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PART 2

CONDITIONS OF CONTRACT

1. Contract Period

- 1.1 Subject to the provisions in the Contract for earlier termination, and without prejudice to Clause 19.1(a) of the Conditions of Contract, this Contract shall have a duration specified as the Contract Period in the Technical Specification. Where the Technical Specification do not specify any period as the Contract Period, the Contract Period shall be the period commencing from the Date of Tender Acceptance and ending on the date when the Contractor has discharged all its obligations in relation to the Goods.
- 1.2 Unless otherwise expressly specified in the Technical Specification, an Order for the Goods may be placed by the ECC any time during the Contract Period up to the last date of the Contract Period.

2. Contractor's Acknowledgement and Contract Performance

- 2.1 The Contractor acknowledges and agrees that when entering into the Contract, it has been supplied with sufficient information to enable it to supply to the ECC the Goods, which shall comply fully with the requirements set out in the Technical Specifications and other provisions of the Contract.
- 2.2 The Contractor further acknowledges that the ECC relies on the skill and judgment of the Contractor in the supply of the Goods and the performance of its obligations under the Contract. The Contractor acknowledges and agrees that save to the extent expressly set out in the Contract, it is neither expected nor necessary that the ECC will have to provide any assistance or perform any act or do anything whatsoever to ensure the delivery of the Goods and performance of its obligations in accordance with the Contract.
- 2.3 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 and regulations.

- 2.4 The Contractor shall, through the ECC Representative, keep the ECC 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 ECC Representative.
- 2.5 The Contractor shall remain responsible for performing the Contract, and be liable to the ECC under the Contract, regardless of whether or not the Goods are manufactured by it.
- 2.6 To the extent that the ECC Representative considers it reasonably necessary and that the information (in whatever media) is in the possession of the ECC Representative and is not subject to any confidentiality restriction, the ECC Representative may at the request initiated by the Contractor (but not otherwise required in the Contract), provide all such information for the Contractor's guidance in the execution of the Contract free of charge provided such request from the Contractor is made in a timely manner to avoid any delay on the part of the Contractor to perform the Contract. If required by the ECC Representative, the Contractor shall return all such information (in whatever media) to the ECC Representative upon the expiry or early termination of the Contract or at the time specified in the Special Conditions of Contract.
- 2.7 Without prejudice to the Deadline Delivery Dates and other time requirements to be observed and complied with by the Contractor, whenever any approval or agreement or instruction or direction is sought by the Contractor from the ECC Representative in accordance with the requirements of the Contract, the ECC Representative is entitled to a reasonable period of time for considering whether any such agreement or approval should be given, and a reasonable period of time to specify such direction or instruction. It will use its reasonable endeavours to give notification to the Contractor of its decision and where applicable any work to be done in order for such approval or agreement or direction or instruction to be given within a reasonable period of time.
- 2.8 In the light of the foregoing, the Contractor will not be entitled to any extension of time or additional payment or exemption from any obligation or liability on the alleged ground (a) that the Contract contains insufficient or unclear or inconsistent or out-of-scope specifications or requirements; or (b) that the ECC Representative has not provided any assistance or performed any act to ensure delivery of the Goods or performance by the Contractor of its obligations; or (c) that the Contractor has to expend time and resources reporting to the ECC Representative on the progress; or (d) that any non-compliance with any obligation or delay is due to the Manufacturer or any other person; or (e) that the ECC Representative has not provided or otherwise in a timely manner any direction, instruction, information or approval which is not otherwise expressly required under the Contract; or (f) for any

approval or agreement which is stated to be required in the Contract, that the ECC Representative abstains from giving any such approval or agreement.

- 2.9 The Contractor shall be responsible for the completeness and accuracy of all Deliverables supplied by the Contractor to the ECC Representative in connection with the Goods. Without prejudice to any other provisions of the Contract, the Contractor shall indemnify the ECC Representative in accordance with Clause 17.2 of the Conditions of Contract in connection with, any discrepancies, errors or omissions therein.
- 2.10 The Contractor acknowledges that it does not have the right to sell the Goods to the ECC on an exclusive basis and nothing in this Contract confers any such exclusive right. Nothing in the Contract shall preclude the ECC from procuring any Goods from any other person.

3. Warranties and Representations

- 3.1 The Contractor warrants, represents and undertakes that:
- (a) as at the time of acceptance and thereafter throughout the Warranty Period, each batch of Goods conforms in all respects to, and operate in accordance with, all requirements of the Contract including the Technical Specification and all other Overall Specifications, and, where applicable, with any sample provided to the ECC Representative before or after the Contract award and accepted by the ECC Representative;
 - (b) as at the time of acceptance and thereafter throughout the Warranty Period, each batch of Goods is of merchantable quality and is free from defects in design, materials and workmanship, and is fit and sufficient for any particular purpose made known to the Contractor by the ECC Representative and to the extent consistent with such particular purpose, for other purposes for which such Goods are ordinarily used;
 - (c) all consent, approval, licences, certifications, and certificates required under the Contract and under all applicable laws and regulations have been duly obtained prior to the commencement of the Contract and are in full force and effect; and will continue to be maintained and if necessary renewed throughout the Contract Period for (1) the performance of the Contract by the Contractor; (2) the supply of the Goods from the Manufacturer at the Manufacturing Plant including any export (and where applicable re-export) approval; (3) (where it is so approved) performance of any part of the Contract by its sub-contractors including the manufacture, sale, supply and delivery of the

Goods; (4) the operation and use of any machinery, equipment and materials for the manufacture of the Goods by the Manufacturer; (5) the operation of any vehicles, vessels, machinery, equipment and other transportation means for the delivery of the Goods; and (6) for the use of the Goods by the ECC Representative in the manner provided for or contemplated in the Contract; and none of the aforementioned acts or the purchase or use of the Goods by the ECC Representative will contravene any laws and regulations;

- (d) each batch of Goods has been manufactured by the Manufacturer at the Manufacturing Plant from the Place of Origin as specified in the Technical Proposal;
- (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, legally binding obligations of the Contractor enforceable in accordance with its terms;
- (g) throughout the Contract Period, the Contractor shall comply with all laws and regulations in the performance of the Contract including all of its obligations under the Contract; as at the time of acceptance, each batch of Goods shall comply with all laws and regulations prevailing at the time of acceptance; and throughout the Contract Period, the Manufacturing Plant and all machinery equipment and materials used for the manufacture and storage of the Goods, and all vehicles, vessels, machinery, equipment and other transportation means for the delivery of the Goods, shall comply with all laws and regulations;
- (h) all information and documents supplied, and statements and representations from time to time made by or on behalf of the Contractor in or in relation to its Tender and the Contract including, without limitation, any test reports or certifications or documents evidencing the identity of the Manufacturer or Place of Origin, are genuine, true, accurate and complete;
- (i) throughout the Contract Period, no claim is being made and no litigation, arbitration or administrative proceeding is presently in progress, or to the best of the Contractor's knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;
- (j) throughout the Contract Period, it is not subject to any contractual obligation or court judgment or ruling order or arbitration decision, compliance with which is likely to have a material

adverse effect on its ability to perform its obligations under the Contract;

- (k) throughout the Contract Period, 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) throughout the Contract Period, 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;
- (m) upon acceptance of a batch of Goods, the ECC Representative shall obtain good and marketable title to such batch of Goods; and
- (n) upon acceptance of a batch of Goods, there is no option, right to acquire, mortgage, charge, pledge, lien, hire purchase, or other form of security or encumbrance on, over or affecting the Goods; and there is no agreement or commitment to give or create any of the foregoing and no claim has been made by any person to be entitled to any of the foregoing.

- 3.2 The warranties, representations and undertakings, expressed or implied, contained in Clause 3.1 above and in Clause 20.1 of the Conditions of Contract and in other provisions of the Contract (including without limitation the Technical Specification and Paragraph 28.1 of the Terms of Tender), and those made by the Contractor in its Tender for the Contract including all Schedules, during the evaluation of the Tender, and those from time to time made in the course of performance of the Contract, are collectively referred to as "Warranties", and each, a "Warranty".
- 3.3 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.
- 3.4 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) apply to bind the Contractor and the ECC respectively.

- 3.5 The ECC relies on the professional judgment and expertise of the Contractor to ensure that the Goods are in compliance with the Warranties.
- 3.6 All of the Warranties are conditions of the Contract where the non-compliance with any of which entitles the ECC Representative, if it so elects, to reject a batch of Goods any time before acceptance of that batch of Goods under Clause 10.1 of the Conditions of Contract. After acceptance of a batch of Goods, if there is any breach of any of the Warranties, the ECC Representative may still reject that batch of Goods under Clause 13 of the Conditions of Contract. Breach of any of the Warranties concerning Intellectual Property Rights under Clause 20.1 of the Conditions of Contract may also lead to rejection of the Goods (even after acceptance) in accordance with Clause 21.3 of the Conditions of Contract. Regardless of whether there is any rejection, the ECC's right and claim against the Contractor including under the indemnities in Clauses 17.2 and 21.1 of the Conditions of Contract arising from the breach of the Warranties shall not be prejudiced.

4. Total Maximum and Minimum Quantities

- 4.1 The Contractor agrees and commits to sell the total quantiti(ies) of the Item(s) specified in the Price Proposal on and subject to the provisions set out in the Contract. In addition, the ECC has an option to purchase extra quantities of all or any of the Items on and subject to the same terms including the price quotations set out in the Price Proposal up to an extra 30% of the Total Estimated Goods Price ("Excess Items") by issuing a notice to the Contractor any time within the Contract Period.
- 4.2 For the avoidance of doubt, the quantities of Excess Items (a) may relate to all Items or (b) may relate to one or more but not all Items.
- 4.3 For the avoidance of doubt, without prejudice to all other rights and remedies of the ECC whether under the Contract or at law, the ECC's obligation under Clause 4.1 shall not apply in the event of any early termination of the Contract under Clause 18.1 or 18.2 or 18.3 or 18.4 of the Conditions of Contract or partial termination of the Contract under Clause 18.3, 18.4 or 18.5 of the Conditions of Contract or after exercising its rights under Clause 10.3(f) of the Conditions of Contract.

5. Price Variation

All unit prices quoted for the Goods in the Price Proposal shall remain valid throughout the Contract Period.

6. Order and Delivery

6.1 Subject to the ordering and delivery arrangement specified in the Technical Specification for the Goods, whenever required by the ECC Representative by a written order signed by the ECC Representative and issued to the Contractor during the Order Period (“Order”) specifying:

- (a) the quantity of the Goods to be supplied and delivered to the ECC Representative;
- (b) the Location(s) for the delivery of the quantity of the Goods referred to in (a) above which shall either be specified in the Interpretation (Supplement) or in the absence of which, in the actual Order to be issued; and
- (c) the date and time for delivery of the Goods referred to in (a) above,

the Contractor shall supply and deliver to the ECC Representative the quantity of the Goods so specified in the Order in accordance with the Order and the provisions of the Contract in Ready for Use condition.

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 Alternatively to Clauses 6.1 and 6.2 above, the date(s) and quantit(ies) for the delivery of each batch of Goods in Ready for Use condition to the Location(s) shall be specified in the Technical Specification. Where there is such specification, Clauses 6.1 and 6.2 above shall not apply.

6.4 Further alternatively to Clauses 6.1, 6.2 and 6.3 above, the date(s) for each batch of implemented units (which shall comprise or include the specified quantity of the Items) (“implemented units”) to be duly assembled, delivered, installed, pass all Inspections and Acceptance Tests, and where applicable connected to other equipment or systems of the ECC in accordance with all requirements of the Contract including the Technical Specifications and becoming Ready for Use shall be as specified in an implementation timetable (“Implementation Timetable” or “Implementation Plan”) set out in the Technical Specifications. The Implementation Timetable may also specify the time requirements for performing other services.

