

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

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

1. Contractor’s Acknowledgement and Contract Performance

- 1.1 The Contractor acknowledges and agrees that it has been supplied with sufficient information to enable it to supply to the University the Goods, which shall comply fully with the requirements set out in the Technical Specifications and other provisions of the Contract. The Contractor shall not be entitled to any additional payment nor be excused from any liability under the Contract as a consequence of any misinterpretation by the Contractor of any matter or fact relating to the Technical Specifications or any other provisions of the Contract.
- 1.2 The Contractor further acknowledges that the University relies on the skill and judgment of the Contractor in the supply of the Goods and the performance of the Contractor’s obligations under the Contract.
- 1.3 The Contractor shall perform its obligations under the Contract:
 - (a) with appropriately experienced, qualified and trained personnel and with all due care, skill and diligence;
 - (b) in accordance with Good Industry Practice; and
 - (c) in compliance with all applicable laws (including but not limited to The Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region), rules and regulations, the terms and conditions of the Contract, and any guidelines and/or requirements issued by the University from time to time.
- 1.4 For the purpose hereof, “**Deliverables**” means all materials (tangible or intangible) of whatsoever nature stored, presented or embodied in any medium, and which apart from the Goods, are delivered or to be delivered by or on behalf of or for the Contractor to the University under or for the purposes of or in relation to the Contract including without limitation data, documents, information text, drawings, pictures, diagrams, images, sound, music, reports, certificates, manuals, instructions, documentation, databases, plans, models, designs, specifications, records, computer source codes, advice, recommendations, solutions, analyses, compilations; and including all drafts of the foregoing. The Contractor shall be responsible for the completeness and accuracy of all Deliverables supplied by the Contractor to the University in connection with the Goods. Without prejudice to any other provisions of the Contract, the Contractor shall fully indemnify, defend and hold harmless the University, its authorised users, employees, agents, assigns and successors-in-title from and against all losses, liabilities, actions, claims, judgments, demands, proceedings, charges and damages arising from, and costs and expenses incurred in connection with, any discrepancies, errors or omissions therein.
- 1.5 The Contractor shall not undertake any service, task or activity, or do anything whatsoever, which has interference with or adverse effect on the Contractor’s performance of, or the Contractor’s ability to perform, its obligations under the Contract.

2. Warranties and Representations

2.1 The Contractor warrants, represents and undertakes that:

- (a) the Goods conform in all respects to the Technical Specifications and, where applicable, with any sample approved by the University;
- (b) the Goods operate in accordance with the relevant technical specifications and comply with the requirements specified in the Technical Specifications and any particulars or conditions specified in the Contract;
- (c) the Goods are free from defects in design, materials and workmanship and are fit and sufficient for any particular purpose made known to the Contractor by the University and to the extent consistent with such particular purpose, for other purposes for which such Goods are ordinarily used;
- (d) all consents, approvals, licences, authorizations, permits, exemptions, requirements and certificates of any governmental, administrative or other authority or body in any relevant jurisdiction which are required for the manufacture, sale, supply, delivery and use of the Goods and/or to authorise the Contractor to execute, deliver and perform the Contractor's obligations under the Contract (including where the Contractor's procedures so require, the consent of its parent company) (collectively, "**Consents**") have been duly and unconditionally obtained and fulfilled and are in full force and effect, and the use of the Goods by the University will not contravene any applicable laws or regulations or third party rights;
- (e) the Contractor has full power, capacity and authority to enter into the Contract and to perform its obligations under the Contract;
- (f) the Contract constitutes valid and legally binding obligations of the Contractor enforceable in accordance with its terms and conditions;
- (g) all costs, charges and expenses that may be incurred in obtaining and maintaining the Consents throughout the Contract Period shall be fully borne by the Contractor;
- (h) all information and documents supplied, and statements and representations made by or on behalf of the Contractor in or in relation to its Tender and the Contract are genuine, true, accurate and complete;
- (i) no claim is being made and no litigation, arbitration or administrative proceedings are presently in progress, or to the best of the Contractor's knowledge and belief, pending or threatened against it or any of its assets which will or may have a material adverse effect on its ability to perform its obligations under the Contract;
- (j) it is not subject to any contractual obligation, court judgment, court ruling, court order or arbitration decision, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- (k) no proceedings or other steps have been taken and not discharged (nor to the best of its knowledge, are threatened) for the winding up or bankruptcy of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar office in relation to any of the Contractor's assets or revenue;

- (l) it owns, has obtained or is able to obtain valid licences of all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
 - (m) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or on its ability to fulfil its obligations under the Contract;
 - (n) each of the Contractor and the Goods shall comply with all applicable laws and regulations of Hong Kong and the place where the Goods are manufactured or exported to Hong Kong, and all orders and regulations promulgated by the Government or the relevant authority from time to time;
 - (o) it shall keep the University informed of all matters related to the Contract within the actual or constructive knowledge of the Contractor and shall answer all enquiries received from the University; and
 - (p) upon acceptance of the Goods, the University shall obtain good and marketable title to such Goods.
- 2.2 The warranties, representations and undertakings, expressed or implied, contained in Clause 2.1 and other provisions of the Contract and those made by the Contractor from time to time in the course of performance of the Contract (collectively, “**Warranties**” and each, a “**Warranty**”) shall be true without limitation in time and shall be true on each day of the Contract Period as if such Warranties were repeated on each such day.
- 2.3 Each of the Warranties shall be separate and independent and without prejudice to any other Warranty, and shall not be limited by reference to or inference from any other Warranty or any other provision of the Contract.
- 2.4 Unless otherwise expressly excluded from or provided to the contrary in the Contract, the rights, duties and liabilities imposed on a seller and the rights conferred on a buyer under the Sale of Goods Ordinance (Chapter 26 of the Laws of Hong Kong) and the Trade Descriptions Ordinance (Chapter 362 of the Laws of Hong Kong) apply to bind the Contractor and the University respectively.

3. Costs and Expenses

Save as otherwise expressly provided for in the Contract, the Contractor shall comply with all provisions of the Contract and its obligations under the Contract at its own costs and expenses. All things done by the Contractor and all things supplied by the Contractor shall be deemed as things done and supplied within the scope of the Contract. No additional money shall be payable by the University in the absence of any express provision specifically for the relevant subject matter.

4. Total Quantities

- 4.1 The Contractor irrevocably undertakes and agrees to sell and deliver to the University, in accordance with the terms and conditions of the Contract, such quantity of the Goods of total value of up to 30% more or 30% less than the Estimated Contract Price (or such other percentage as stated in the Special Conditions of Contract).

- 4.2 Subject to Clause 4.1, the quantity of any item of Goods specified in the Price Schedule is an estimate only and the quantity of each such item actually ordered and purchased by the University may be more or less than the estimate. Within that limit, the Contractor shall be bound to supply the Goods in the quantities actually ordered by the University and at the rate/unit price set out in the Price Schedule. The Contractor shall have no claim against the University if the University orders the Goods within the limit as specified in Clause 4.1.
- 4.3 Notwithstanding Clause 4.1 and any other provision of the Contract, the Contractor agrees that the University has no obligation to purchase from it such quantity of the Goods which in total value exceeds 70% of the Estimated Contract Price (or such other percentage as stated in the Special Conditions of Contract).
- 4.4 For the purposes of Clauses 4.1, 4.2 and 4.3, the total value of the Goods shall be calculated by multiplying the total number of pieces of Goods ordered by the University under Clause 6.1 by the rate/unit price set out in the Price Schedule.

