) and Articles of Association or similar constitutional documents of the Consultant;
- (e) no authorisations, consents, approvals are required from any governmental authorities or agencies or other official bodies in the place of incorporation, formation or establishment in connection with the execution and delivery of the Bidder's Proposals, or the performance by the Bidder of its obligations under the Invitation to Proposal and this Agreement;
- (f) the Bidder's Proposals and this Agreement (if awarded to the Consultant) need not be registered or filed in the place of incorporation, formation or establishment in order to secure their validity and/or priority;
- (g) there is no restriction under the laws of the place of the Bidder's incorporation, formation or establishment affecting the Bidder's obligations under the Invitation to Proposal and this Agreement;
- (h) the choice of the laws of Hong Kong to govern the Invitation to Proposal and this Agreement is a valid choice of laws;
- (i) the judgment handed by the courts of Hong Kong after the adjudication of any dispute arising from this Agreement will be recognised and given effect to by the courts of the place of incorporation, formation or establishment of the Consultant; and
- (j) it is not necessary under the laws of the place of incorporation, formation or establishment of the Bidder that the Government be licensed, qualified or otherwise registered in such place of incorporation, formation or establishment in order to enable it to enforce its rights under the Invitation to Proposals and this Agreement.

43.3 The Government may require the Bidder to provide, at its own expense, additional legal opinion satisfactory to the Government in all respects issued by a lawyer duly qualified to practise the laws of the place of incorporation, formation or establishment of the Bidder and acceptable to the Government on any other matters arising from its Proposals. Where the opinion on the question specified in Clause 43.2(i) above is negative or otherwise subject to qualifications not satisfactory to the Government, the additional legal opinion shall opine that any ruling made by the arbitrator under the arbitration provision set out in Clause 43.4 below will be recognised and given effect to by the courts of the place of incorporation, formation or establishment of the Bidder ("additional opinion on arbitration"). Together with the additional opinion on arbitration to be provided, the Bidder shall also be required to provide a confirmation in writing that

in consideration of the award of this Agreement, it agrees that Clause 29.2 of this Agreement shall be replaced by the arbitration clause in Clause 43.4 below.

- 43.4 Where the opinion on the question specified in Clause 43.2(i) above is negative or otherwise subject to qualifications not satisfactory to the Government, subject to the obtaining of the additional opinion on arbitration as mentioned in Clause 43.3 above, Clause 29.2 of this Agreement shall be deemed deleted and replaced by the following: “Any dispute arising from this shall not be adjudicated by the courts of Hong Kong but shall be adjudicated by arbitration to be held in accordance with the Hong Kong International Arbitration Centre Domestic Arbitration Rules prevailing at the time when a notice of arbitration is issued by a Party (“Arbitration Rules”) except that regardless of whether the Arbitration Rules providing anything to the contrary, unless the Parties otherwise agree in writing: (a) the arbitration hearing must be held in Hong Kong and that the Arbitration Ordinance (Chapter 609 of the Laws of Hong Kong) shall apply to the arbitration (including the whole of Schedule 2); and (b) without prejudice to section 18(2) of the Arbitration Ordinance, the Government may on its own disclose any information relating to (i) the arbitral proceedings under the arbitration agreement; and (ii) an award made in those arbitral proceedings, under any of the circumstances mentioned in Clause 42.2 of this Agreement”.

44. PERSONAL DATA PROVIDED

- 44.1 All personal data provided in a Proposal will be used by the Government for the purposes of the Invitation to Proposal and all other purposes arising from or incidental to it (including for the purposes of proposal evaluation, the award of this Agreement and resolution of any dispute arising from the Invitation to Proposal, and the disclosure pursuant to Clause 42 of this Agreement).
- 44.2 By submitting a Proposal, a Bidder is regarded to have agreed to, and to have obtained from each individual whose personal data is provided in the Proposal, his consent for the disclosure, use and further disclosure by the Government of the personal data for the purposes set out in Clause 44.1 above, or the disclosure pursuant to Clause 42 of this Agreement.
- 44.3 An individual to whom personal data belongs and a person authorised by him in writing has the right of access and correction with respect to the individual’s personal data as provided for in sections 18 and 22 and Principle 6 of Schedule 1 to the Personal Data (Privacy) Ordinance (Chapter 486 of the Laws of Hong Kong). The right of access includes the right to obtain a copy of the individual’s personal data provided in the Proposal.
- 44.4 Enquiries concerning the personal data collected by means of the Invitation to Proposal, including the making of access and corrections, should be addressed to the Personal Data Privacy Officer of the Planning Department.