6.5 The delivery date (or the last working day of the delivery period) for a specified quantity of the Goods (a) as determined in an Order to be issued under Clause 6.1 above or under Clause 6.2 above or (b) as stated in the Technical Specifications in the manner mentioned in Clause 6.3 whichever is applicable, shall be known as a “Deadline Delivery Date”.

The quantity of one or more Item(s) to be delivered in one lot by a Deadline Delivery Date is known as “a batch of Goods” throughout the Contract. Where there will only be one batch of Goods, references to “each” or “any” or “all” batch(es) of Goods shall mean that single one batch throughout the Contract. In the case where Clause 6.4 above applies, the date by which a batch of implemented units (or alternatively referred to as a “batch of Goods”) is to be Ready for Use at the Location(s) shall be known as a “Deadline Delivery Date” (or alternatively referred to as “Completion Date”) for such batch of implemented units. Where there will only be one batch of implemented units, references to “each” or “any” or “all” batch(es) of Goods shall mean that single one batch throughout the Contract.

- 6.6 Time shall be of the essence of the Contract as regards each Deadline Delivery Date and all other time stipulations set out in the Contract including the Implementation Plan referred to in Clause 6.4 above (if any).
- 6.7 Where there are more than one batches of Goods to be delivered, the Contractor should note that no delivery of the second batch (or where applicable each subsequent batch) shall be made before the issue of Acceptance Note for the first batch (and where the batch of Goods has to be shipped to Hong Kong, no such shipment shall be made before the aforesaid issue of Acceptance Note). No Acceptance Note for the first batch will be issued until and unless the conditions specified in Clause 9.2 of the General Conditions of Contract are fulfilled. If any delay in the first batch fulfilling the aforesaid conditions leads to the delay of the issue of the Acceptance Note, the Contractor shall make up the time lost when delivering the second batch (or where applicable each subsequent batch) to the Location(s) and ensure that the second batch (or where applicable each subsequent batch) is in Ready for Use condition by the applicable Deadline Delivery Date. The Deadline Delivery Date for the second batch (or where applicable for each subsequent batch) shall still continue to apply and be binding on the Contractor notwithstanding such delay.
- 6.8 Each delivery of a batch of Goods shall be accompanied by a copy of the Order issued for that delivery (if any). In respect of each delivery, the Contractor shall upon delivery of a batch of Goods to a Location obtain a receipt from the Receiving Officer, but no such receipt shall constitute an acceptance by the ECC Representative of the batch of Goods, or an acceptance or acknowledgement by the ECC Representative of the condition, quantity or the nature of such Goods.
- 6.9 Unless otherwise specified in the Technical Specification, the Contractor shall be responsible for delivering the Goods on an F.I.S. basis (as defined in Paragraph 5.1 of the Terms of Tender). The Contractor shall be responsible for delivering the Goods to the Location(s) during the

normal business hours (unless the Technical Specification stipulate otherwise). Where required, the Contractor shall be responsible for stacking the Goods within the designated storage area of each Location.

- 6.10 Where it is specified in the Technical Specification that the Goods shall not be delivered on an F.I.S. basis but shall be delivered on other applicable Incoterms of the International Chamber of Commerce (e.g., cost insurance freight (C.I.F.) or free on board (F.O.B.) or ex works (EX.W.)), the Contractor shall comply with the arrangement specified in the Technical Specification concerning the delivery of the Goods and the documents evidencing the due delivery of the Goods. The Deadline Delivery Date shall be taken as the date when the Contractor is required to deliver and load the Goods to the relevant ship or aircraft or other location under the applicable Incoterms as stated in the Technical Specification. References to "Location(s)" shall mean the aforesaid applicable location(s).
- 6.11 The ECC shall be entitled to postpone the Deadline Delivery Date or any other date specified in the Contract (and where there is an Implementation Plan, any date specified therein) by giving the Contractor not less than fourteen (14) days' written notice prior to the date to be postponed. All other dates and time shall remain in full force and effect unless the ECC shall otherwise determine or unless the postponement is of a material length and the Contractor provides justifications to the satisfaction of the ECC that there shall be a corresponding postponement of any of the remaining dates (where applicable).
- 6.12 Without prejudice and in addition to Clause 30 of the Conditions of Contract (Force Majeure), should it become reasonably apparent to the Contractor that due to certain delay or disruption falling within the description set out in Clause 6.12(a) or 6.12(b) below, a batch of Goods will not be delivered by the applicable Deadline Delivery Date as a result of any of the following events, the Contractor shall, as soon as possible, but in any event no later than seven (7) days after the occurrence of the relevant event, issue a written notice to the ECC Representative stating in full detail the alleged event triggering the delay or disruption:
- (a) instructions having been issued by the ECC Representative requiring compliance with specifications or requirements not already specified in the Contract or in the Technical Specifications or otherwise not pursuant to the Contract; or
 - (a) the Contractor not having received any necessary information or direction from the ECC Representative in accordance with the time specified in the Contract or otherwise within a reasonable time; or the ECC Representative has taken more than a reasonable period of time or otherwise more than the time specified in the

Contract (if any) to notify the Contractor of its decision on whether certain approval or agreement should be given.

- 6.13 Upon receipt of any notice from the Contractor under Clause 6.12 above, the ECC Representative will review the alleged event. If the ECC Representative in its reasonable opinion considers that (a) there has indeed been such event as mentioned in Clause 6.12(a) or 6.12(b) above, and that (b) such event will cause a batch of Goods not being delivered by the Deadline Delivery Date, the ECC Representative will grant to the Contractor the appropriate postponement of any of the dates specified in the Contract (or the Implementation Plan as the case may be). All decisions of the ECC Representative shall be binding on the Contractor (save in the case of manifest error). The Contractor shall not be entitled to raise any subsequent objection or protest due to any alleged event falling within Clause 6.12 above if it has not issued any notice concerning such alleged event in accordance with Clause 6.12 above.
- 6.14 Any postponement or change or suspension pursuant to Clause 6.11 or 6.13 above or Clause 18.4 of the Conditions of Contract or other applicable provisions of this Contract by the ECC shall not:
- (a) oblige the ECC to pay any additional remuneration or compensation to the Contractor; or
 - (b) release the Contractor from any of its obligations or liabilities or give rise to any waiver or estoppel in relation to any of its obligations or liabilities; or
 - (c) give rise to any other obligation or liability on the part of the ECC.

7. Licences and Taxes

- 7.1 Without prejudice to any other provision of the Contract, the Contractor shall apply for and procure the issue of all export, re-export and import licences, certification, certificates, permits and approvals for the performance of the Contractor's obligations as required under the Contract and under all applicable laws and regulations (regardless of the applicable jurisdiction including the Place of Origin) including those mentioned in Clause 3.1(c) of the Conditions of Contract and including those specified in the Technical Specification (if any). 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. All costs and duties payable arising from the application and issuance shall be borne by the Contractor ("Licence Costs").

- 7.2 The Contractor shall at its own costs and expenses pay for all taxation, duties and imposts of whatever nature which the Contractor may incur in performing the Contract or in respect of any Contract Price receivable or otherwise which may arise from the export of the Goods, regardless of the jurisdiction which imposes such taxation, duties or imposts.

8. Inspection Testing and Acceptance

- 8.1 Each batch of Goods to be delivered to the ECC Representative shall be subject to such inspection and/or tests as specified in the Contract (including those set out in the Technical Specification (if any)) and such other inspection and/or tests as the ECC Representative considers appropriate. Depending on the stipulations of the Technical Specification, inspection and/or tests of the Goods may either be done by the Contractor (in the presence of the ECC Representative and if the ECC Representative considers appropriate, also with the ECC Representative's participation), and/or the ECC Representative (with the assistance of the Contractor), and/or by an Independent Accredited Laboratory (whereupon the passing of any such tests shall be evidenced by a test certificate or laboratory test report certified by the Independent Accredited Laboratory), and/or such other person as specified in the Technical Specification.
- 8.2 All costs incurred by the Contractor in complying with this Clause 8 (including those for the appointment of the Independent Accredited Laboratory where applicable) shall be borne by the Contractor and shall not be chargeable to the ECC unless and to the extent otherwise expressly specified in the Price Proposal. Without prejudice to the generality of the foregoing, any inspection and/or tests of the Goods may relate to either a finished product or whilst still in the process of manufacture at the Manufacturing Plant. In addition, the ECC Representative may conduct an inspection upon a batch of Goods is delivered to the Location(s).
- 8.3 All inspections referred to in this Clause 8 and in the Technical Specification shall be known as "Inspections". All tests referred to in this Clause 8, and in the Technical Specification shall be known as "Testing and Commissioning". The Goods must successfully pass all Inspections and Acceptance Tests as one of the conditions before the Acceptance Note for the Goods will be issued under Clause 9.1(a) of the Conditions of Contract. By default, unless otherwise waived by the Government, all quantities of all Items within each batch of the Goods shall have to pass all Inspections and Acceptance Tests unless otherwise expressly specified in the Technical Specification that only a sample shall be taken from a batch of Goods for such purposes.

- 8.4 No failure by the ECC Representative to make a complaint at any time of any Inspections or Acceptance Tests, and no approval or consent or omission or waiver in relation to any matter given during or after such Inspections or Acceptance Tests shall constitute an acceptance of a batch of Goods (unless and until an Acceptance Note has been issued in respect of such Goods). The ECC Representative reserves all its rights to reject the Goods whether under the provisions of the Contract, in law or otherwise.

9. Acceptance

- 9.1 A batch of Goods delivered to the ECC Representative shall not be regarded to have been accepted by the ECC Representative unless and until:
- (a) the date on which the ECC Representative or the Receiving Officer serves on the Contractor in respect of such batch of Goods a written notice to the effect that the ECC Representative has accepted the batch of Goods (“Acceptance Note”) whether or not subject to any qualifications provided that such Acceptance Note will only be issued if all of the conditions specified in Clause 9.2 below are fulfilled (save and to the extent expressly waived or deferred by the ECC Representative); or
 - (b) upon the expiry of the period of one (1) month (or otherwise such shorter period as the ECC Representative or the Receiving Officer may agree) provided further that this Clause 9.1(b) shall only apply if (i) the ECC Representative agrees in writing that the batch of Goods may be accepted in the manner specified in this Clause 9.1(b); and (ii) that such batch of Goods or any part thereof has not been rejected by the ECC Representative during the afore-said one-month period (or the applicable shorter period as the case may be). One (1) month (or such shorter period) mentioned above shall count from the date of a receipt issued under Clause 6.8 of the Conditions of Contract in respect of such batch of Goods.
- 9.2 In relation to each batch of Goods, (a) upon that batch of Goods passing all Inspections, and all Acceptance Tests (where stated to be applicable in the Contract); (b) upon that batch of Goods complying with the Overall Specifications and all of the Warranties; (c) upon the successful delivery of the Goods to the Location(s) as specified in that Order in accordance with all requirements of the Contract and the Order by the Deadline Delivery Date; (d) upon fulfilment of such other conditions as specified in the Technical Specification; (e) upon any activity as stipulated in the Technical Specification which is required to be completed before acceptance having been completed; and (f) upon due

and punctual completion by the Contractor of all obligations which are due to be performed by the Contractor, the ECC Representative will issue an acceptance note in respect of that batch of Goods (“Acceptance Note”).