5. The Goods

- 5.1 All Goods supplied by the Contractor to the University under the Contract shall be of merchantable quality, fit for purpose, and comply in all respects with the Technical Specifications.
- 5.2 For the purpose of Clause 5.1, the Goods will not be regarded to be “fit for purpose” unless:
- (a) if the University has made known to the Contractor any particular purpose for which the Goods are being bought, the Goods are reasonably fit and sufficient for the particular purpose so disclosed by the University, whether or not that is a purpose for which such goods are commonly supplied; and
 - (b) to the extent consistent with any particular purpose referred to in paragraph (a) above, the Goods are fit for the purpose for which goods of that kind are commonly bought.
- 5.3 The Contractor shall be liable to the University under the terms of the Contract whether or not the Goods are manufactured by it.
- 5.4 The University may provide the Contractor with drawings and information reasonably required for the Contractor’s guidance in the execution of the Contract free of charge. If required by the University, the Contractor shall promptly return all such drawings and information to the University upon the expiry or early termination of the Contract.

6. Order and Delivery

- 6.1 Whenever required by the University by a written order signed by the University (“**Order**”) specifying:
- (a) the quantity of the Goods to be supplied and delivered to the University;
 - (b) the destination for delivery of the Goods referred to in paragraph (a) above;
 - (c) the date and time for delivery of the Goods referred to in paragraph (a) above; and
 - (d) the conditions, if any, applicable to the supply and delivery of the Goods referred to in paragraph (a) above,

the Contractor shall supply and deliver to the University the quantity of the Goods so specified in the Order in accordance with the Order and the provisions of the Contract.

- 6.2 If no date and time for delivery of the Goods is specified in an Order, the Contractor shall deliver the quantity of the Goods specified in the Order within fourteen (14) working days from the date of the Order.
- 6.3 Time shall be of the essence of the Contract as regards each delivery of the Goods specified in an Order.
- 6.4 Each delivery of the Goods shall be accompanied by a copy of the Order issued for that delivery.
- 6.5 In respect of each Order, the Contractor shall upon delivery of the Goods to the destination(s) (each as specified in the Order), obtain a receipt from the Receiving Officer, but no such receipt shall constitute an acceptance by the University of the Goods that are received, or an acceptance or acknowledgement by the University of the condition, quantity or the nature of such Goods.
- 6.6 Notwithstanding any provision of the Contract, due delivery of any Goods to the University shall not be regarded to have taken place unless and until such Goods are accepted by the University under the Contract.

7. Delivery Documents (For Goods sold on FOB or CIF Terms)

- 7.1 The Contractor shall ensure that all the delivery and shipping documents and/or the airway bills relating to the Goods are received by the Purchasing and Support Services Section, Finance Office, Hong Kong Baptist University, DLB 510, 5/F., David C. Lam Building, Renfrew Road, Kowloon Tong, Kowloon, Hong Kong, at least seven (7) working days prior to the arrival of the vessel or aircraft on which the Goods are carried unless other arrangements have been agreed upon by the University in writing beforehand. If the Contractor fails to comply with this Clause, the Contractor shall be liable for all landing and demurrage charges incurred due to such failure.
- 7.2 If any of the Goods supplied by the Contractor fails to conform to the Technical Specifications or the Contractor fails to deliver to the University the quantity of the Goods specified in an Order, without prejudice to any other provision of the Contract, the Contractor shall also indemnify the University against all additional delivery and handling charges incurred by the University in connection therewith.

8. Documentation

The Contractor shall obtain all necessary export, re-export and import licences, certification and other documentation for the supply and delivery of the Goods to the University in accordance with the Contract or under applicable laws and regulations. The Contractor shall ensure that all of them shall remain valid and subsisting throughout the Contract Period and shall comply with all conditions stated therein, and shall renew them upon expiry any time in the Contract Period.

9. Inspection, Testing and Acceptance

- 9.1 All Goods to be delivered to the University shall be subject to such inspection and/or tests as specified in the Contract and such other inspection and/or tests as the University considers appropriate. The Contractor shall provide all reasonable assistance to the University in relation to all such inspection and tests free of charge. Without prejudice to the generality of the foregoing, the University may by giving reasonable prior notice to the Contractor inspect or test the Goods (or any part thereof) either in the form of a finished product or in the process of manufacture.
- 9.2 If required by the University, the Contractor shall deliver to the University a proof note or a certificate showing that the Goods have been subjected to and passed the tests as specified in the Contract and such other tests referred to in Clause 9.1.
- 9.3 No failure by the University to make a complaint at any time of an inspection or test, and no approval or consent given during or after such inspection or test shall constitute a waiver by the University of any rights or remedies which it has or may have in respect of the Goods. The University reserves all its rights to reject the Goods whether under the provisions of the Contract, in law or otherwise.
- 9.4 No Goods delivered to the University shall be regarded to have been accepted by the University unless and until the earlier of:
- (a) the date on which the University or the Receiving Officer serves on the Contractor in respect of such Goods a written notice to the effect that the University has unconditionally accepted those Goods (“**Acceptance Note**”); or
 - (b) a period of thirty (30) days has expired from the date of a receipt issued under Clause 6.5 in respect of such Goods and no such Goods (or any part thereof) have been rejected by the University.
- 9.5 All title, beneficial ownership, interest to, in and of the Goods in respect of which an Acceptance Note has been issued shall be and shall remain the exclusive property of and shall vest in the University absolutely forthwith from the issue of such Acceptance Note free and clear of all liens, claims, mortgages, charges, and any other form of encumbrance, contractual rights, and third party rights or interest of whatsoever nature. All title, beneficial ownership, interest to, in and of the Goods in respect of which acceptance is made under Clause 9.4(b) above shall be and shall remain the exclusive property of and shall vest in the University absolutely forthwith from the date of delivery to the location(s) free and clear of all liens, claims, mortgages, charges, and any other form of encumbrance, contractual rights, and third party rights or interest of whatsoever nature. Unless otherwise provided for in the Special Conditions of Contract, risk and property in the Goods shall only pass to the University after the University’s acceptance of the Goods in accordance with the Contract.

10. Rejections

- 10.1 Without prejudice to the other rights and claims of the University, if any Goods supplied by the Contractor is not fit for purpose or of merchantable quality, or fails to comply with the Technical Specifications, Special Conditions of Contract (if any), any drawings and specifications (if any) supplied to the Contractor or other provisions of the Contract, notwithstanding any acceptance of the Goods by the University pursuant to the Contract (including the University’s issuance of an Acceptance Note), the University may by notice in writing signed by the University (“**Rejection Notice**”) reject those Goods.
- 10.2 Upon the issuance of a Rejection Notice, without prejudice to other rights and claims of the

University, the University may exercise all or any of the following rights:

- (a) require the Contractor to remove the Goods specified in the Rejection Notice within the period prescribed in the Rejection Notice;
- (b) require the Contractor to repair the Goods specified in the Rejection Notice promptly and in any event no later than the date prescribed in the Rejection Notice;
- (c) require the Contractor to replace the Goods specified in the Rejection Notice promptly, and deliver to the University the replacement Goods no later than the date specified by the University or in the Rejection Notice; and/or
- (d) terminate the Contract forthwith.