45. WARNING AGAINST BRIBERY

- 45.1 The offer of an advantage to any Government officer with a view to influencing the award of the Contract is an offence under the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong). Any such offence committed by a Bidder or any of its officers (including directors), employees or agents will render its bid null and void.
- 45.2 The Consultant shall inform its officers, employees (whether permanent or temporary), agents and sub-contractors who are connected with the provision of the Consultancy

Services that the soliciting or accepting of advantages, as defined in the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong) is not permitted. The Consultant shall also caution its officers (including directors), employees and 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 once selected.

46. ENVIRONMENTAL PROTECTION

46.1 Bidders are requested to minimise the impact of their activities on the environment.

46.2 The following environment-friendly measures are recommended to be adopted in the preparation of documents relating to a bid and the future performance of the Contract:

- (a) all documents should be printed on both sides and on recycled paper. Paper that exceeds 80 gsm should not be used for the text;
- (b) use of plastic laminates, glossy covers or double covers should be avoided as far as possible. If art board paper has to be used as document covers, recyclable non-glossy paper should be used; and
- (c) single line spacing should be used and excessive space in the margins and in between paragraphs should be avoided.

47. GOVERNMENT DISCRETION

47.1 Notwithstanding anything to the contrary in this Agreement, the Government reserves the right to disqualify a Bidder on grounds including any one of the following:

- (a) a petition is presented or a proceeding is commenced which has not been withdrawn any time prior to the commencement of this Agreement or an order is made or a resolution is passed for the winding up or bankruptcy of the Bidder or a related person of the Bidder;
- (b) the Bidder has made or submitted a false, inaccurate or incomplete statement or representation or a forged document in the Proposal or in any subsequent submission by the Bidder or communication between the Government and the Bidder since submission of that Proposal;
- (c) in the event of (i) a claim or allegation or ruling or judgment by a court or decision by a competent tribunal or arbitration body that any thing(s), service(s) or material(s) to be supplied or recommended by the Bidder in its Proposal infringe any Intellectual Property Rights of any person (“IPR infringement”) (and in the case of any claim or allegation, it was made any time during a period of seven (7) years preceding the Technical Proposal Closing Date and up to the time of commencement of this Agreement) or (ii) the Government having grounds to believe there is or will be such IPR infringement; or (iii) an agreement has been entered into whether by the Bidder or any other person to settle or compromise any claim or allegation about IPR Infringement (regardless of whether on an admission basis or non-admission basis) which agreement is still valid and subsisting at any time during a period of seven (7) years preceding the Technical Proposal Closing Date and up to the time of commencement of the Term of this Agreement;

- (d) any time during the thirty-six(36) months prior to the Technical Proposal Closing Date or between the Technical Proposal Closing Date and the commencement of this Agreement, the Bidder or a related person of the Bidder (as defined in Clauses 46.6 and 46.7 below and including those who were in such capacity any time within the same period, i.e., thirty-six(36) months prior to the Technical Proposal Closing Date or between the Technical Proposal Closing Date and the time of commencement of the Term of this Agreement) has committed significant or persistent default(s) or deficienc(ies) in the performance of any requirement or obligation under any other Government contract regardless of the procurement department of such other Government contract, regardless of whether such default(s) or deficienc(ies) led to the actual termination of the relevant Government and regardless of whether such default(s) or deficienc(ies) occurs before or after the termination or expiry of the relevant Government contract, and in the case of the latter, provided that the default(s) or deficienc(ies) relates to any provisions which survive such termination or expiry, and regardless of whether such default(s) or deficienc(ies) has been remedied (“Contract Default(s)”); and the Director’s Representative in its sole judgment is satisfied that such Contract Default(s) casts a reasonable doubt on the capability of the Bidder to perform this Agreement in this Invitation to Proposal;
- (e) (i) the Bidder; or (ii) a related person of the Bidder; or (iii) a director or management staff of the Bidder or those of the related person of the Bidder, has been convicted by the final judgement (i.e. judgment not subject to any appeal to a higher court prior to the Contract award) in respect of one or more serious offences including conviction of offences involving bribery, false accounting, corruption, dishonesty or employment handed down any time during a period of five (5) years preceding the Proposal Closing Time and thereafter up to the time of commencement of the Term of this Agreement;
- (f) in the event of the professional misconduct or acts or omissions having been committed during a period of five (5) years preceding the Proposal Closing Time and up to the time of commencement of the Term of this Agreement that adversely reflect on the commercial integrity of the Bidder or a related person of the Bidder or a director or management staff of the Bidder or those of the related person of the Bidder; professional misconduct includes any breach of the Good Industry Practice;
- (g) any failure of the Bidder to pay taxes to the Government during a period of five (5) years preceding the Proposal Closing Time and up to the time of commencement of the Term of this Agreement; or
- (h) the Bidder has made any restrictions or limitations which seek to limit or avoid the responsibility of the Bidder in this Agreement, tort or otherwise for failing to exercise the skill and care required by this Agreement, or reasonably expected of the Bidder/Consultant under this Agreement in the Proposal or in any subsequent submission by the Bidder or communication between the Government and the Bidder since submission of the Proposal.