- 9.3 Where there are more than one batches of Goods and that Clause 9.1(b) above does not apply, each batch of Goods shall only be accepted through the Acceptance Note applicable to that batch. No individual Acceptance Note will be issued in respect of an individual Item within a batch of Goods. Any Acceptance Note to be issued must relate to the entire batch and all quantities of all Items comprised in that batch and that therefore the conditions specified in Clause 9.2 above must be fulfilled by all such quantities of all Items within a batch of Goods before an Acceptance Note will be issued in respect of that batch of Goods.
- 9.4 Where the ECC Representative refrains from issuing the Acceptance Note under Clause 9.1(a) above, but the ECC Representative does not issue any Rejection Notice under Clause 10.1 of the Conditions of Contract, this Clause 9.4 shall apply. The Contractor shall comply with all such instructions which may be given by the ECC Representative in writing to the Contractor specifying all the work which is required to be done by the Contractor before such Acceptance Note may be issued. No Acceptance Note may be issued until such work is completed to the ECC Representative’s satisfaction (save to the extent waived by the ECC Representative). Alternatively, the ECC Representative may, but is not obliged to, issue a qualified Acceptance Note noting the outstanding work to be done. Upon such qualified Acceptance Note, the Contractor shall complete all such outstanding work within such deadline stipulated by the ECC Representative.
- 9.5 As set out in Paragraph 1.2(v) of the Interpretation, throughout the Contract, references to “acceptance of a batch of Goods” or “acceptance” (appearing in a context concerning a batch of Goods) shall mean either (a) the acceptance under Clause 9.1(a) above, or (b) if Clause 9.1(b) above is applicable in the manner mentioned therein, then acceptance under Clause 9.1(b) above.

10. Rejections

- 10.1 Without prejudice to the other rights and claims of the ECC, where any quantity of any Item within a batch of Goods (or a sample taken from such batch, if and to the extent only a sample is required to be subject to an Inspection or Acceptance Test as specified in the Technical Specification (if any)) fails to commence or pass or complete any of the Inspections and/or any of the Acceptance Tests, or is in breach of any of the Overall Specifications, or any of the Warranties (“faulty unit(s)”),

the ECC may by notice in writing signed by the ECC Representative (“Rejection Notice”) reject the entire batch of Goods (“faulty batch”) or at its election just the faulty unit(s).

10.2 Reference to the failure of any quantity of any Item within a batch of Goods (or a sample taken from such batch) to commence or pass or complete, any of the Inspections or any of the Acceptance Tests shall include any one of the following failures:

- (a) failure of any quantity of any Item within a batch of Goods (or a sample taken from such batch) to comply with any requirement of the Overall Specifications or any of the Warranties or otherwise any requirement of the Contract as shown in the results of such Inspection or Acceptance Test; or
- (b) failure of any quantity of any Item within a batch of Goods (or a sample taken from such batch) to pass any such Acceptance Test or Inspection in the manner specified in the Technical Specification; or
- (c) failure of any quantity of any Item within a batch of Goods (or a sample taken from such batch) to satisfy any testing criteria or fulfil any expected result specified in the test plan approved by the ECC Representative for any such Inspection or Acceptance Test; or
- (d) failure of any quantity of any Item within a batch of Goods (or a sample taken from such batch) to pass an Inspection any time within one (1) month (or such shorter period as may be allowed as mentioned in Clause 9.1(b) of the Conditions of Contract) after the date of a receipt issued under Clause 6.8 of the Conditions of Contract in respect of that batch of Goods which has been delivered; or
- (e) the Contractor’s failure to commence (or do all things to enable the commencement of) an Inspection and/or any of the Acceptance Tests by or at the time as stated in the Contract (whether in the Implementation Timetable or in other part of the Technical Specification); or
- (f) the Contractor’s failure to complete (or do all things to enable the completion of) an Inspection and/or any of the Acceptance Tests by or at the time as stated in the Contract (whether in the Implementation Timetable or in other part of the Technical Specification); or
- (g) the Contractor’s failure to provide any duly certified test certificate or laboratory test report in respect of any part of the

Acceptance Tests by the time as required in the Contract (whether in the Implementation Timetable or in other part of the Technical Specification); or else that such certificate or report has been issued but it states that any quantity of any Item from a batch of Goods or a sample taken therefrom fails any of the Acceptance Tests.

- 10.3 Upon the issuance of a Rejection Notice under Clause 10.1 above, without prejudice to other rights and claims of the ECC, the ECC Representative may exercise all or any one or more of the following rights (and none of them is mutually exclusive of any of the other of them):
- (a) reject the entire faulty batch or at the election of the ECC Representative, just the faulty unit(s) as specified in the Rejection Notice;
 - (b) require the Contractor to remove the entire faulty batch or at the election of the ECC Representative, just the faulty unit(s), within the period prescribed in the Rejection Notice;
 - (c) require the Contractor to promptly repair the entire faulty batch or at the election of the ECC Representative just the faulty unit(s) and procure each unit of each Item in the entire faulty batch (or each faulty unit as the case may be) to pass all or any part of the Inspections and all or any part of the Acceptance Tests not later than a deadline date, all of which requirements and the extent of such requirements shall be as specified by the ECC Representative in the Rejection Notice;
 - (d) require the Contractor to promptly replace the entire faulty batch, or at the election of the ECC Representative just the faulty unit(s) specified in the Rejection Notice, and deliver to the ECC Representative the replacement batch or unit(s) of Goods (as the case may be), and procure each unit of each Item in the replacement batch or replacement unit(s) (as the case may be) to pass all or any part of the Inspections and all or any part of the Acceptance Tests, not later than a deadline date, all of which requirements and the extent of such requirements shall be as specified by the ECC Representative in the Rejection Notice;
 - (e) reject all other batches of Goods which have been Ordered or otherwise scheduled to be delivered under the Contract but not yet accepted;
 - (f) refrain from purchasing any Goods which have not been accepted or where applicable, issuing any Order for any of Goods; and the ECC's obligation under Clause 4.1 or 4.2 (including the caps as

mentioned therein) of the Conditions of Contract (as the case may be) shall no longer apply regardless of whether the ECC also terminates the Contract or partially terminates the Contract under Sub-clause (i) below;

- (g) obtain replacement goods and services as covered by the price quotation of the Goods (including all transportation and insurance) whether for the faulty unit(s) or for the entire batch (as the ECC Representative may determine) from a third party as the ECC may deem fit in which event the Contractor shall be responsible for all losses, liabilities, expenses and costs incurred by the ECC including without limitation all of the following: (i) any excess cost incurred by the ECC for procuring such replacement goods and services; (ii) the costs of all stop-gap measures taken by the ECC whilst awaiting the delivery of the replacement goods and/or services; (iii) the extra operation and maintenance costs for operating and maintaining the original property which the faulty unit(s) or faulty batch was supposed to replace; and (iv) all administrative and legal cost incurred by the ECC for procuring the replacement goods and services from a third party and for arranging any stop-gap measures;
- (h) charge and demand the payment of liquidated damages for delay up to the date of actual acceptance by the ECC Representative of the replacement Goods which is eventually supplied by the Contractor, and which replaces the faulty units or faulty batch (as the case may be) covered in the Rejection Notice; and/or
- (i) terminate the entire Contract pursuant to Clause 19.1 of the Conditions of Contract or partially terminate the Contract pursuant to Clause 18.5 of the Conditions of Contract depending on the election of the ECC Representative.

10.4 If the ECC Representative rejects any Goods under Clause 10.3(a) and/or 10.3(e) above which are not to be repaired or replaced under Clause 10.3(c) or 10.3(d) above, or under Clause 10.9 and/or 10.10(a) below, the Contractor shall forthwith refund to the ECC all Contract Price and all other monies, if any, previously paid by the ECC to the Contractor in respect of the rejected Goods plus interest to accrue at the rate specified in Clause 14.12 of the Conditions of Contract during the period from the date of payment by the ECC to the date of refund by the Contractor.

10.5 If the Contractor fails to remove any Goods in accordance with a requirement made under Clause 10.3(b) above, the ECC Representative may dispose of the Goods as it sees fit. The ECC shall not be liable to the Contractor (in contract, tort or otherwise) in respect of such disposal

and the Contractor shall pay the ECC all costs and expenses incurred by the Government for the disposal.

- 10.6 If the right under Clause 10.3(c) or (d) above is exercised, but the repaired or replacement Goods is still found to be in breach of any of the Overall Specifications, or the Warranties, or still fails any of the Inspections or Acceptance Tests, or the Contractor fails to provide the replacement Goods or repair the faulty units or faulty batch (as the case may be), within the time specified in the Rejection Notice or such other time as agreed by the ECC Representative, the ECC Representative shall be entitled to exercise all or any one or more of the rights set out in Clause 10.3 above by issuing another Rejection Notice (including the right of rejection and to demand a refund under Clause 10.4 above). Where the Contractor delivers the same faulty units or faulty batch which has been rejected and holds it out as replacement Goods or repaired Goods, it shall be deemed to have failed to provide the replacement Goods or repair the faulty units or faulty batch (as the case may be).
- 10.7 If there is any dispute between the ECC Representative and the Contractor concerning whether faulty unit(s) or faulty batch complies with any of the Overall Specifications or any Warranties or any other requirement of the Contract or concerning the results of any Inspections or Acceptance Tests ("Dispute"), the ECC Representative may, but is not obliged to, on its own appoint a surveyor or an expert or an Independent Accredited Laboratory to be nominated by the ECC Representative or otherwise whose nomination is agreed to by the ECC Representative in the appropriate field to investigate into and/or establish the validity of the results of any Inspections and/or Acceptance Tests and/or re-conduct any Inspections and/or Acceptance Tests. The surveyor or expert or Independent Accredited Laboratory shall act as an expert but not an arbitrator and the decision of the expert shall be binding on both Parties. The costs of the appointment shall be borne by the losing party of the Dispute. In the event that for any reason the ECC Representative does not elect to make any appointment under this Clause 10.7, any dispute shall be resolved in accordance with Clause 38 of the Conditions of Contract (or other provision which replaces or supplements it, if any).
- 10.8 Risk in all Goods rejected or returned by the ECC Representative to the Contractor remains with the Contractor (irrespective of the location of the Goods) and they shall be collected by the Contractor at the Contractor's expense. Should the Contractor fail to do so within fourteen (14) days upon the request from the ECC Representative, the ECC Representative shall be free to dispose of the same and any costs incurred thereby shall be recoverable from the Contractor as a debt.

- 10.9 Time shall be of the essence of this Contract. Without prejudice to the rights of the ECC under Clauses 10.1 and 10.3 above, a batch of Goods may be rejected by the ECC Representative by giving a notice to the Contractor to this effect (“Non-delivery Rejection Notice”) if the Contractor fails to deliver the entire quantity of the batch of Goods to all of the applicable Location(s) for that batch of Goods by the Deadline Delivery Date for that batch of Goods or otherwise fails to do so in accordance with the requirements of the Contract and where applicable the Order (“Delayed Goods”).
- 10.10 Upon the issuance of a Non-delivery Rejection Notice under Clause 10.9 above, without prejudice to other rights and claims of the ECC, the ECC Representative may exercise all or any one or more of the following rights (and none of them is mutually exclusive of any of the other of them):
- (a) on top of the rejection of the Delayed Goods, reject also all other batches of Goods which have been Ordered or otherwise scheduled to be delivered under the Contract but not yet accepted through the issue of the Acceptance Note; and/or
 - (b) exercise all or any one or more of the rights specified in Clauses 10.3(e) to (i) above (excluding Clause 10.3(h)) in such order as the ECC Representative deems fit.