10.3 If the University rejects any Goods, the Contractor shall forthwith refund to the University all monies, if any, previously paid by the University to the Contractor in respect of the rejected Goods.

10.4 If the Contractor fails to remove any Goods in accordance with a requirement made under Clause 10.2(a), the University may dispose of the Goods as it sees fit. The University shall not be liable to the Contractor (in contract, tort or otherwise) in respect of such disposal and the Contractor shall pay the University all costs and expenses incurred by the University for the disposal.

10.5 Risk in all Goods rejected or returned by the University to the Contractor remains with the Contractor (irrespective of the location of the Goods) and they shall be returned to the Contractor at the Contractor's expense.

11. Place of Origin

The University reserves the right to reject any Goods which were not manufactured in the place or by the manufacturer as specified in the Contract. The Contractor shall ensure that the Goods supplied are from the same source (in terms of manufacturer and place of origin) as stated in the Contract.

12. Survey Expenses

If the University discovers any defect in the Goods, the University may, at the costs and expenses of the Contractor, appoint a surveyor or an expert in the appropriate field to investigate into and/or establish the nature of the defect.

13. Payment of the Contract Price

13.1 In consideration of the Contractor's due and proper performance of all its obligations in accordance with the Contract, the University shall pay the Contractor the Contract Price in accordance with the payment timetable set out in the Price Schedule.

13.2 Notwithstanding any provision in the Contract, unless otherwise agreed in writing by the University, in respect of any Goods delivered to the University, the University shall not have any obligation to pay the Contractor any Contract Price for such Goods unless and until the Goods have been accepted by the University in the manner prescribed in the Contract, and

the University shall pay the Contractor the Contract Price for such Goods within thirty (30) days after the date of University's acceptance of the Goods.

- 13.3 The Contract Price is inclusive of all charges (including the costs of packaging, packing, delivery, transportation, shipping, carriage, insurance, loading and unloading of the Goods and inland freight, broker's fees, custom house's fees, duties, imposts and levies) and all other costs and charges for the supply and delivery of the Goods to the destination(s) specified in the Orders. Subject to Clause 4 and save as otherwise expressly provided for in the Contract, the Contractor shall not be entitled to any adjustment in the Contract Price for any reason (including foreign exchange fluctuations).
- 13.4 In the event that the Contractor has made a standing offer to supply the Goods to the University if and when demanded during the Contract Period, the Contractor and the University hereby acknowledge and agree that the consideration for the standing offer shall be one (1) Hong Kong dollar, payable by the University to the Contractor, if and when demanded, and that the Contractor irrevocably undertakes to keep the standing offer open throughout the Contract Period.
- 13.5 The Contractor shall invoice the University for any payment of the Contract Price. In respect of each delivery of the Goods, the Contractor shall deliver to the University at the destination of the delivery or at such other address specified by the University, an invoice setting out the Order number of the Goods or delivery, the particulars of the Goods delivered (including the quantity, rate, unit price and value of such Goods), the amount of Contract Price payable for the Goods and such other information as the University may require from time to time.
- 13.6 Notwithstanding any provision of the Contract, the University is entitled to withhold payment of all or any part of the Contract Price and any other sum payable by the University to the Contractor under the Contract if:
- (a) the Contractor fails to observe or perform any provision of the Contract;
 - (b) the University disputes on any reasonable ground its obligation to pay the amount in question;
 - (c) the University has reasonable grounds to believe that the Contractor is or will be liable to the University under any provision of the Contract for the loss or damage suffered by the University; or
 - (d) withholding of payment is required by any applicable law or regulation.
- 13.7 No payment made by the University under the Contract shall prejudice or carry any implication whatsoever on any rights or cause of action which has accrued or may accrue, or any remedy available, to the University in respect of any breach of the Contract by the Contractor.
- 13.8 The Contractor agrees and acknowledges that it is the Contractor's own responsibility to report and pay any local and foreign taxes which the Contractor may incur in performing the Contract or in respect of any payment made by the University to the Contractor under the Contract.

14. Guarantee of the Quality of the Goods

- 14.1 Without prejudice to Clause 5.1 and without prejudice to the rights and claims of the University arising from any breach of the Warranties, the Contractor shall, for a period of twelve (12) months after the date of the University's acceptance of any Goods or a longer period specified in the Special Conditions of Contract ("**Guarantee Period**"), guarantee the quality of such Goods and that they are free from faulty materials or workmanship.
- 14.2 In respect of any Goods accepted by the University, the Contractor shall whenever required by the University by notice in writing to the Contractor, make good and remedy (whether by repair or replacement as the University may elect) to the reasonable satisfaction of the University all defects, malfunctions or deficiencies in the Goods (whether arising from defective design, materials, workmanship or otherwise) discovered at any time during the Guarantee Period and specified by the University in the notice. The Contractor shall promptly comply with the notice issued under this Clause and have the defects, malfunctions and deficiencies made good and remedied to the University's reasonable satisfaction no later than the date specified by the University in the notice.
- 14.3 If the Contractor fails to make good or remedy any defects, malfunctions or deficiencies in accordance with Clause 14.2, the University may, after notifying the Contractor of its intention, arrange to make good and remedy the defects, malfunctions or deficiencies by repair or replacement at the Contractor's risk and expense.
- 14.4 In the event that the Contractor is required under the Contract to replace any defective Goods but it does not at the same time call for the return of the defective Goods, no responsibility for the defective Goods shall rest upon the University, and the University may dispose of them after a reasonable time in whatever manner as it sees fit. The Contractor shall compensate the University all costs and expenses incurred in connection with the disposal. The University shall not be liable to the Contractor (in contract, tort or otherwise) in respect of such disposal.
- 14.5 The Contractor undertakes (a) not to employ illegal workers in the execution of the Contract, and (b) to offer to all employees who participate in the discharge of the obligations of the Contractor under the Contract all the relevant statutory entitlements under the applicable laws in Hong Kong including but not limited to those prescribed under the Employment Ordinance (Chapter 57 of the Laws of Hong Kong), Factories and Industrial Undertakings Ordinance (Chapter 59 of the Laws of Hong Kong), Employees' Compensation Ordinance (Chapter 282 of the Laws of Hong Kong), Occupational Safety and Health Ordinance (Chapter 509 of the Laws of Hong Kong) and Minimum Wage Ordinance (Chapter 608 of the Laws of Hong Kong).