The grounds specified in Clauses 47.1(a) to 47.1(h) above are separate and independent, and shall not be limited by reference to or inference from the other of them.

47.2 For the purposes of Clause 47.1, each Bidder shall provide at the time of submission of its Proposal (and thereafter up to the time of award in relation to any event occurring

between the time of submission and the time of award) all information at least in relation to itself and those information in relation to its related person or its director or management staff (which it has knowledge and is reasonably relevant to facilitate the Government's determination as to whether to exercise its right of disqualification), including but not limited to the following:

- (a) details of any petition or proceeding mentioned in Clause 47.1(a);
- (b) details of all infringement claims or allegations or rulings or judgments or decisions or settlement agreements as mentioned in Clause 47.1(c);
- (c) details of all Contract Defaults as mentioned in Clause 47.1(d) above;
- (d) details of conviction as mentioned in Clause 47.1(e) above in Hong Kong or any overseas jurisdiction;
- (e) details of any professional misconduct or act or omission as mentioned in Clause 47.1(f) above; and
- (f) details of any failure to pay taxes as mentioned in Clause 47.1(g) above.

If none of the events as mentioned in Clauses 47.1(a) to 47.1(h) above has ever occurred within the applicable period as mentioned above, the Bidder shall provide a statement to that effect by completing the relevant part of the Information Schedule at **Annex to Attachment A** at the time of submission of its Proposal. If found missing, the Government reserves the right to seek clarification pursuant to Clause 47.3 below. The information provided by the Bidder is not conclusive. The Government may independently verify the veracity and completeness of any information provided. In the case of Contract Default, the Government will form an assessment as to whether or not such Contract Default has occurred.

47.3 In addition to the information mentioned in Clause 47.2 above, the Government reserves the right (but not obligation) to request from a Bidder or a related person of the Bidder or director or management staff of the Bidder or those of the related person of the Bidder or other independent sources such other information that is reasonably relevant to facilitate the Government's determination as to whether to exercise its right of disqualification under Clause 47.1 above.

47.4 If the Bidder fails to comply with the request made by the Government pursuant to Clause 47.3 above within such time as required by the Government, the Government may disqualify the Bidder. If the Bidder has otherwise submitted false, inaccurate or incomplete information, the Government may disqualify the Bidder pursuant to Clause 47.1(b) above.

47.5 In providing the information required under Clauses 47.2 and 47.3 above, the Bidder may show cause to satisfy the Government that relation to any of the events as mentioned in Clause 47.1 above, even if it has occurred, it does not cast doubt on the fitness, propriety or capability of the Bidder to perform this Agreement to be awarded in this Invitation to Proposal.

47.6 If the Bidder is a company, the expression "related person" of the Bidder includes any one of the following:

- (a) a shareholder (corporate or individual) which directly or indirectly beneficially owns fifty (50) percent or more of the issued share capital of the Bidder (“majority shareholder”);
- (b) a holding company or a subsidiary of the Bidder;
- (c) a holding company or a subsidiary of a majority shareholder (being a company) of the Bidder; or
- (d) a company in which a majority shareholder (being an individual) of the Bidder directly or indirectly beneficially owns fifty (50) percent or more of its issued share capital or controls the composition of its board of directors.

The expressions “holding company” and “subsidiary” have the meanings given to them in the Companies Ordinance (Chapter 622 of the Laws of Hong Kong).