11. Title and Risk

- 11.1 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 ECC 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.
- 11.2 All title, beneficial ownership, interest to, in and of the Goods in respect of which acceptance is under Clause 9.1(b) of the Conditions of Contract, shall be and shall remain the exclusive property of and shall vest in the ECC 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.
- 11.3 All risks to and arising from the Goods shall remain with the Contractor, and shall not pass to the ECC unless and until acceptance of such Goods.

12. Insurance for the Goods

The Contractor shall take out adequate property insurance in respect of the Goods covering its full value whilst it is in transit and after it has arrived in Hong Kong unless and until acceptance under Clause 9.1 of the Conditions of Contract. Where in relation to any Goods, the risks mentioned in Clause 11.3 of the Conditions of Contract still remain with the Contractor as provided for under that Clause, under no circumstances whatsoever will the ECC be liable or responsible for any loss or destruction of such Goods or any other property or death or personal injury of any person unless (a) any such loss or destruction of the Goods or any other property is caused after the Goods has been delivered to the Location(s) and that such loss or destruction is due to the ECC's gross negligence; or (b) unless any personal injury or death of any person is caused by the negligence (as defined in the Control of Exemption Clauses Ordinance, Chapter 71 of the Laws of Hong Kong) of the ECC.

13. Rejection after Acceptance

13.1 Notwithstanding the acceptance of a batch of Goods or any payment of the Contract Price for the batch of Goods, the ECC Representative shall be entitled to, any time within the first twelve (12) months, reject all or any unit of any Item of the batch of Goods ("faulty unit(s)") or the entire batch of the Goods to which the faulty unit(s) belongs ("faulty batch") by giving a notice to this effect to the Contractor ("Rejection Notice") if:

- (a) faulty unit(s) are in breach of any of the Warranties; and
- (b) any change in the condition of the faulty unit(s) or faulty batch is only caused by the defect or non-conformity constituting the breach of any of the Warranties; and other than that, there is no other substantial change in the condition of the faulty unit(s) or faulty batch.

13.2 Upon the issuance of a rejection notice pursuant to Clause 13.1(a) above, without prejudice to the other rights and claims of the ECC, the ECC Representative may exercise all or any one or more of the rights as specified in Clauses 10.3 to 10.8 of the Conditions of Contract (*mutatis mutandis*). References therein to "faulty unit(s)" and "faulty batch" shall mean those as mentioned in Clause 13.1 above.

14. Payment of the Contract Price

14.1 In consideration of the Contractor's due and proper performance of all its obligations in accordance with all terms and conditions of the Contract and subject always to all and any set-off, deductions or withholding, the ECC shall pay the Contractor the Contract Price in

accordance with the payment timetable set out in the Technical Specification.

14.2 The Contractor shall render to the ECC Representative for:

(a) an itemised invoice for the instalment of the Contract Price which he considers due to him for the Goods accepted by the ECC Representative under the Contract within each billing period; or

(b) on completion of any milestone as specified in the payment timetable in the Technical Specification, an invoice for such instalment of the Contract Price.

14.3 All such invoices shall be paid within 30 days of the date upon where the Goods have been accepted pursuant to Clause 9 of this Conditions of Contract, whichever date is the earlier.

14.4 Apart from the Contract Price, no other money shall be payable by the ECC to the Contractor or any other person under the Contract. Save as otherwise expressly provided for in the Contract, the Contractor shall perform, comply with and observe 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 ECC in the absence of any express provision specifically for the relevant subject matter.

14.5 Without prejudice to Clause 14.4 above, the Contract Price in relation to each batch of Goods is inclusive of and deemed to be inclusive of all charges for such batch including the costs of packaging, packing, delivery, transportation, shipping, carriage, insurance, loading and unloading of the batch of Goods and inland freight, broker's fees, custom house's fees, duties, imposts and levies, all Licence Costs referred to in Clause 7.1 of the Conditions of Contract, the Accepted Innovative Suggestions, and all other costs and charges for the supply and delivery of that batch of Goods to the Location(s). 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). For the avoidance of doubt, where an Accepted Innovative Suggestion does not concern any batch of Goods, all Contract Prices payable and/or having been paid under the Contract shall be deemed to cover and shall have covered the charge for such Accepted Innovative Suggestion. No separate charges shall be payable.

14.6 Notwithstanding Clause 14.5 above, where the Goods are to be delivered on terms other than F.I.S., the Contract Price shall exclude the charges

for all those activities which shall be the responsibility of the ECC as buyer depending on the applicable Incoterms of the International Chamber of Commerce which are stated to be applicable in the Conditions of Contract.

- 14.7 Notwithstanding any provision of the Contract, the ECC is entitled to withhold payment of all or any part of the Contract Price and any other sum payable by the ECC to the Contractor under the Contract if:
- (a) the Contractor fails to observe or perform any provision of the Contract;
 - (b) the ECC disputes on any reasonable ground its obligation to pay the amount in question;
 - (c) the ECC has reasonable grounds to believe that the Contractor is or will be liable to the ECC under any provision of the Contract for the loss or damage suffered by the ECC; or
 - (d) withholding of payment is required by any applicable law or regulation for tax or otherwise.
- 14.8 No payment made by the ECC 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 ECC in respect of any breach of the Contract by the Contractor.
- 14.9 The ECC shall not be held responsible or liable for any delay in payment and no interest or other surcharge or any other payment howsoever described shall be charged to the ECC due to (a) invoices not having been issued in accordance with this Clause 14, or (b) the amount billed in the invoices not having been duly calculated in accordance with the provisions of the Contract (including without limitation not having taken into account all applicable deductions, set-off or withholding), or (c) the Contractor disputing any deductions or set-off or withholding made by the ECC pursuant to the Contract, or (d) any invoice or correspondence being improperly addressed contrary to the requirements stipulated in the Contract. Each invoice shall include all deductions, set-off and withholding which may be made pursuant to the terms of the Contract and shall show the net amount payable. If the Contractor does not render an invoice charging a correctly stated net amount due to its failure to take into account all appropriate deductions, set-off or withholding or otherwise, the ECC may, but is not obliged to, pay the net amount which duly takes into account all appropriate deductions, set-off and withholding.
- 14.10 In the event that the Contractor fails to pay any sum of money on the date it falls due or upon demand by the ECC under the Contract, it shall

pay interest on such sum to accrue from the due date up to the date of actual payment in full at the rate of 1% above the rate per annum which shall be a simple average of the rates per annum announced by the note-issuing banks of Hong Kong from time to time to be its prime lending rate for Hong Kong dollars. Such interest shall accrue on a daily basis in year of 365 days (“default interest rate”). For the applicable interest rate when a court judgment or an award from the arbitrator is obtained (if any), the interest rate to accrue on such judgment sum or awarded sum shall be the aforesaid default interest rate, or such rate as may be determined from time to time by the Chief Justice of Hong Kong by order for judgment debt interest (whichever rate is the higher rate).

15. Warranty Services for the Goods

- 15.1 Without prejudice to the rights and claims of the ECC arising from any breach of the Warranties, the Contractor shall, for a period of twelve (12) months after the date of the ECC Representative’s acceptance of any Goods or a longer period specified in the Technical Specification (or any other applicable part of the Contract) or a longer period committed by the Contractor in its Tender (where applicable) (“Warranty Period”) provide the warranty and after-sales services as specified in this Clause 15 and where applicable any other provisions elsewhere in the Contract including without limitation the Technical Specification and to the extent not inconsistent also in the Contractor’s Tender for the Contract free of charge to the Government (“Warranty Services”).
- 15.2 In respect of a batch of Goods accepted by the ECC Representative, without prejudice to all other rights and claims of the ECC, the Contractor shall, from time to time upon the demand of the ECC Representative during the Warranty Period, make good and remedy (whether by repair or replacement as the ECC Representative may elect) to the reasonable satisfaction of the ECC Representative all defects or mal-functions or deficiencies in that batch of Goods (whether arising from defective design, materials, workmanship or otherwise) discovered at any time during the Warranty Period and notified by the ECC Representative to the Contractor (“Defective Warranty Goods”). In performing the Warranty Services, the Contractor shall supply all brand new replacement parts and labour at its cost. The Contractor shall promptly make good and remedy all defects, malfunctions and deficiencies (whether by repair or replacement with brand new Goods or parts of such Goods as the ECC Representative may elect) to the ECC Representative’s reasonable satisfaction no later than the time requirements specified in the Technical Specification or in the absence of which no later than 48 hours after the Defective Warranty Goods are returned to the service centre or within such other time as the parties may agree. In lieu of returning the Defective Warranty Goods to the service centre, the Warranty Services may be effected on-site at the

Location or another location at which the Defective Warranty Goods are located. In doing so the Contractor shall send competent engineers on-site in compliance with all such response time and resolution time as stated in the Technical Specification.

- 15.3 If the Contractor fails to make good or remedy any defect or malfunction or deficiency in accordance with Clause 15.2 above, the ECC Representative may, after notifying the Contractor of its intention, arrange to make good and remedy the defects or malfunction or deficiency by repair or replacement at the Contractor's risk and expense. All costs incurred by the ECC arising from such repair or replacement (including cost of replacement parts and units) shall be borne by the Contractor without prejudice to any other rights which the ECC may have against the Contractor.
- 15.4 In the event that the Contractor is required under the Contract to replace any Defective Warranty Goods but it does not at the same time call for the return of the Defective Warranty Goods, no responsibility for the Defective Warranty Goods shall rest upon the ECC, and the ECC Representative may dispose of them after a reasonable time in whatever manner as it sees fit. The Contractor shall compensate the ECC all costs and expenses incurred in connection with the disposal. The ECC shall not be liable to the Contractor (in contract, tort or otherwise) in respect of such disposal.
- 15.5 The Contractor shall be liable to perform all Warranty Services regardless of whether or not the Goods, or any part thereof, were manufactured by it. If it is not the Manufacturer, without prejudice to its obligations under this Contract, at the request of the ECC Representative or where the Contractor cannot perform the Warranty Services on its own, the Contractor shall ensure that the Manufacturer or otherwise the authorised agent as specified by the Contractor for this purpose in the Contract provides the same Warranty Services upon the demand of the ECC Representative as if references to the Contractor mean such manufacturer or authorised agent.
- 15.6 Where stated to be required in the Technical Specification, the Contractor shall ensure that each batch of Goods complies with certain minimum availability level as specified in the Technical Specification. There shall be an extension of the Warranty Period for that batch of Goods for non-compliance with the availability level as stated in the Technical Specification. Upon such extension, the Contractor shall continue to provide the free of charge Warranty Services for the relevant batch of Goods throughout the extension.
- 15.7 Where stated to be required in the Contract, the Contractor shall provide maintenance services for the Goods on the terms as set out in the

Technical Specifications (and/or in such other applicable part of the Contract).

16. Recovery of Sums Due

Where the Contractor has incurred any liability to the ECC, whether at law or in equity and whether such liability is liquidated or unliquidated, the ECC 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 ECC to the Contractor under the Contract or any other contract made between the ECC and the Contractor.

17. Liability and Indemnities

17.1 Neither the ECC nor any of its employees or agents shall be under any liability whatsoever for or in respect of:

- (a) any loss of or damage to any of the Contractor's property or that of its employees or agents however caused (whether by any Negligence of the ECC or any of its employees or agents or otherwise); or
- (b) any injury to or death of the Contractor (in the case where the Contractor is a natural person) or any of its employees or agents, save and except any such injury or death caused by the Negligence of the ECC or any of its employees (in the course of employment).