15. Intellectual Property Rights

- 15.1 The Contractor warrants that the Goods and the Deliverables to be supplied under the Contract, the process of their manufacture or preparation, and any operation, possession, distribution, export, import or sale by the Contractor of such Goods and Deliverables under the Contract do not and will not infringe the Intellectual Property Rights of any party, and that the possession, import, purchase, usage and operation of the Goods and Deliverables by the University, its authorised users, employees, agents, licensees, assigns and successors-in-title will not infringe the Intellectual Property Rights of any party and shall be free of any royalty or other payment to any party.
- 15.2 The Contractor shall notify the University in writing immediately if any claim for infringement or alleged infringement of any Intellectual Property Rights is lodged against it whether during or after the expiry of the Contract Period in respect of the Goods or Deliverables and shall render all assistance to the University for defending against or

responding to such claim.

- 15.3 All Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs, documents, records, equipment, works, and other materials and property furnished to or made available to the Contractor by or on behalf of the University are and shall remain the property of the University at all times, and shall be returned to the University forthwith upon completion, expiry or termination of the Contract or upon request by the University.
- 15.4 The Contractor hereby grants, or in case it is not empowered to do so, shall at its own cost and expense procure that there will be granted to the University 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 the Contract 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 Goods or in the design of the Goods, to use, possess, distribute, repair, replace and if required as part of the work to be performed by the Contractor under the Contract, modify, adapt or customise, the Goods and any part of the Goods
- (all of the rights mentioned above in sub-clauses (a) and (b) above and those as mentioned in the provisions of the Special Conditions of Contract supplementing this Clause 15 shall be collectively referred to as “**Licensed Rights**”; and the licences as provided for in this Clause 15.4 and in the aforesaid provisions of the Special Conditions of Contract shall be collectively referred to as “**Licences**”).
- 15.5 The Contractor hereby undertakes to procure, obtain and produce for inspection by the University 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 15.4 above.
- 15.6 Reference to the Licence Term in Clause 15.4 above shall mean:
- (a) in the case of the Licence referred to in Clause 15.4(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 15.4(b) above or any other Licence in relation to any other subject matter as specified in the provisions of the Special Conditions of Contract supplementing this Clause 15, 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 Goods (or such subject matter as specified in the aforesaid provisions of the Special Conditions of Contract) continue to subsist under all

and any applicable laws including the laws of Hong Kong, counting from the date the Goods (or the relevant subject matter) are delivered to the University.

- 15.7 Apart from the Contract Price, under no circumstances whatsoever shall the University or any other licensee be liable or responsible to pay to the Contractor 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.
- 15.8 The Contractor irrevocably waives and shall procure all relevant authors of the Deliverables to irrevocably waive all the moral rights therein (whether past, present or future). The waiver shall operate in favour of the University, its assigns, authorised users and successors-in-title and shall take effect upon creation or delivery to the University of the relevant Deliverables or the grant of the relevant Licence (as the case may be). In this Clause, “**moral rights**” means the moral rights referred to in the Copyright Ordinance (Chapter 528 of the Laws of Hong Kong).
- 15.9 Without prejudice to any other provision of the Contract, the Contractor shall fully indemnify, defend and hold harmless the University, its authorised users, employees, agents, assigns and successors-in-title and keep them fully and effectively indemnified from and against all claims, actions, proceedings, liabilities, losses, damages, demands, charges, costs and expenses of whatsoever nature (including legal fees and costs) arising from or in relation to any infringement or alleged infringement of any Intellectual Property Rights in connection with their use, import, purchase, operation or possession of the Goods or Deliverables.
- 15.10 In the event of a claim being received by the University alleging or the University having grounds to believe that the Goods supplied hereunder are infringing copies or have otherwise infringed the Intellectual Property Rights of a third party, the University may:
- (a) forthwith terminate the Contract in respect of the Goods not yet received by the University;
or
 - (b) suspend the performance of the Contract until the claim in question is resolved to the satisfaction of the University provided that the election to suspend performance under this Clause shall not preclude the University from terminating the Contract at any time thereafter.
- 15.11 The University shall not be liable to pay any cost or compensation to the Contractor by reason of any termination under Clause 15.10 irrespective of whether the Goods are later found by a court of law to have infringed any person’s Intellectual Property Rights or not.
- 15.12 The rights of the University under Clauses 15.10 and 15.11 shall be without prejudice to the provisions of Clauses 15.2 and 15.9.

16. Contract Deposit

- 16.1 If and when required by the University, as security for the due and faithful performance of the Contract by the Contractor, the Contractor shall deposit with the University (via the Director of Finance) within twenty-one (21) days from the date of Tender Acceptance, an amount equivalent to 2% of the Estimated Contract Price (“**Contract Deposit**”).

- 16.2 The Contractor shall pay the Contract Deposit either in cash or in the form of a banker's guarantee. If the Contractor pays the Contract Deposit by way of a banker's guarantee, the banker's guarantee must comply with the following:
- (a) it must be issued by a bank that holds a valid banking licence granted under the Banking Ordinance (Chapter 155 of the Laws of Hong Kong) and acceptable to the University for the purpose of issuing banker's guarantee for the Contract Deposit;
 - (b) unless otherwise agreed by the University, it must be on the terms set out at Part II of the Terms of Tender (Supplement) (if any); and
 - (c) the banker's guarantee shall come into effect on the date of commencement of the Contract Period unless another date is specified in the Tender Acceptance as the date on which the banker's guarantee is to take effect. In the event that another date is so specified, the banker's guarantee shall take effect no later than such date.
- 16.3 If the Contractor fails to comply with Clause 16.1 or 16.2, the University may terminate the Contract immediately without any liability for compensation or damages.
- 16.4 Without prejudice to Clause 16.3, if the Contractor fails to comply with Clause 16.1 or 16.2, the University may withhold from any sum due or payable by the University to the Contractor from time to time such amount(s) which in aggregate do not exceed the amount of Contract Deposit payable to the University under Clause 16.1. The University may apply the amount(s) so withheld to satisfy the Contractor's obligation under Clause 16.1 in full or in part, and the amount(s) so applied shall be treated as Contract Deposit (or part thereof) paid in cash pursuant to Clause 16.1.
- 16.5 If:
- (a) the Contractor fails to comply with any provision of the Contract, the University may deduct from the Contract Deposit paid in cash, or call on the banker's guarantee, to recover the amount of costs, losses, damages or expenses suffered or incurred by the University arising from or relating to such failure; or
 - (b) any amount is due or payable by the Contractor to the University under the Contract, the University may deduct from the Contract Deposit paid in cash, or call on the banker's guarantee, to recover the amount due or payable, in each case irrespective of whether or not a demand for payment has been made against the Contractor.
- 16.6 The Contract Deposit (whether paid in cash or in the form of the banker's guarantee) may be deducted or called on by the University without the University first having recourse to any other security or rights or taking any other steps or proceedings against the Contractor or any other person, and may be enforced for any balance due after resorting to any one or more of other means of obtaining payment or discharge of the monies, obligations and liabilities owing by the Contractor to the University.
- 16.7 If any deduction is made by the University from the Contract Deposit or a call is made on the banker's guarantee any time prior to the expiry or termination of the Contract, the Contractor shall, within twenty-one (21) days after the date of the written demand by the University, deposit a further sum or provide a further banker's guarantee, in a sum equal to the amount so deducted or so called, which further sum shall be added to the residue and form part of the Contract Deposit. If the Contractor is required to provide a further banker's guarantee under this Clause, the further banker's guarantee must comply with the requirements in Clauses

16.2(a) and (b) and shall come into operation on the date of its execution.