47.7 If the Bidder is a sole proprietor or partnership, the expression “related person” includes any one of the following:

- (a) any partner of the Bidder (if it is a partnership);
- (b) the spouse, parent, child, brother or sister of the Bidder, 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 parent and of any step parent; or
- (c) a company in which the **Bidder** or any partner of the Bidder beneficially directly or indirectly owns fifty (50) percent or more of its issued share capital or controls the composition of its board of directors.

47.8 References to related persons of the Bidder, directors and management staff of the Bidder or those of a related person in any of the applicable Sub-clause of Clause 46.1 above include persons who were in such capacity at such time of the event referred to in that Sub-clause.

48. DOCUMENTS OF UNSUCCESSFUL BIDDERS

48.1 The Government may destroy all documents submitted by unsuccessful bidders three (3) months after the Contract has been constituted under this Agreement.

49. CONTRACTS (RIGHTS OF THIRD PARTIES) ORDINANCE

49.1 The Parties hereby declare that nothing in this Agreement confers or purports to confer on any person not being a Party to this Contract any benefit or any right to enforce any term of this Contract under or pursuant to or for the purposes of the Contracts (Rights of Third Parties) Ordinance (Chapter 623 of the Laws of Hong Kong).

IN WITNESS WHEREOF this Agreement has been entered into and executed under hand in 2 originals the date first before written

Signed by Ms. Jessica H F CHU,
Assistant Director/Special Duties,
Planning Department
for and on behalf of the Government of the
Hong Kong Special Administrative Region

Witness:

Name: Ms. Isabel Y YIU

Occupation: Chief Town Planner/Urban Design & Landscape, Planning Department

Address: Room 1301-04, 13/F, AXA Tower Landmark East,
100 How Ming Street, Kwun Tong, Kowloon, Hong Kong

Signed by [Name],
[Position],
[Consultant's Name]

Witness:

Name:

Occupation:

Address:

Information Schedule

(To be completed and returned together with the technical proposal submission)

Name of Bidder: _____

Date: _____

1. Information and documents required under Clause 43.1 of the Articles of Agreement and Conditions of Contract:

(a)	Type of business entity of the Bidder	company / sole proprietorship / partnership / statutory corporation /other* (*Please delete whichever is not applicable.)
(b)	Place and date of incorporation or formation	
(c)	Names and addresses of banks which are prepared to provide references or other relevant financial data which indicate the financial viability of the Bidder	
(d)	A copy of a valid Business Registration Certificate issued under the Business Registration Ordinance (Chapter 310 of the Laws of Hong Kong) or copies of other documents evidencing its business status or if the Bidder does not carry on business in Hong Kong, the equivalent documents issued by the place of business of the Bidder	Please attach if applicable.
(e)	(whether the Bidder is a company or body corporate) a copy of the Memorandum (if any) and Articles of Association, Certificate of Incorporation, Certificate of Change of Name (if any) or equivalent documents issued by the authority of the place of incorporation of the Bidder	Please attach if applicable.
(f)	(if the Bidder is a company incorporated in Hong Kong or is registered as a non-Hong Kong company under the Companies Ordinance, Chapter 622 of the Laws of Hong Kong) a copy of the latest annual return filed with the	Please attach if applicable.

Annex to Attachment A

	Companies Registry and all subsequent filings since the latest annual return; or (if not) the equivalent documents issued by the authority of the place of incorporation of the Bidder	
(g)	Employee's Compensation Insurance Policy Name of insurer: Policy No: Expiry date:	
(h)	A copy of the relevant document proving that the authorised person(s) who sign(s) the Agreement / the Offer to be Bound has/have the authority to sign it for and on behalf of the Bidder	Please attach if applicable.

2. Information required under Clause 47.2 (Government Discretion) of the Articles of Agreement and Conditions of Contract

- * (a) I / We confirm that none of the events as mentioned in Clauses 47.1(a) to 47.1(h) of the Articles of Agreement and Conditions of Contract has ever occurred.

- * (b) I / We confirm that the following event(s) as mentioned in Clauses 47.1(a) to 47.1(h) of the Articles of Agreement and Conditions of Contract has occurred:

Date	Details of the Event

Note: * Please delete whichever is not applicable.

Authorized Signature: _____

Name and Post of Person(s) authorized to sign: _____

Name of the Company/Organization: _____

Date: _____