17.2 Without prejudice to any other provision of the Contract, the Contractor shall indemnify each of the ECC, its assigns, successors-in-title, and its employees, agents and authorised users (each an "Indemnified Party") from and against:

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

everything stated in Sub-clause (a) above incurred or suffered by an Indemnified Party in all and any such Claims,

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

- (i) the breach of any provisions of the Contract by the Contractor;
- (ii) the negligence, recklessness, tortious acts or wilful act or omission of the Contractor, its employees, agents or sub-contractors;
- (iii) any Warranty which is incorrect, inaccurate, incomplete or misleading;
- (iv) the non-compliance by the Contractor, its employees, agents or sub-contractor(s) with any applicable law or regulation, order or requirement of any government agency or authority;
- (v) any act or omission of the Contractor, or its employees, agents or sub-contractors, in the performance of the Contract notwithstanding that the Contractor is authorised or obliged to do or commit any such act or omission under this Contract;
- (vi) any loss, damage, injury or death referred to in Clause 17.1 above save and except injury or death caused by the Negligence of the ECC or any of its employees (in the course of employment); or
- (vii) any injury or death of any third party, or any loss or damage to property sustained by any third party, in consequence of any act, omission, default, or negligence of the Contractor or any of its employees, agents and sub-contractors.

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

- 17.3 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 ECC Representative as early as practicable and deliver to the ECC Representative a written report within seven (7) working days after the

occurrence of the injury or death, or on an earlier date specified by the ECC Representative.

- 17.4 For the purposes of this Clause 17, “Negligence” (appearing in upper case) 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).
- 17.5 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 ECC in enforcing any of the terms and conditions of the Contract.

18. Termination

18.1 In the event that:

- (a) the Contractor is in breach of any provision of the Contract which in the opinion of the ECC is not capable of remedy;
- (b) the Contractor commits a breach of any provision of the Contract which is capable of remedy and fails to remedy the same within fourteen (14) days from the date of service of notice by the ECC (or such longer period as specified in the notice) requiring such remedy;
- (c) any Warranty is incorrect, inaccurate, incomplete or misleading;
- (d) the Contractor has made a material misrepresentation (including submission of false statement or inaccurate information) during the tendering process of the Contract;
- (e) the Contractor, any officer (including director), employee, agent or sub-contractor of the Contractor commits an offence under the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong) or any law of a similar nature in relation to the Contract or any other contract made by the Contractor with the ECC;
- (f) the Contractor abandons the Contract in whole or in part;
- (g) 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 ECC; or

(h) any event or circumstance occurs which enables the ECC to terminate the Contract under any one of the following provision of the Conditions of Contract:

- (i) Clause 10.3(i) (Rejection);
- (ii) Clause 10.10(b) (Rejection);
- (iii) Clause 13.2 (Rejection after Acceptance);
- (iv) Clause 21.3(b) (Intellectual Property Rights Indemnities);
- (v) Clause 24.3 (Probity);
- (vi) Clause 30.3 (Force Majeure);
- (vii) Clause 31 (Illegal Workers);
- (viii) Paragraph 28.3(c) of the Terms of Tender (Warranty against Collusion),

the ECC may by seven (7) days' written notice to the Contractor terminate the Contract immediately.

18.2 The ECC may immediately terminate the Contract 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' resolution has been passed that it be wound up or dissolved (other than voluntarily for the purpose of bona fide reconstruction or solvent amalgamation the terms of which have been approved by the ECC in advance);
- (c) a petition is presented for the winding up or 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 or 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 endangering national security or which 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 ECC reasonably believes that any of the events mentioned above is about to occur.
- 18.3 Separate from the event mentioned in Clause 18.1(h)(vii) above and Clause 30.3 of the Conditions of Contract, where there is a Force Majeure Event, the ECC may terminate the Contract in part or in whole pursuant to Clause 30.7 of the Conditions of Contract. In case of partial termination of any part but not the whole of the Contract under this Clause 18.3 (including the partial termination of the Contract in relation to one or more batches of Goods), the partial termination shall be referred to as “Partial Termination Due to FM”.
- 18.4 Notwithstanding anything herein to the contrary, the ECC may at any time and from time to 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. In the case of suspension, the written notice shall specify the period of the suspension (“Suspension Period”) and the scope of the suspension (viz., the suspension of the Order Period and/or the Contract Period, and/or the Deadline Delivery Date for all or any of the batches of the Goods which have not yet been accepted or the Services which have not yet been performed) (“Suspended Goods” or “Suspended Services”, as the case may be). In case of partial termination of any part but not the whole of the Contract under this Clause (including the partial termination of one or more batches of Goods), the partial termination shall be referred to as “Partial Termination by Notice”.
- 18.5 Instead of terminating the Contract in relation to all batches of Goods pursuant to Clause 18.1 or 18.2 above, the ECC may elect, but is not obliged, to terminate the Contract in relation to one or more batches of Goods only (“Partial Termination Due to Default”). The term “Partial Termination” may mean a Partial Termination Due to FM or a Partial Termination by Notice or a Partial Termination Due to Default and in each case a “Partial Termination”. The batches of Goods to which a Partial Termination relates are referred to as “Terminated Goods”. The Terminated Goods may cover all or any batches of Goods which have not been accepted up to the time of the Partial Termination.
- 18.6 Each of the grounds entitling the ECC to terminate the Contract as specified in Clauses 18.1 to 18.5 above and in each Sub-clause of Clauses 18.1 and 18.2 shall be construed independently and shall not be limited or restricted by reference to or inference from any other ground or any other provision of this Contract.

19. Termination Consequences

19.1 Upon expiry or early termination of the Contract (howsoever occasioned) (“Termination”):

- (a) the Contract shall be of no further force and effect, but without prejudice to:
 - (i) the ECC’s rights and claims under the Contract or otherwise at law against the Contractor arising from antecedent breaches of the Contract by the Contractor (including any breach(es) which entitle the ECC to terminate the Contract);
 - (ii) the rights and claims which have accrued to a Party prior to the Termination;
 - (iii) the continued existence and validity of those provisions which are expressed to or which in their context by implication survive the Termination (however occasioned) (including Clauses 2, 3, 7, 11, 13, 14.9 to 14.12, 15 to 45 of the Conditions of Contract, the Interpretation, and such other provisions as specified in the Technical Specification); and
 - (iv) the obligations of the Contractor in respect of a batch of Goods which has not been accepted before the Termination but also has not been rejected by the ECC before or upon Termination; if elected by the ECC in the same notice of the Termination (but not otherwise), the Contractor shall continue to perform all obligations in full accordance with all applicable provisions of the Contract (but not just those provisions mentioned in Sub-clause (iii) above);
- (b) the ECC shall not be responsible for any claim, legal proceeding, liability, loss (including any direct or indirect loss, any loss of revenue, profit, business, contract or anticipated saving), damages (including any direct, special, indirect or consequential damages of whatsoever nature) or any cost or expense, suffered or incurred by the Contractor arising out of or in relation to the Termination;
- (c) without prejudice to the other rights and claims of the ECC including the right to seek indemnity under Clause 17.2 of the Conditions of Contract, in the event of the Termination under Clause 18.1 or 18.2 of the Conditions of Contract, the Contractor

shall be liable for all losses, damage, costs and expenses incurred by the ECC arising from the Termination including without limitation (i) the price payable by the ECC for procuring goods and services and/or spare parts under separate contract(s) up to the maximum quantities which would have been procurable under this Contract in excess of the price payable for such Goods and/or such services and/or such spare parts under this Contract; and (ii) in the case of the warranty repair and after-sales services during an uncompleted part of the Warranty Period after the Termination, the Contractor shall be liable to compensate the ECC the full cost incurred by the ECC for procuring such services from another contractor (or from within the ECC); (iii) the costs of any stop-gap measures implemented by the ECC pending the procurement of the replacement goods and services; (iv) all administrative and legal costs incurred in (1) monitoring the Contract over any delay prior to the Termination; (2) effecting the Termination; and (3) procuring replacement goods and services and where applicable stop-gap measures as mentioned in (i) to (iii) above; and (v) any difference between those costs arising from maintaining and supporting the existing property with which the Goods were intended to replace. Interim and/or final statements of these losses, damage, liabilities, costs and expenses may be issued from time to time after the Termination by the ECC to the Contractor whereupon the Contractor shall be liable to pay such amount as demanded in each of these statements within seven (7) days. For the avoidance of doubt, for the determination of the losses as mentioned in sub-clause (i) above, all amounts and costs incurred by the ECC shall be taken into account regardless of (1) whether the relevant contractors and/or suppliers are appointed through open tendering or restricted tendering or through direct appointment; (2) whether one single or multiple contractors or suppliers have been appointed for the replacement services and/or goods; (3) whether an in-house team is deployed alone or in conjunction with such contractors and suppliers for performing the replacement services; (4) the difference of manufacturer or model or any specifications of the replacement goods provided they serve the same or similar functions as the Goods; and (5) the time taken for the procurement of the replacement goods and services;

- (d) in the event of the Termination under Clause 18.1 or 18.2 above, (i) those batches of Goods not accepted before the Termination shall no longer be payable by the ECC; and (ii) the Contractor shall forthwith refund to the ECC without any deduction all amounts of the Contract Price previously paid under the Contract for all or any Goods which have not been accepted plus interest of such amounts, to accrue at the rate specified in Clause 14.13 of

the Conditions of Contract from the date of payment by the ECC to the actual date of complete refund by the Contractor;

- (e) where the Termination is under Clause 18.3 or 18.4 above, in relation to any Goods which have not been accepted prior to the Termination, the parties shall negotiate in good faith concerning the amount payable by the ECC to the Contractor for work done and costs incurred by the Contractor for arranging such Goods to be delivered (“Quantum Meruit Payment”); where there has been advance payment by the ECC for such Goods, if it is agreed that the Quantum Meruit Payment falls short of the advance payment, the Contractor shall refund the difference to the ECC without interest; if the opposite, the ECC shall pay the difference to the Contractor without interest;
- (f) for any batch of Goods which has been accepted by the ECC Representative prior to the Termination (or after the Termination under the circumstances mentioned in Clause 19.1(a)(iv) above) and in respect of which there is any amount of Contract Price which has not been paid as at the Termination, the payment shall be subject to all deductions, set-off and withholding of all and any amounts due and payable by the Contractor to the ECC; and the ECC will only pay any balance thereof without interest after all deductions, set-off and withholding have been made and after acceptance of such batch of Goods;
- (g) the Contractor shall remove those Goods which have been rejected by the ECC Representative (if any) from the designated premises at the Contractor’s own cost and expenses without delay; failing which the ECC Representative shall be free to dispose of the same as it sees fit and any costs incurred by the ECC arising from such disposal shall be recoverable from the Contractor as a debt;
- (h) at the request of the ECC Representative, the Contractor shall enter into and perform all deeds of assignment, transfer or novation in favour of the ECC or in favour of any person whom the ECC 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 ECC may stipulate; and procure any other third party whom the ECC considers necessary for effecting or perfecting such assignment, transfer or novation to enter into and perform any such deeds of assignment, transfer or novation;
- (i) the Contractor shall immediately return to the ECC all ECC Property which is supplied or in respect of which access is

granted to the Contractor by the ECC for the purposes of or in relation to the Contract; and

- (j) the Contractor shall provide all such assistance as the ECC may request from time to time after the Termination to facilitate an orderly and effective handover of the work already completed under the Contract to the ECC or another contractor to be appointed by the ECC. Where some Goods have already been accepted, to provide assistance to the ECC or its contractor in relation to the installation operation or maintenance of the Goods.