- 16.8 If based on the Order(s) issued by the University under Clause 6.1, the University determines that the total Contract Price payable by it for such Order(s) is likely to exceed the Estimated Contract Price, the University may, by written notice to the Contractor, require the Contractor to submit to the University such additional amount specified by the University in the notice as further Contract Deposit such that the Contract Deposit shall at all times during the Contract Period be an amount equivalent to 2% of the Estimated Contract Price.
- 16.9 If a notice is issued by the University under Clause 16.8, the Contractor shall within twenty-one (21) days deliver to the University the additional amount of further Contract Deposit required in the notice in the form of either cash or a further banker's guarantee. The further banker's guarantee must comply with the requirements in Clauses 16.2 (a) and (b) and shall come into effect on the date of its execution. A further Contract Deposit paid by the Contractor to the University shall form part of the Contract Deposit.
- 16.10 If the Contractor fails to comply with Clause 16.7, 16.8 or 16.9, the University may terminate the Contract immediately.
- 16.11 Upon the expiry or termination of the Contract:
- (a) if the Contract Deposit is paid in cash, on the condition that the Contractor has performed and discharged all its obligations and liabilities under the Contract to the University's satisfaction, the University shall, after deducting the sums due from the Contractor to the University, return the balance of the Contract Deposit in cash and without interest to the Contractor within three (3) months after the expiry or termination of the Contract; or
 - (b) if the Contract Deposit is paid by way of a banker's guarantee, the banker's guarantee shall be discharged and released in accordance with its terms.

17. Variations

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

18. Liability and Indemnities

- 18.1 Neither the University nor any of its employees, authorised users, assigns, successors-in-title or agents shall be under any liability whatsoever for or in respect of:
- (a) any loss of or damage to any of the Contractor's property or that of its employees, sub-contractors or agents however caused (whether by any Negligence of the University or any of its employees, authorised users, assigns, successors-in-title or agents or otherwise); or
 - (b) any injury to or death of the Contractor (in the case where the Contractor is a natural person) or any of its employees, sub-contractors or agents, save and except any such injury or death caused by the Negligence of the University or any of its employees or agents.
- 18.2 Without prejudice to any other provision of the Contract, the Contractor shall fully indemnify,

defend and hold harmless each of the University and its employees, authorised users, assigns, successors-in-title and agents (each an “**Indemnified Person**”) from and against:

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

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

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

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

18.4 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).

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

19. Termination

19.1 If:

- (a) the Contractor fails or is unable to deliver to the University any Goods specified in an Order within the time as specified in the Order or in accordance with Clause 6.2 or is in the reasonable opinion of the University grossly negligent or incompetent in the

performance of its obligations under the Contract;

- (b) any Goods are rejected pursuant to the Contract;
- (c) the Contractor fails to deliver to the University replacement Goods by the date specified by the University or in the Rejection Notice under Clause 10.2;
- (d) the Contractor offers to deliver or delivers to the University any Goods which have previously been rejected by the Receiving Officer or the University;
- (e) the Contractor commits a fundamental breach of any term of the Contract;
- (f) the Contractor is in breach of any provision of the Contract which in the opinion of the University is not capable of remedy;
- (g) the Contractor commits a breach of any provision of the Contract which is capable of remedy and fails to remedy the same to the satisfaction of the University within seven (7) days from the date of service of notice by the University (or such period as specified in the notice) requiring such remedy;
- (h) the Contractor has made a material misrepresentation (including submission of false statement or inaccurate or incomplete information) during the tendering process or negotiation or performance of the Contract, or any warranty, undertaking or representation given by the Contractor is incorrect, inaccurate, incomplete or misleading;
- (i) the Contractor or any officer (including director), employee, sub-contractor or agent of the Contractor commits an offence under the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong) or any law of a similar nature or has breached any other applicable laws, rules or regulations in relation to the Contract or any other contract made by the Contractor with the University;
- (j) the Contractor has committed a breach of any provision in the Confirmation Letter for Compliance with Anti-Collusion Provisions in Tender and Certificate relating to Bona Fide Tender in Appendix 3 of Part 8 of the Tender Form, or any representation or warranty in the Contract regarded to be given under paragraph 14.1 of the Terms of Tender;
- (k) the Contractor has employed illegal workers in breach of the undertaking under Clause 14.5;
- (l) the Contractor assigns or transfers, or purports to assign or transfer, all or any part of the Contract or all or any of its rights or obligations thereunder without the prior written consent of the University;
- (m) the Contractor is guilty of fraud, dishonesty or serious misconduct, or the Contractor or any of its officers (including directors), employees, sub-contractors or agents has engaged in any conduct whether in relation to the duties hereunder or not which, in the opinion of the University, is regarded as prejudicial or materially adverse to the interests of the University or which may bring the University into disrepute; or
- (n) termination of the Contract is required by a competent authority,

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

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

- (a) a proposal is made for a voluntary arrangement or any other composition, scheme or arrangement with, or assignment for the benefit of, the Contractor's creditors;
- (b) if the Contractor is an incorporated body, a shareholders or members meeting is convened for the purpose of considering a resolution that it be wound up or dissolved or a resolution for its winding-up or dissolution is passed (other than voluntarily for the purpose of bona fide reconstruction or solvent amalgamation);
- (c) a petition is presented for the winding up, dissolution or bankruptcy of the Contractor, which is not dismissed within fourteen (14) days after the petition is presented;
- (d) the Contractor is or becomes insolvent, or any order is made for the Contractor's bankruptcy, winding up or dissolution;
- (e) an administrator, administrative receiver, receiver or similar officer is appointed over the whole or any part of the Contractor's business or assets;
- (f) the Contractor suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
- (g) the Contractor has engaged or is engaging in acts or activities that are likely to constitute or cause the occurrence of offences against the laws of Hong Kong, including but not limited to offences endangering national security, or that would otherwise be contrary to the interest of national security;
- (h) the continued engagement of the Contractor or the continued performance of the Contract is contrary to the interest of national security; or
- (i) the University reasonably apprehends that any of the events mentioned above is about to occur.

19.3 Where there is a Force Majeure Event, the University may terminate the Contract in part or in whole pursuant to Clause 31.7. Further, notwithstanding anything herein to the contrary, the University may at any time during the Contract Period, at its discretion and without cause, suspend or terminate the Contract or any part thereof by giving the Contractor one month's written notice of such suspension or termination.

19.4 If the Contract is terminated or suspended under Clause 19.1, Clause 19.2 or Clause 19.3, the Contractor is not entitled to claim any compensation, loss, damages, costs or expenses arising from or in relation to such termination or suspension. Subject to the aforesaid, upon the expiry or termination of the Contract, the Contract shall be of no further force and effect, but without prejudice to any accrued rights or liabilities of either Party prior to or at the date of such expiry or termination or the continued existence and validity of any provisions of the Contract which are expressly stated to or which in their context by implication survive such expiry or termination or continue to be in force after such expiry or termination. In case of suspension, the written notice shall specify the period(s) of suspension (which shall not be more than six

(6) months in aggregate) and the scope of the suspension.

