

GENERAL CONDITIONS OF CONTRACT

1. Definitions and Interpretation

- “ECC” means the Environmental Campaign Committee;
- “ECC Representative” means the officer authorised to act on behalf of the ECC in respect of the administration of this Contract;
- "Bidder" means the company/ organisation, and/ or its representative/ person authorised to act on his behalf, that is invited to make a proposal for the services set out in the;
- “Contract” means the contract to be signed between the ECC and an authorised representative of the Bidder referred to in the **Services Specifications** whose proposal is accepted;
- “Contractor” means the Bidder referred to in the **Services Specifications** whose proposal is accepted;
- “Force Majeure Event” means:
- (a) any outbreak of war, hostilities (whether war be declared or not), invasion, acts of foreign enemies, rebellion, revolution affecting Hong Kong, overthrow (whether by external or internal means) of the Government; or
 - (b) any event which is not caused or contributed to by, and is beyond the control of, the Contractor, its related persons (as defined in **Clauses 9.26 and 9.27** of the **Instructions on Submission of Proposal**) or any employee or agent or ex-employee or ex-agent of the Contractor and none of them can prevent the consequences of such event from happening;

and which, in any case of (a) or (b) above, materially prevents the performance of the duties and obligations of any Party hereunder; for the avoidance of doubt, any change of law and regulation of

whichever jurisdiction shall not be treated as a Force Majeure Event;

“Government” “Government” means the Government of the Hong Kong Special Administrative Region, the People’s Republic of China.

“Hong Kong” means the Hong Kong Special Administrative Region of the People’s Republic of China;

“Services” means the services to be provided by the Contractor as set out in the **Services Specifications**.

Words importing the singular includes the plural and vice versa and words importing a gender include any gender; and

The headings to the Clauses and/or Sub-clauses of the **Services Specifications** are for ease of reference only and shall not limit or extend the interpretation of the **Services Specifications**.

2. Total Services and Variation

- (a) The Services to be performed under the Contract shall be as laid down in the **Services Specifications** shall be carried out, as and when required, to the satisfaction of the Inspecting Officer. All orders placed under the Contract shall be issued in writing and the ECC will not be responsible for Services performed on oral instructions issued by any person whomsoever.
- (b) The Contractor shall not extend the Services beyond the requirements specified in the **Services Specifications** except as directed in writing by the ECC Representative; but the ECC Representative may, subject to the proviso hereinafter contained, at any time during the Contract period by notice in writing direct the Contractor to alter, amend, omit, add to, or otherwise vary any of the Services and/or the Contract period, and the Contractor shall carry out such variations, and be bound by the same conditions, so far as are applicable, as though the said variations were stated in the **Services Specifications**. Provided that no such variation shall, except with the consent in writing of the Contractor, involve a net addition to or deduction from the Contract price of more than twenty per cent or the Contract period of more than six months, unless otherwise mutually agreed by the Contractor and the ECC Representative.
- (c) Where a variation has been made to the Contract the amount to be added to or deducted from the Contract price in accordance with that variation shall be determined in accordance with the rates specified in the **Price Proposal** so far as the same may be applicable and where rates are not contained in the said **Price Proposal**, or are not

applicable, such amount shall be such sum as is reasonable in the circumstances. Due account shall be taken of any partial execution of the Services which are rendered useless by any such variation.

- (d) The ECC's liability shall be limited to the money payable in accordance with the schedule of rates for the amount of work completed to the standard acceptable to the ECC Representative. The Contractor shall refund the excessive payment to the ECC resulting from any deletion of the Services.

3. Assignment

The Contractor shall not, without the written consent of the ECC Representative, assign or otherwise transfer the Contract, or any part share or interest therein, and the performance of the Contract by the Contractor shall be deemed to be personal to him.