19.2 Upon a Partial Termination pursuant to Clause 18.3 or 18.4 or 18.5 of the Conditions of Contract:

- (a) the provisions in the Contract to the extent they apply or concern or relate to the Terminated Goods shall be of no further force and effect, but without prejudice to:
 - (i) the ECC's rights and claims under the Contract or otherwise at law against the Contractor arising from antecedent breaches of the Contract by the Contractor;
 - (ii) the rights and claims which have accrued to a Party prior to the Partial Termination; and
 - (iii) the continued existence and validity of all remaining provisions of the Contract; and
- (b) all of the consequences specified in Clause 19.1 above (apart from Clause 19.1(a) above) shall apply save that (i) references to "Termination" shall mean "Partial Termination"; references to "Goods" shall mean the "Terminated Goods"; and (ii) for Clauses 19.1(c) and (d), it shall apply to a Partial Termination Due to Default; and for Clause 19.1(e), it shall only apply to a Partial Termination Due to FM or a Partial Termination By Notice.

19.3 Upon the issue of a suspension notice pursuant to Clause 18.4 of the Conditions of Contract in relation to the Suspended Goods or Suspended Services for the Suspension Period specified therein ("Suspension"):

- (a) the Contract in relation to the Suspended Goods or the Suspended Services shall be of no force and effect during the Suspension Period but subject to the same provisions set out in Clauses 19.1(a)(i) to (iii) above save that references therein to Termination shall mean Suspension;

- (b) the Contract in relation to the Suspended Goods or the Suspended Services shall resume immediately upon expiry of the Suspension Period (or such other date as the ECC may subsequently stipulate by varying the Suspension Period by serving at least fourteen (14) days' notice on the Contractor);
- (c) unless and to the extent waived by the ECC Representative in writing, Clauses 19.1(b) and (j) shall apply in the case of a Suspension save that references therein to Termination shall mean Suspension;
- (d) the ECC has no obligation to pay the Contract Price (or any part thereof) to the Contractor for any Suspended Goods accepted or Suspended Services performed but unpaid as at the date when the Suspension comes into effect or at any time during the Suspension Period; and any such obligation shall only resume as the Contract resumes pursuant to Clause 19.3(b) above but strictly on and subject to the terms and conditions of the Contract; any Contract Price paid in advance of the Suspension need not be refunded; and
- (e) the Contractor shall not and has no obligation to perform its obligations in relation to the Suspended Goods or the Suspended Services as at the date when the Suspension comes into effect or at any time during the Suspension Period; and save as directed by the ECC in relation to any uncompleted part of the Contractor's obligations in relation to the Suspended Goods or Suspended Services as at the date of the Suspension, any such obligation will resume as the Contract resumes pursuant to Clause 19.3(b) above whereupon the Contractor shall resume its obligations in relation to the Suspended Goods and/or the Suspended Services strictly on and subject to the terms and conditions of the Contract.

20. Intellectual Property Rights

Warranties and Representations

20.1 The Contractor hereby warrants and represents that:

- (a) 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 infringe the Intellectual Property Rights of any person.
- (b) If and to the extent licence is required for the Contractor to sell the Goods, the Contractor has a valid and subsisting licence

granted from the person who has the legal power to grant the same whether it be the Manufacturer (or its authorised agent or any other rightful person) in its favour which entitles the Contractor to sell and supply the Goods on the terms and conditions set out in the Contract.

- (c) The possession, import, purchase, usage and operation in the manner and for the purposes contemplated by the Contract of the Goods and the Deliverables by the ECC, its authorised users, assigns, and successors-in-title of the Goods and the Deliverables will not infringe the Intellectual Property Rights of any person.
- (d) The Contractor is not aware of and has no reason to believe that in relation to the Goods or the Deliverables (i) there is any judgment or order or ruling or decision from any court of competent jurisdiction or from any arbitration body that such Goods or Deliverables infringe the Intellectual Property Rights of any person; or (ii) any claims, actions or proceedings or arbitration have been initiated or threatened against it or the Manufacturer or a sub-contractor of the Contractor for infringement of any Intellectual Property Rights of any person; or (iii) any agreement having been entered into to settle any such claims, actions, proceedings or arbitration. Each of the events mentioned in (i) to (iii) above shall be referred to as “Infringement Event”.

Notification

- 20.2 Within seven (7) days of the first written request from the ECC, the Contractor shall provide all such documentary evidence to the satisfaction of the ECC to prove compliance with the Warranties specified in Clause 20.1 above.
- 20.3 In the event that there is any Infringement Event (as defined in Clause 20.1(d) above) which has not already been notified to the ECC during the tendering stage under Paragraph 18 of the Terms of Tender, without prejudice to the rights and claims of the ECC, the Contractor shall immediately notify the ECC concerning such Infringement Event, and continue to update the ECC concerning the progress and status thereof. In addition, the Contractor shall provide all such information and documents to the ECC concerning such Infringement Event as the ECC may request.

Licence to use the Goods and the Deliverables

- 20.4 Without prejudice to the Contractor’s obligations under the Contract including this Clause 20 and Clause 23 of the Conditions of Contract,

the ECC does not claim ownership of any Intellectual Property Rights which may subsist in the Goods or any of the Deliverables (if any).

20.5 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 ECC 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 Technical Specification supplementing this Clause 20 shall be collectively referred to as “Licensed Rights”; and the licences as provided for in this Clause 20.5 and in the aforesaid Technical Specification shall be collectively referred to as “Licences”).

20.6 The Contractor hereby undertakes to procure, obtain and produce for inspection by the ECC 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 20.5 above.

20.7 Reference to the Licence Term in Clause 20.5 above shall mean

- (a) in the case of the Licence referred to in Clause 20.5(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 20.5(b) above or any other Licence in relation to any other subject matter as specified in the Technical Specification supplementing this Clause 20, 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 Technical Specification) 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 ECC.

- 20.8 Apart from the Contract Price, under no circumstances whatsoever shall the ECC 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.

Waiver of Moral Rights

- 20.9 The Contractor hereby irrevocably waives and undertakes to procure, at its own costs and expense, 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 ECC, its assigns, authorised users and successors-in-title and shall take effect upon creation or delivery to the ECC of the relevant Deliverables or the grant of the relevant Licence (as the case may be).
- 20.10 In the event that for any reason whatsoever a Licence referred to in Clause 20.5 above has not been granted in favour of a licensee, the Contractor shall forthwith, or shall ensure that the licensor(s) who is capable of granting the Licence will respectively forthwith, upon the first written demand of the ECC execute such deed and all other necessary documents under which the ECC, its authorised users, successors-in-title and assigns shall be granted such Licence on the terms set out in Clause 20.5 above.
- 20.11 References to “authorised users” in this Clause 20 and Clause 21 of the Conditions of Contract and other parts of the Contract shall include, without limitation, customers of or persons receiving services from the ECC or other authorised users of the Goods.

21. Intellectual Property Rights Indemnities

- 21.1 In addition to, and without prejudice to Clause 17.2 of the Conditions of Contract and the remaining provisions of this Clause 21, the Contractor shall indemnify and keep indemnified each of the ECC, its authorised users, employees, agents, assigns, and successors-in-title (collectively “IP Indemnified Parties”) from and against

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

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

- (i) the exercise of the Licensed Rights;
- (ii) the performance by the Contractor of the Contract or the supply of all or any of the Goods or Deliverables in the manner provided for or contemplated under the Contract;
- (iii) the enjoyment or exercise by that IP Indemnified Party of any of its right or powers under the Contract;
- (iv) (whether or not involving any element of fault or negligence on the part of the Contractor) any act, omission or default by the Contractor in the performance of the Contract;
- (v) the breach of any Warranties concerning Intellectual Property Rights (including those set out in Clause 20.1 of the Conditions of Contract); or
- (vi) any Infringement Event (as defined in Clause 20.1(d) of the Conditions of Contract).

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

21.2 In the event that there is an infringing act or an alleged infringing act, the Contractor shall as soon as it becomes aware of the same, but in any event within seven (7) days of the first written request of the ECC or

such longer period as the ECC may allow, at its own costs and expenses, without prejudice to any other rights and claims of an IP Indemnified Party (including in particular those under Clauses 17 and 21 of the Conditions of Contract):

- (a) procure the consent and licence of all relevant persons on such terms to the satisfaction of the ECC to permit the infringing act or alleged infringing act, failing which the ECC shall have the right, but not the obligation, to procure the same, and any costs incurred by the ECC shall be recovered from the Contractor on a full indemnity basis; or
- (b) replace or modify the Goods so as to avoid infringement or alleged infringement of any third party's Intellectual Property Rights (in which event the Contractor shall compensate the ECC for the full amount of any loss and damage sustained or incurred by the ECC arising from such replacement or modification) provided always that any suggestion to make any replacement or modification must first be raised by the ECC in writing, and then proposed by the Contractor for the ECC's acceptance and be subject to the same Inspections and Acceptance Tests (as the ECC may stipulate) and other applicable terms and conditions of the Contract. If the ECC does not raise any suggestion or refuses acceptance in relation to any proposed modification or replacement, the Contractor must seek the consent and licence pursuant to Clause 21.2(a) above.

21.3 Without prejudice to any other rights and claims that the ECC may have under the Contract or at law (including without limitation to claim indemnity from the Contractor in light of any Claims against the ECC pursuant to Clause 17 of the Conditions of Contract and/or Clause 21.1 above), where neither Clause 21.2(a) nor 21.2(b) above can be accomplished or elected to be exercised by the ECC (in the case of Clause 21.2(b) above),

- (a) the ECC may reject all or any Goods (regardless of whether they have been delivered or accepted) ("IP Infringing Goods"); and
- (b) the ECC shall have the right to terminate the entire Contract pursuant to Clause 18.1 of the Conditions of Contract or partially terminate the Contract pursuant to Clause 18.5 of the Conditions of Contract depending on the election of the ECC. Upon such rejection and termination, the Contractor shall forthwith refund to the ECC with interest, all monies previously paid to the Contractor under the Contract in respect of all IP Infringing Goods. The interest rate mentioned in Clause 14.12 of the Conditions of Contract will be applied to accrue from the date of

payment by the ECC to the date of actual refund by the Contractor.

- 21.4 As and when the ECC Representative may require, and regardless of whether all or any of Goods have been delivered and accepted by the ECC Representative, the Contractor shall, at its cost, forthwith upon receiving written directions and instructions from time to time of the ECC Representative, take all such actions (including initiating or defending a legal action in its name or in such other manner as the ECC deems fit), or provide to the ECC all such documents or information in the possession or under the control of the Contractor, to cause all and any claims, demands, or actions instituted against the ECC and/or the Contractor to be withdrawn, resisted, disputed, counter-claimed, settled or compromised in such manner as the ECC may direct.

22. Conflict of Interest

- 22.1 The Contractor shall during the Contract Period and for six (6) months thereafter:

- (a) ensure that it (including each and every officer, employee 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 hereunder, and each of their respective associates and associated persons (collectively "Restricted Group") shall not undertake any business, activity, service, task, or job or do anything whatsoever for its own account (whether on its own or in conjunction with another person(s) in a joint venture or partnership or other business entity) or for or on behalf of another person (other than in the proper performance of 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 ECC; and
- (b) forthwith notify the ECC in writing of all or any facts which may reasonably be considered to give rise to a situation where the interests (of whatsoever nature) of the Contractor or any other member of the Restricted Group, conflict or compete, or may be seen to conflict or compete, with the Contractor's duties or obligations under the Contract.