- 19.5 Without prejudice to the other rights and claims of the University, if the Contract is terminated under Clause 19.1 or Clause 19.2 and the University makes other arrangements for the supply of any Goods from any other source, the University may recover from the Contractor all costs and expenses incurred in making the arrangements (including the costs and expenses incurred in conducting any tender or quotation as appropriate for procurement of the Goods then outstanding) and any additional expenditure incurred by the University in connection with a default by the Contractor referred to in Clause 19.1 or Clause 19.2. If the Contract is so terminated, until the University has established the final cost of making other arrangements contemplated under this Clause, no further payments shall be payable by the University to the Contractor for the Goods supplied by the Contractor prior to termination and in accordance with the Contract for which payment has yet to be made by the University.
- 19.6 On the expiry or termination of the Contract for any reason or upon the request of the University, the Contractor shall at its sole costs and expenses:
- (a) immediately return to the University all Confidential Information, personal data and such other information, property and materials (including any drafts and copies thereof) in the possession or under the control of the Contractor or any of its suppliers, employees, sub-contractors and agents, which was obtained or produced in the course of providing the Goods or for the purposes of or in relation to the Contract;
 - (b) assist and cooperate with the University to ensure an orderly transition of the provision of the Goods to such person specified by the University and/or the completion of any work in progress, and at the request of the University, enter into and perform all deeds of assignment, transfer or novation in favour of the University or in favour of any person whom the University may designate, for the assignment, transfer or novation of any contract, arrangement or other subject matter whatsoever (including without limitation licences in relation to any Intellectual Property Rights) on such terms and conditions as the University may stipulate; and procure any other third party whom the University considers necessary for effecting or perfecting such assignment, transfer or novation to enter into and perform any such deeds of assignment, transfer or novation; and
 - (c) promptly provide all information concerning the provision of the Goods which may be requested by the University for the purposes of adequately understanding the manner in which the Goods have been provided or the purpose of allowing the University or a replacement contractor to conduct due diligence.
- 19.7 The University shall not be responsible for any claim, legal proceedings, liability, loss (including any direct or indirect loss, or any loss of revenue, profit, business, contract or anticipated saving), damages (including any direct, special, indirect or consequential damages of whatsoever nature) or any cost or expense suffered or incurred by the Contractor arising out of or in relation to the early termination or suspension of the Contract.

20. Recovery of Sums Due

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

21. Conflict of Interest

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

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

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

21.3 In the Contract:

- (a) **“associate”** of a person means:
 - (i) a relative or partner of that person; or
 - (ii) a company one or more of whose directors is/are in common with one or more of the directors of that person;
- (b) **“associated person”** of a person means:
 - (i) any person who has control, directly or indirectly, over the second-mentioned person;
 - (ii) any person who is controlled, directly or indirectly, by the second-mentioned person; or
 - (iii) any person who is controlled by, or has control over, the person mentioned in (i) or (ii) above;

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

to secure:

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

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

- (d) “**director**” means any person occupying the position of a director by whatever name called and includes a de facto or shadow director; and
- (e) “**relative**” means the spouse, parent, child, brother or sister of the relevant person, and, in deducing such a relationship, an adopted child shall be deemed to be a child both of the natural parents and the adopting parents and a step child to be a child of both the natural parents and the step parents.

22. Confidentiality

22.1 The Contractor shall treat as proprietary and confidential all information, documents, materials and data (including any personal particulars records and personal data (as defined in the Personal Data (Privacy) Ordinance (Chapter 486 of the Laws of Hong Kong) (the “**PDPO**”))), in whatever form or media, which the University or its employees, officers, agents or representatives have for the purposes of or in the course of performing the Contract, supplied, made available or communicated to the Contractor, whether or not it is labelled or identified as confidential (collectively, “**Confidential Information**”). The Contractor’s obligations under this Clause 22 shall not extend to any information which was rightfully in the possession of the Contractor prior to the commencement of the negotiations leading to the Contract or which is already in the public knowledge or becomes so at a future date otherwise than as a result of a breach of this Clause 22.

22.2 Without prejudice to any other provision of the Contract, the Contractor shall fully and effectively indemnify, defend, hold harmless and keep indemnified the University, and its authorised users, employees, agents, assigns and successors-in-title from and against any and all actions, damages, costs, claims, demands, expenses, proceedings, judgments, losses, liabilities, charges of whatsoever nature (including the fees and disbursements of lawyers, agents and expert witnesses) and any awards and costs which may be agreed to be paid in settlement of any proceedings and liabilities of any nature arising from or incurred by reason of:

- (a) a breach of confidence (whether under the Contract or general law) by the Contractor or any of its employees, agents, officers, representatives or sub-contractors or their respective associates or associated persons;
- (b) any actions or claims made in respect of information subject to the PDPO, which action and/or claim would not have arisen but for the act, negligence or omission of the

Contractor or any of its employees, agents, officers, representatives or sub-contractors or their respective associates or associated persons in connection with the performance of the Contract; and

- (c) any act done or omission in the performance of the Contract that contravenes the Unsolicited Electronic Messages Ordinance (Chapter 593 of the Laws of Hong Kong) or the PDPO.

- 22.3 The Contractor shall use the Confidential Information solely for the purpose of performing the Contractor's obligations under the Contract. The Contractor shall not, at any time whether during the Contract Period or after the expiry or termination (howsoever occasioned) of the Contract, use (or allow to be used) the Confidential Information for any other purposes without the University's prior written consent.
- 22.4 The Contractor shall not disclose the Confidential Information to any third parties except in confidence to such of the Contractor's employees, agents or sub-contractors who need to know the same for the purposes of performance of the Contract, provided that such Contractor's employees, agents or sub-contractors are bound by written and binding confidentiality obligations with the Contractor which are no less restrictive than those stipulated in this Clause 22.
- 22.5 The Contractor undertakes to take and maintain all necessary measures and comply with all applicable laws and regulations including without limitation the PDPO for the protection of the Confidential Information and to prevent any unauthorised disclosure, use or leakage of the Confidential Information by applying at least the same level of security measures and the same degree of care as the Contractor exercises to protect its own information of similar type and importance, but no less than a reasonable level of security measures and a reasonable degree of care.
- 22.6 The Contractor undertakes, if so requested by the University, to deliver to the University on or before such date as specified by the University, separate non-disclosure and/or confidentiality agreements duly executed by the Contractor and/or each person or entity to whom any Confidential Information is to be disclosed by the Contractor in accordance with the Contract. The Contractor shall not be regarded to have complied with this Clause unless each such non-disclosure and/or confidentiality agreement is executed on terms prescribed or approved by the University. The Contractor further agrees to, if so required by the University and at the Contractor's own cost and expense, take such actions and steps as are lawful and necessary to enforce such non-disclosure and/or confidentiality agreements in the event of any breach thereof.
- 22.7 The Contractor shall not reproduce, or make copies or summaries of, the Confidential Information save as strictly necessary to perform the Contractor's obligations under the Contract, which shall be clearly marked or identified as confidential. The Contractor further agrees that it will not at any time whether by itself or through any subsidiary or agent use, sell, license or sub-license any Confidential Information, or create or develop information based on the Confidential Information, or deal with any Confidential Information otherwise than in accordance with the Contract. The Contractor further agrees that it will keep the terms of the Contract confidential and will not divulge its terms to any third party except with the prior written consent of the University.
- 22.8 The Contractor shall procure that each person or entity to whom any Confidential Information is disclosed by the Contractor in accordance with the Contract are to comply with the confidentiality obligations under this Clause 22 and any breach by such persons or entities of

such confidentiality obligations shall be deemed to be a breach of the Contractor for which the Contractor shall remain fully liable to the University. If the Contractor becomes aware of any actual, suspected or threatened breach of confidence by any of its employees, agents, officers, representatives or sub-contractors or their respective associates or associated persons, it shall promptly notify the University in writing and at no charges to the University, give the University all reasonable assistance in connection with any action or proceedings which the University may take or institute against any such persons or entities, or which the University may be claimed against as a result of such breach.

- 22.9 All Confidential Information is provided by the University on “as is” basis. The University makes no warranty, guarantee, undertaking or representation of any kind, whether express, implied, statutory or otherwise, relating to or arising under the Confidential Information, including without limitation the warranties as to adequacy, accuracy, sufficiency, title or freedom from defects or that the use or reproduction of any information shall be free from any patent, trade secret, trademark or copyright infringement. The University shall not be liable for damages, costs, expenses, risks or liabilities of any kind as a result of the Contractor’s receipt or use of, or reliance on, any Confidential Information.
- 22.10 Except as expressly granted herein, no other license or right is granted to the Contractor by implication, estoppel or otherwise. The Contract does not provide for any transfer of title or ownership of Confidential Information or any intellectual property arising therefrom which is and will remain the sole and exclusive property of the University.
- 22.11 If the Contractor is required to disclose Confidential Information by order of a court of competent jurisdiction or other competent administrative body, the Contractor shall (a) provide the University with a prompt written notice of such possible disclosure prior to its disclosure in order to give the University an opportunity to contest such disclosure; (b) reasonably cooperate with the University in its efforts to contest such disclosure; and (c) disclose only that portion of the information as is legally required in a confidential manner, and use reasonable efforts to request for confidential treatment for any Confidential Information that is so disclosed.
- 22.12 The Contractor acknowledges that any unauthorised disclosure or use of the Confidential Information can cause irreparable harm and significant injury to the University, the degree of which may be difficult to ascertain or for which damages may not be an adequate remedy. Accordingly, the Contractor agrees that the University shall have the right to obtain and be immediately granted an injunction prohibiting any breach of this Clause 22 and/or specific performance ensuring the compliance of this Clause 22 in light of any threatened or actual breach of this Clause 22, without prejudice to its other rights and claims including those available under the Contract or at law arising from such breach.
- 22.13 The University may request the Contractor in writing at any time that any Confidential Information disclosed pursuant to the Contract and any copies, analyses, compilations and extracts thereof whether in hardcopies, electronic format or other media be returned, destroyed and/or deleted with a written statement to the effect that upon such return, destruction and/or deletion it has not retained in its possession or under its control, either directly or indirectly, any Confidential Information in whatever form and medium. The Contractor shall comply with any such request from the University within seven (7) days from receipt of such request.

23. Probity

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

24. Insurance

- 24.1 The Contractor shall effect and maintain with an insurance company a policy of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor in connection with the performance or attempted performance of its obligations under the Contract, including death, personal injury, loss of or damage to property or any other loss. Such policy shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor. Such insurance shall be maintained throughout the Contract Period and for a minimum period of six (6) years after the expiry or sooner termination of the Contract.
- 24.2 Without prejudice to Clause 24.1, the Contractor shall effect and maintain employer's liability insurance in respect of all its employees and other staff in accordance with all applicable legal requirements.
- 24.3 If required by the University, the Contractor shall deliver to the University copies of all insurance policies required under the Contract together with receipts or other evidence of payment of the latest premium due under the policies.
- 24.4 If the Contractor fails to give effect to or maintain any insurance policy required under the Contract, the University may make such alternative arrangements as it considers appropriate to protect its interests and may recover from the Contractor the costs of putting such in place and maintaining such arrangements.
- 24.5 No provision in any insurance policy and no amount of insurance cover shall relieve the Contractor of any liability under the Contract or be construed as a cap on the liability of the Contractor under the Contract. It is the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability under the Contract.
- 24.6 For all insurance policies required under the Contract, the Contractor shall comply with and observe duly and punctually all terms and conditions set out in these policies. The Contractor

shall be responsible for lodging claims with the insurance company and shall notify the insurance company within the time period specified in the policy of the occurrence of any event liable to give rise to a claim covered by the relevant insurance policy.

25. Process Agent

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

26. Relationship of the Parties

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

27. Assignment and Sub-contracting

- 27.1 Unless otherwise provided for in the Contract, the Contractor shall not, without the prior written consent of the University, assign, transfer, sub-contract or otherwise dispose of any of its interests, rights, benefits or obligations under the Contract. The performance of the Contract by the Contractor shall be personal to it. Any person purportedly appointed by the Contractor as agent shall be treated as sub-contractor for the purpose of this Clause 27 and for the whole of the Contract.
- 27.2 A sub-contracting of the Contract or any part of it shall not relieve the Contractor of any of its obligations or duties under the Contract, and the Contractor shall remain fully liable to the University and be responsible for the acts, defaults, neglect and omissions of its employees, officers, agents, representatives or sub-contractors (at whatever level) and employees, officers, representatives and agents of any such sub-contractors as though they were its own.

28. Non-exclusive Contract

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

29. Disclosure of Information

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

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

30. Publicity

- 30.1 Whether before, during or after the expiry or termination of the Contract Period, the Contractor shall not use the University's name, logo, emblem, symbol, trade name, trademark or visual identity or any variation or derivation thereof, whether in any document, publication, advertisement, activity, publicity material or otherwise, without the prior written consent of the University.
- 30.2 Subject to Clause 30.1, the Contractor shall submit to the University for approval all the proposed advertising or other publicity materials relating to the Contract, the Goods or other products supplied or other work done in connection with the Contract wherein the University's name, logo, emblem, symbol, trade name, trademark or visual identity or any variation or derivation thereof is mentioned or used, or language is used from which a connection with the University can reasonably be inferred or implied.
- 30.3 Notwithstanding any consent or approval given under Clause 30.1 or 30.2, whenever required by the University, the Contractor shall promptly remove or procure to remove all advertisements, documents, publication and publicity or other materials relating to the Contract wherein the University's name, logo, emblem, symbol, trade name, trademark or visual identity or any variation or derivation thereof is used, or language is mentioned or used from which a connection with the University can reasonably be inferred or implied and the Contractor must comply with such request.