- 22.2 The Contractor shall ensure that itself and each other member of the Restricted Group shall keep themselves informed and that each other member of the Restricted Group shall inform the Contractor and keep it informed regularly of all facts which may reasonably be considered to give rise to a situation in which its and/or their interests conflict or

compete, or may be seen to conflict or compete, with the Contractor's obligations under this Contract.

22.3 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 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;
- (e) "relative" means the spouse, parent, child, brother or sister of the relevant person, and, in deducing such a relationship, an adopted

child shall be deemed to be a child both of the natural parents and the adopting parent and a step child to be a child of both the natural parents and the step parent; and

- (f) “Restricted Group” has the meaning given to it in Clause 22.1 above.

23. Confidentiality

23.1 The Contractor shall not disclose and shall treat as proprietary to the ECC and confidential all ECC Data, any other information, report, document, plan, record, data (including any personal particulars records and personal data (as defined in the Personal Data (Privacy) Ordinance (Chapter 486 of the Laws of Hong Kong)), database, code or particulars (a) furnished or disclosed by or on behalf of the ECC or by any other person to the Contractor; or (b) otherwise is accessible by or available to the Contractor in the course of performing the Contract; or (c) where applicable processed by the Goods or transmitted to the Goods or stored in the Goods; or (d) any Deliverable, advice, recommendations, reports or any other materials containing information belonging to the ECC or specifically relating to or relevant to the Goods supplied to the ECC (collectively “Confidential Information”) in whatever form or media. The restrictions on disclosure contained in this Clause 23.1 shall not apply to the disclosure of any Confidential Information if:

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

(e) with the prior consent in writing of the ECC Representative.

23.2 Without prejudice to any other provision of the Contract, the Contractor shall indemnify and keep indemnified each of the ECC, its assigns successors-in-title and authorised users from and against everything stated in Clauses 17.2(a) and 17.2(b) of the Conditions of Contract which the ECC (or any of its assigns or successors-in-title or authorised users) may suffer or incur directly or indirectly as a result of or arising from or in connection with or in relation to:

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

23.3 The Contractor shall use the Confidential Information solely for the purposes of the Contract. The Contractor shall not, at any time whether during the Contract Period or after the expiry or termination (howsoever occasioned) of the Contract, use, disclose, publish or reproduce, and shall procure and ensure each person who may be imparted with any Confidential Information in accordance with Clause 23.1 above shall not use, disclose, publish or reproduce, the Confidential Information for any other purposes without the ECC Representative's prior written consent.

23.4 When requested by the ECC Representative, the Contractor shall forthwith require any of its officers or employees or agents or sub-contractors as the ECC Representative may stipulate, and such other persons to whom disclosure is made pursuant to Clause 23.1 above, to execute a written undertaking in favour of the Contractor and the ECC Representative in a form to be determined by the ECC Representative agreeing to the restrictions attached to the Confidential Information set out in this Clause 23 and the Contractor agrees to provide certified true copies of any such undertakings to the ECC Representative within fourteen (14) days from the date of request by the ECC Representative. The Contractor further agrees that, if so required by the ECC Representative, it will, at its own cost and expense, take such actions and steps as are lawful and necessary to enforce such undertaking in the

event of any breach thereof by anyone who has executed such undertaking.

- 23.5 The Contractor shall establish and maintain all necessary security measures and procedures for the safe custody of the Confidential Information in the Contractor's possession or under its control and to prevent unauthorised access thereto or use thereof.
- 23.6 The Contractor shall not, and shall ensure that no other member of the Restricted Group will, save to the extent necessary for performing the Contract, peruse, retain possession or control of, or duplicate, any Confidential Information or any copy thereof (in whatsoever media or format).
- 23.7 The Contractor shall ensure that each of its employees, agents, sub-contractors, and any other persons involved in the performance of the Contract are aware of and comply with the provisions of this Clause 23 and the Official Secrets Ordinance (Chapter 521 of the Laws of Hong Kong).
- 23.8 The Contractor shall promptly notify the ECC Representative of, and give the ECC Representative all reasonable assistance in connection with, any proceedings which the ECC may institute against any person pursuant to any of the provisions in this Clause 23.
- 23.9 The Contractor acknowledges that any unauthorised disclosure or use of the Confidential Information can cause irreparable harm and significant injury to the ECC, the degree of which may be difficult to ascertain or that damages may not be an adequate remedy. Accordingly, the Contractor agrees that the ECC Representative shall have the right to obtain and be immediately granted an injunction prohibiting any breach of this Clause 23 and/or specific performance ensuring the compliance of this Clause 23 in light of any threatened or actual breach of this Clause 23, without prejudice to its other rights and claims including those available under the Contract or at law arising from such breach.
- 23.10 Without prejudice to the generality of the foregoing provisions, the Contractor further undertakes that it will not at any time itself or through any associate or associated person or employee, sub-contractor or agent use, sell, license, sub-license, create, develop or otherwise deal in any Confidential Information.
- 23.11 The ECC Representative may request the Contractor in writing at any time that any Confidential Information disclosed pursuant to the terms of this Clause 23 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 ECC Representative within seven (7) days of receipt of such request.

24. Probity

24.1 The Contractor acknowledges it has been reminded that:

- (a) dishonesty, theft and corruption on its part or that of its officers, employees, agents or sub-contractors are criminal offences and may lead to prosecution under section 9 of the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong), sections 17, 18D and 19 of the Theft Ordinance (Chapter 210 of the Laws of Hong Kong) and section 161 of the Crimes Ordinance (Chapter 200 of the Laws of Hong Kong); and
- (b) the soliciting or accepting of advantages, as defined in the Prevention of Bribery Ordinance is not permitted.

24.2 The Contractor shall inform its officers, employees (whether permanent or temporary), agents and sub-contractors that the soliciting or accepting of advantages (as defined in the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong)) is not permitted. The Contractor shall also caution its officers (including directors), employees and agents and sub-contractors against soliciting or accepting any hospitality, entertainment or inducement which may impair their impartiality in relation to the selection of its sub-contractors, if any, or the supervision of the work of the sub-contractors.

24.3 The ECC shall have the right to terminate the entire Contract pursuant to Clause 18.1 of the Conditions of Contract or partially terminate the Contract pursuant to Clause 18.5 of the Conditions of Contract depending on the election of the ECC in the event that the Contractor or any of its officers, employees, agents and sub-contractors is convicted of an offence under the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong), the Theft Ordinance (Chapter 210 of the Laws of Hong Kong) or the Crimes Ordinance (Chapter 200 of the Laws of Hong Kong).

25. Insurance

25.1 The Contractor shall effect a policy of insurance against all claims, demands or liability under the Contract, and shall continue such insurance throughout the Applicable Period (as defined in Clause 25.3 below).

- 25.2 The policy of insurance effected shall be a public liability insurance policy in the joint names of (i) the Contractor and (ii) the Government, (with appropriate cross-indemnity clause as if a separate policy has been issued to each of them) subject to a maximum indemnity amount in the sum of not less than an indemnity amount of HK\$10,000,000 for each claim or a series of claims arising from one event, but otherwise unlimited in the aggregate indemnity amount for all claims arising during the entire period of insurance (“public liability insurance policy”), and fulfilling the following requirements:
- (a) issued by an insurance company authorised to carry on the relevant insurance business under the Insurance Ordinance (Cap. 41);
 - (b) against liability to pay damages and compensation for injury or death of any person and loss or damage to any property, where such injury or death or loss or damage occurs during the currency of the insurance policy within Hong Kong in connection with the performance of this Contract.
- 25.3 The Applicable Period for the public liability insurance policy shall be the Contract Period.
- 25.4 Without prejudice to Clauses 25.1 to 25.3 above, the Contractor shall effect and maintain employer’s liability insurance in respect of all its employees and other staff in accordance with all applicable laws and regulations.
- 25.5 If required by the ECC Representative, the Contractor shall deliver to the ECC Representative 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.
- 25.6 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.
- 25.7 If the Contractor fails to give effect to or maintain any insurance policy required under the Contract, the ECC 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.

- 25.8 No provision including any indemnity limit specified in any insurance policy required under the Contract 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.

26. Relationship of the Parties

The Contractor enters into the Contract with the ECC as an independent contractor only and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership, or a joint venture between the ECC and the Contractor. Unless otherwise expressly provided for in the Contract, neither Party is authorised to act in the name of, or on behalf of, or otherwise bind the other Party.

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 ECC Representative, 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-contractors for the purpose of this Clause 27 and for the whole of the Contract.
- 27.2 Acceptance of the Tender does not signify the ECC's acceptance of any sub-contracting proposal set out in the Tender.
- 27.3 The ECC Representative may impose conditions either to be complied with by the Contractor and/or any proposed sub-contractors before giving any approval under Clause 27.1 above including without limitation the execution of a sub-contractor's undertaking by the proposed sub-contractor in favour of the ECC in such form and substance to be prescribed by the ECC. Where the ECC Representative requests the same, a certified copy of the sub-contract shall be deposited with the ECC within seven (7) days after the effective date of the sub-contract.
- 27.4 The Contractor shall remain fully liable and shall not be relieved from any of its obligations hereunder by entering into any sub-contract for the performance of any part of the Contract or supply contract with the Manufacturer (or its agent). The Contractor shall be responsible for all acts, defaults, omissions and neglect of any of its officers, employees, agents, sub-contractors (at whatever level), and the Manufacturer, and

employees and agents of any such sub-contractor and those of the Manufacturer as if they were its own.

28. Disclosure of Information

28.1 The Contractor hereby irrevocably authorises, consents and agrees that the ECC Representative 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 ECC Representative considers fit:

- (a) a brief description of the Goods provided or to be provided by the Contractor;
- (b) the Total Estimated Goods Price and any other fees, cost and expense payable to the Contractor pursuant to the Contract;
- (c) the engagement by the ECC Representative of the Contractor under the Contract and the name and address of the Contractor; and
- (d) the date of award of the Contract.

28.2 Disclosure may also be made by the ECC Representative under any of the circumstances specified in Paragraph 25.2 of the Terms of Tender in relation to any information concerning or relating to the Contractor or the Contract or the Goods or the Deliverables (including information recorded in whatever media).

28.3 Nothing in this Clause 28 or in Paragraph 25.2 of the Terms of Tender shall imply or be construed that the ECC owes any duty of confidentiality to the Contractor including without limitation in relation to any information of or concerning this Contract or the Contractor or the Goods or the Deliverables.

29. Publicity

29.1 Whether before, during or after the expiry or termination of the Contract Period, the Contractor shall not use the ECC's name in any document, publication, advertisement or publicity material without the prior written consent of the ECC Representative.

29.2 Subject to Clause 29.1 above, the Contractor shall submit to the ECC Representative for approval all the proposed advertising or other publicity material relating to the Contract, the Goods or other products supplied or other work done in connection with the Contract wherein the

ECC's name is mentioned or language used from which a connection with the ECC can reasonably be inferred or implied.

- 29.3 Notwithstanding any consent or approval given under Clause 29.1 or 29.2 above, whenever required by the ECC Representative, the Contractor shall remove all advertisement and publicity materials relating to the Contract wherein the ECC is mentioned or language used from which a connection with the ECC can reasonably be inferred or implied and the Contractor must comply with such request.