31. Force Majeure

- 31.1 If the Contractor becomes aware of any matter likely to constitute a Force Majeure Event, the Contractor shall forthwith notify the University in writing of that matter and all relevant particulars.
- 31.2 Within three (3) days after the occurrence of a Force Majeure Event, the Contractor shall notify the University in writing of the full particulars of the Force Majeure Event including its nature, extent, effect on the Contractor's ability to perform the Contractor's obligations under the Contract and likely duration of such effect. In the event of an occurrence of a Force Majeure Event, the University may on its own issue a notice to the Contractor noting the

occurrence of the Force Majeure Event and requiring the Contractor to suspend all or any of its obligations under the Contract. A notice issued by the Contractor or the University pursuant to this Clause is hereinafter referred to as the “**Suspension Notice**”.

- 31.3 Following the issuance of a Suspension Notice by the Contractor or the University, the Contractor shall keep the University informed in writing at reasonable intervals or upon the request of the University, of:
- (a) the likely duration of the relevant Force Majeure Event and of its effect on the Contractor’s ability to perform the Contractor’s obligations under the Contract;
 - (b) the actions taken or proposed to be taken by the Contractor to mitigate or minimise the effects of that Force Majeure Event; and
 - (c) any other matters relevant to that Force Majeure Event or the Contractor’s performance of the Contract affected by that Force Majeure Event.
- 31.4 To the extent that the performance of obligations by the Contractor under the Contract is prevented by a Force Majeure Event, the Contractor’s performance of such obligations will, subject to Clause 31.5, be suspended to that extent from the date that the Contractor or the University gives a Suspension Notice in respect of that Force Majeure Event until the Contractor ceases to be so prevented (“**Cessation Date**”). Notwithstanding anything in the Contract to the contrary, as soon as the University issues a Suspension Notice to the Contractor, the Contractor shall forthwith suspend the performance of its obligations under the Contract to the extent specified in the Suspension Notice.
- 31.5 During the suspension of any obligations under Clause 31.4:
- (a) the Contractor shall use its best endeavours (including incurring any reasonable expenses and re-deploying its manpower and resources) to remove or mitigate the effect of each Force Majeure Event on the Contractor’s performance of its obligations under the Contract;
 - (b) the University may make alternative arrangements for the performance of any suspended obligations, whether by another person or otherwise, without compensation to the Contractor;
 - (c) the Contractor shall not be entitled to any payment of money, cost, fee, compensation, expense or charge or such pro rata portion thereof in respect of the suspended obligations for the suspended period, or in respect of any loss or damage arising from such suspension of obligations, or in respect of the costs or expenses incurred or actions taken by the Contractor to remove or mitigate the effect of the Force Majeure Event; and
 - (d) the Contractor shall continue to fully and punctually perform and observe all of its other obligations which are not affected by the Force Majeure Event in full accordance with the requirements of the Contract including those obligations which are not suspended, and to that extent, all the terms and conditions of the Contract shall continue to apply and be in full force and effect.
- 31.6 As soon as the relevant Force Majeure Event has terminated, the Contractor shall forthwith notify the University in writing of the Cessation Date, or the University may on its own, or after consultation with the Contractor, by notice in writing to the Contractor, determine the

appropriate Cessation Date. The Contractor shall immediately after the Cessation Date resume performance of the suspended obligations in accordance with the terms and conditions of the Contract. In the event of any disagreement between the University and the Contractor on the appropriate Cessation Date, the University's decision shall be final in the absence of manifest error.

- 31.7 Should suspension of the performance by the Contractor of its obligations under the Contract persist or be likely to persist as a result of a Force Majeure Event, the University shall be entitled to terminate the Contract pursuant to Clause 19.3.
- 31.8 The Contractor shall ensure that provisions similar to this Clause 31 are incorporated in all its contracts with its sub-contractors made for the performance of its obligations under the Contract.

32. Audit

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

33. Notices

- 33.1 Each notice, demand, invoice, correspondence or other communication given or made under the Contract by a Party shall be in writing and delivered or sent to the other Party at its postal address, facsimile number or email address set out in Appendix 1 of Part 8 of the Tender Form (or such other postal address, facsimile number or email address as the addressee has by no less than seven (7) working days' prior written notice specified to the other Party).
- 33.2 Such notices, demands or other communications shall be addressed as provided in Clause 33.1 and, if so addressed, shall be deemed to have been duly given or made as follows:
- (a) if sent by personal delivery during normal business hours on a working day, upon delivery at the address of the relevant Party;
 - (b) if sent by post, two (2) working days (for any place in Hong Kong) and seven (7) working days (for any place outside Hong Kong) after the date of posting;
 - (c) if sent by facsimile during normal business hours on a working day, when despatched with confirmed receipt as evidenced by the transmission report generated at the end of the transmission of such facsimile by the facsimile machine used for such transmission; or
 - (d) if sent by email during normal business hours on a working day, upon despatch unless the sender has received a non-delivery notification from his own computer system.
- 33.3 Nothing in Clause 33.2 shall affect the validity of any notice, demand or other communication despatched outside normal business hours. Any such notice, demand or other communication despatched outside normal business hours which fulfills the conditions specified in Clause 33.2 shall be deemed to have been duly given or made on the next working day following the

date of such personal delivery, posting, facsimile or email.

34. Entire Agreement

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

35. Governing Law and Jurisdiction

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

36. Severability

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

37. Waiver

- 37.1 Time shall be of the essence of the Contract but no failure, delay, forbearance or indulgence by any Party to the Contract to exercise any right, power or remedy available to it under the Contract, at law or in equity shall operate as a waiver thereof; nor shall any single or partial exercise of the same preclude any other or further exercise thereof or the exercise of any other right, power or remedy. Any right, power or remedy of each Party under the Contract shall be cumulative and shall not be exclusive of any other rights, powers or remedies provided by the Contract, at law or in equity. Without limiting the foregoing, no waiver by a Party of any breach by the other Party of any provision hereof shall be deemed to be a waiver of any subsequent breach of that or any other provision hereof.
- 37.2 Without prejudice to the generality of Clause 37.1, any right of termination of the Contract or any other right, power or remedy of whatsoever nature conferred upon the University under the Contract shall be exercisable by the University in addition to and without prejudice to any other rights, powers and remedies available to it under the Contract, at law or in equity (and, without prejudice to the generality of the foregoing, shall not extinguish any right to damages to which the University may be entitled in respect of the breach of the Contract) and no exercise of or failure or delay to exercise a right of termination by the University shall

constitute a waiver by the University of such right of termination or any other right, power or remedy.

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

38. Assistance in Legal Proceedings

- 38.1 If and whenever requested to do so by the University, the Contractor shall forthwith provide to the University all relevant information, documents (including documentation and statements from staff) and other assistance in connection with any inquiry, investigation, arbitration, tribunal hearings or court proceedings in which the University or its authorised users, employees, agents, licensees, assigns and successors-in-title may become involved or any internal disciplinary hearing of the University that arises out of or in connection with the Contract or the Contractor's presence at the University's premises. If requested by the University, the Contractor shall arrange for relevant staff, agent and/or sub-contractor to give evidence at such inquiries, investigations, arbitrations, hearings or proceedings.

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

39. Order of Precedence

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

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

40. Execution of Further Documents

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

41. Joint and Several Obligations

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

42. United Nations Convention on Contracts for the International Sale of Goods not applicable

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

43. Term

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

44. Exclusion of Third Party Rights

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

45. Counterparts

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

46. Electronic Signature and Transmission

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