30. Force Majeure

- 30.1 If the Contractor becomes aware of any matter likely to constitute a Force Majeure Event, the Contractor shall forthwith notify the ECC Representative in writing concerning such matter and provide the ECC Representative with all relevant information as the ECC Representative may request.
- 30.2 Within seven (7) days after the occurrence of a Force Majeure Event or earlier, the Contractor shall notify the ECC Representative in writing of the full particulars of the Force Majeure Event including its nature, extent, how the Force Majeure Event has and/or will materially prevent it from performing the Contract or such part thereof, and likely duration of such material prevention.
- 30.3 Provided the ECC Representative is satisfied with the Contractor's claim of a Force Majeure Event which has materially prevented and/or will continue to materially prevent it from performing its obligations under the Contract or such part thereof, the Contract or such part thereof strictly to the extent of such prevention shall be suspended during the subsistence of such Force Majeure Event commencing from a date to be agreed between the Parties ("Suspension due to Force Majeure"). Where the ECC Representative is not so satisfied about any alleged claim of a Force Majeure Event, there shall be no Suspension due to Force Majeure. The Contractor may not allege or claim any event as a Force Majeure Event. Any failure by the Contractor to perform any obligation under the Contract shall be treated as default and entitles the ECC to terminate the Contract under any applicable Sub-clause of Clause 18.1 or Clause 18.2 of the Conditions of Contract or partially terminate the Contract under Clause 18.5 of the Conditions of Contract.
- 30.4 Without prejudice to the generality of Clause 30.3 above, whilst the Suspension due to Force Majeure subsists:
- (a) the Contractor shall not be required to perform any part of its obligations under the Contract strictly to the extent it is materially prevented from doing so by the Force Majeure Event ("Affected

Obligations”) but it shall use its best endeavours to remove or mitigate the effect of the Force Majeure Event on the Affected Obligations;

- (b) the ECC Representative may make alternative arrangements for the performance of the Affected Obligations, whether by another person or otherwise, without compensation to the Contractor;
- (c) the Contractor shall not be entitled to any payment of money in respect of the Affected Obligations (if any money would have been payable in the first place);
- (d) notwithstanding anything in the Contract to the contrary, no compensation shall be payable by either Party to the other due to any losses or damage arising from the Suspension due to Force Majeure; and
- (e) 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 Affected Obligations, and to that extent, all terms and conditions of the Contract shall continue to apply and be in full force and effect.

30.5 Following the issue of a notice by the Contractor under Clause 30.1 above which has led to Suspension due to Force Majeure under Clause 30.3 above, the Contractor shall keep the ECC Representative informed once every week or at such longer frequency as may be allowed by the ECC Representative, and in any event from time to time upon the request of the ECC Representative, of:

- (a) the likely duration of the relevant Force Majeure Event and of its effect of materially preventing the Contractor from performing the Affected Obligations;
- (b) the actions taken or proposed to be taken by the Contractor to mitigate or minimise the effects of that Force Majeure Event (“Mitigation Actions”); and
- (c) any other matters relevant to that Force Majeure Event or the Contractor’s performance affected by that Force Majeure Event.

30.6 As soon as the relevant Force Majeure Event has terminated or otherwise that the ECC Representative considers that the Mitigation Actions have minimised the effect of the Force Majeure Event on the ability of the Contractor to perform the Affected Obligations, the Contractor shall forthwith notify the ECC Representative, or the ECC Representative may on its own, after consultation with the Contractor, by

notice in writing to the Contractor, determine the appropriate date for resuming the performance of the Affected Obligations (“Resumption Date”). The Contractor shall immediately after the termination of the Force Majeure Event or with effect from Resumption Date as determined by the ECC Representative in the aforesaid manner, resume performance of the Affected Obligations in accordance with the terms and conditions of the Contract. In the event of any disagreement between the ECC Representative and the Contractor on the appropriate Resumption Date, the ECC Representative’s decision shall be final in the absence of manifest error.

- 30.7 Should a Suspension due to Force Majeure subsists for more than thirty (30) days, the ECC shall be entitled to, but is not obliged to, terminate the Contract (whether in whole or in part) pursuant to Clause 18.3 of the Conditions of Contract (depending on the election of the Government).

31. Illegal Workers

The Contractor undertakes not to employ illegal workers in the execution of this Contract or any other ECC contracts. Should the Contractor be found to have employed illegal workers in breach of this undertaking, the ECC Representative may, on behalf of the ECC, by notice, terminate this Contract pursuant to Clause 18.1 of the Conditions of Contract or partially terminate this Contract pursuant to Clause 18.5 of the Conditions of Contract (depending on the election of the ECC).

32. Notices

- 32.1 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 the applicable postal address, facsimile number or email address mentioned in Annex XI - Contact Details (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).
- 32.2 Such notices, demands, invoice, correspondence or other communications shall be addressed as provided in Clause 32.1 above and, if so addressed, shall be deemed to have been duly given or made as follows:
- (a) if sent by personal delivery during normal business hours on a working day, upon delivery at the address of the relevant Party;
 - (b) if sent by post (regardless of whether during or outside normal business hours), two (2) working days (for any place in Hong

Kong) and seven (7) working days (for any place outside Hong Kong) after the date of posting which is a working day;

- (c) if sent by facsimile during normal business hours on a working day, when despatched with confirmed receipt as evidenced by the transmission report generated at the end of the transmission of such facsimile by the facsimile 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.

32.3 Notice, demand, invoice, correspondence or other communication to the Contractor from the ECC in the prescribed manner specified in Clause 32.2 above (whether from an ECC Representative specified in (1) of Annex XI) shall be deemed to have been served provided that the notice, demand, invoice, correspondence or other communication has been sent to the correct applicable contact of the Contractor as specified in Annex XI.

32.4 Notice, demand, correspondence or other communication to the ECC Representative shall be to the applicable contact(s) as specified in Annex XI (as the same may from time to time be revised) depending on the subject matter to which it relates.

32.5 Nothing in this Clause 32 shall affect the validity of any notice, demand, invoice or communication despatched by personal delivery or by fax or by email outside normal business hours whether on a working day or a non-working day. Any such notice, demand, invoice, correspondence or other communication fulfilling the conditions specified in Clause 32.2 above shall be deemed to have been duly given or made on the next working day following from the date of personal delivery or fax or email. Where posting is not done on a working day, it shall be deemed to have been done on the next working day after such day.

33. Entire Agreement

33.1 The Contract constitutes the whole agreement between the Parties and supersedes any previous agreements or arrangements between them relating to the subject matter hereof. The Contractor acknowledges that in entering into the Contract, it has not relied on any statements, warranties or representations given or made by the ECC. On the other hand, the ECC has relied on the Warranties when entering into the Contract.

- 33.2 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).

34. 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 ECC Representative to give full effect to the provisions in this Contract and shall provide all such documents and materials to the ECC within fourteen (14) days of the date of the ECC Representative's written request or such longer period as may be agreed by the ECC in writing.

35. Variations

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

36. Severability and Exclusion of the Contra Proferentum Rule

- 36.1 If any provision of the Contract is found by any authority or court of competent jurisdiction to be illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect the other provisions of the Contract, all of which shall remain in full force and effect.
- 36.2 The court or arbitrator interpreting or construing any provision of this Contract shall not apply any rule of construction (including the contra proferentum rule) that a document is to be construed more strictly against any one party which has put it forward.

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 or at law or in equity shall operate as a waiver thereof; nor shall any single or partial

exercise of the same preclude any other or further exercise thereof or the exercise of any other right, power or remedy. A right or a remedy of each Party under the Contract shall be cumulative and not exclusive of any other rights, power or remedies provided by the Contract, at law or in equity. Without limiting the foregoing, no waiver by any Party of any breach by the other Party of any provision hereof shall be deemed to be a waiver of any subsequent breach of that or any other provision hereof.

- 37.2 Without prejudice to the generality of Clause 37.1 above, any right of termination of the Contract or any other right, power or remedy of whatsoever nature conferred upon the ECC under the Contract shall be exercisable by it in addition to and without prejudice to any other rights and remedies available to it under the Contract or at law (and, without prejudice to the generality of the foregoing, shall not extinguish any right to damages to which the ECC may be entitled in respect of the breach of the Contract) and no exercise or failure to exercise a right of termination shall constitute a waiver by the ECC of any other right, power or remedy.

38. Dispute Resolution and Jurisdiction

- 38.1 The Parties shall first refer any dispute or difference arising out of or in connection with the Contract to mediation in accordance with The Government of the Hong Kong Special Administrative Region Mediation Rules prevailing at the time.
- 38.2 If the said dispute or difference is not settled by mediation according to Clause 38.1, a Party may institute litigation in respect of the said dispute or difference. The Parties agree that the courts of Hong Kong shall have exclusive jurisdiction in respect of the said dispute or difference.

39. Assistance in Legal Proceedings

- 39.1 If and whenever requested to do so by the ECC Representative, the Contractor shall provide to the ECC all relevant information, documents (including documentation and statements from staff) and other assistance in connection with any inquiry, investigation, mediation, arbitration, tribunal hearings or court proceedings in which the ECC may become involved or any internal disciplinary hearing of the ECC that arises out of or in connection with the Contract or the Contractor's presence at the ECC's premises. If requested by the ECC, the Contractor shall arrange for relevant staff to give evidence at such inquiries, investigations, arbitrations, hearings or proceedings or to participate and/or provide assistance at such mediation.

39.2 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 ECC or the Contractor or in respect of the Contract, it shall notify the ECC Representative immediately in writing giving full details of such incident, accident or matter as the ECC Representative may require.

40. Retention of Records

The Contractor shall keep and maintain until seven (7) years after the expiry 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 ECC, and all payments made by the ECC. If requested by the ECC Representative, the Contractor shall afford the ECC Representative or authorised person access to the records and to make and retain copies thereof as may be requested by the ECC Representative or authorised person.

41. Joint and Several Obligations

41.1 Where the Contractor comprises more than one persons, each such person 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.

41.2 A reference to the Contractor in this Contract is a reference to each of the persons constituting the Contractor.

42. Governing Law

The Contract shall be governed by and construed in accordance with the laws of Hong Kong.

43. Contracts (Rights of Third Parties) Ordinance

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

44. 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 this Contract.

45. Order of Precedence

45.1 In the event of, and only to the extent of, any conflict or inconsistency amongst or between any provisions of the Contract, the following order of precedence shall be applied, but only in so far as is necessary to resolve that conflict or inconsistency:

- (a) the Technical Specifications;
- (b) the Conditions of Contract;
- (c) the Terms of Tender;
- (d) the Interpretation;
- (e) other Tender Documents which forms part of the Contract; and
- (f) any other materials which were submitted by the Contractor as part of its Tender and attached to the Contract.

45.2 The Deliverables are items to be prepared and/or supplied by the Contractor pursuant to requirements of the Contract. They shall form part of the Contract. Notwithstanding, unless the Parties agree in writing in the manner specified in Clause 35 of the Conditions of Contract, no Deliverables shall seek to waive, alter, cancel or amend any provisions of any documents listed in Clause 45.1 above. No general approval of, or signature by, the ECC of any such Deliverable shall be taken as agreement or approval of any such waiver, cancellation, alteration or amendment, unless the ECC expressly acknowledges and agrees on a case-by-case basis to this effect. This shall apply even if any such Deliverable is signed or given approval after the Date of Tender Acceptance. In the case of specifications set out in the design for any of the Goods (if any) and test plans for the Acceptance Tests (if any) which have been in form and substance approved by the ECC in writing, or which have otherwise been signed by both parties in writing, the Contractor hereby expressly acknowledges and agrees that they serve to further elaborate the objectives and requirements set out in the Contract. None of such further elaboration shall be taken as inconsistency or out-of-scope of the requirements of the Contract.