4. Quality of Services

- (a) The ECC Representative will oversee the progress and implementation of Services and is the contact point for day-to-day liaison with the Contractor.
- (b) The Contractor shall be supervised by the ECC Representative. In the course of service execution, the Contractor shall fully cooperate with the ECC and/or ECC Representative and shall comply with all instructions and amendments of the ECC and/or ECC Representative in relation to the Services. The Contractor shall provide the Services as required in a timely and effective manner in accordance with the Conditions or upon receiving instructions from the ECC Representative.
- (c) The Contractor's performance will be closely monitored and may be taken into consideration in future when the Contractor's tenders, quotations or service proposals are evaluated by the ECC. A quotation may be rejected if the Bidder is in default in respect of any ECC contract which is of the same or substantially similar nature as this invitation to quotation within 12 months of the Tender Closing Date or between the Tender Closing Date and the award of the Contract.
- (d) The Services shall be as specified in the **Services Specifications** and shall fulfil all the conditions and terms of any drawings and specifications (if any) supplied to the Contractor.
- (e) Any drawings and specifications reasonably required for the Contractor's guidance in the execution of the Contract shall be provided by the ECC free of charge but shall be returned on completion of the Contract.

5. Subcontracting

- (a) On the ECC's written consent, subcontracting of all or part of the Services to a third company/organisation after award of contract may be permitted on the condition that the ECC Representative is reasonably satisfied that the Contractor would have a good and effective control of the sub-contractor(s) with respect to work quality and timeliness of service. The sub-contractor(s) shall be financially and technically capable of completing the part of work assigned to the sub-contractor(s). While the sub-contractor(s) are expected to be financially and technically capable of completing the part of work subcontracted to them, the Contractor shall be held solely accountable and is fully responsible for the work done by its sub-contractor(s).
- (b) The proposal from the Bidder shall be deemed to be invalid if the ECC Representative is not reasonably satisfied with the competency of the sub-contractor(s) in carrying out all or a fraction of the work subcontracted.

6. Inspection and Acceptance

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

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

7. Rejections

- (a) Without prejudice to any statutory rights, the Inspecting Officer or the ECC Representative may reject any Services (or part thereof) which do not strictly conform to the conditions of **Sub-clause (d) of Clause 4** hereof.
- (b) Within 24 hours of being notified in writing of the rejection of any Services the Contractor shall be required to take the necessary action to rectify such rejected Services.

8. Meetings

The Contractor shall attend meetings with the ECC Representative as and when required to review the progress of the Services.

9. Title to Data and Intellectual Property Rights

- (a) All the deliverables including but not limited to all draft and finished products and their designs under these Conditions, that are produced and/or supplied by or on behalf of the Contractor in the performance of any of the Services under these Conditions

(“Deliverables”) and all the intellectual property rights, including but not limited to copyright therein, shall be and shall remain the exclusive property of the ECC shall vest in the ECC at the time when the Deliverables are created.

(b) The Contractor warrants and undertakes that:

- (i) the Deliverables shall be or shall consist of original works created, developed or made by or on behalf of the Contractor; and
- (ii) the use and/or possession of any of the Deliverables shall not infringe any intellectual property rights of any third party.

(c) The Contractor hereby waives and undertakes to procure all the authors of the Deliverables to waive all the moral rights in the Deliverables, such waiver(s) to take effect upon the vesting of the intellectual property rights in the Deliverable in the ECC pursuant to **Clause 9(a)** above or any other provisions of these Conditions.

(d) The Contractor shall at its own costs and expense do and execute any further thing(s) and document(s), or procure the same to be done or executed, as may be required by the ECC to give full effect to the above **Clauses 9(a) to 9(c)** and shall provide all such documents and materials to the ECC within seven days upon the ECC’s written request or within such longer period as may be agreed by the ECC in writing.

(e) Upon request by the ECC Representative and/or in the event of the expiration or termination of the Contract, the Contractor shall at its own costs and expense promptly deliver to the ECC all the Deliverables, whether in completed form or not, then in the Contractor’s custody, control or possession.

(f) The Contractor shall indemnify the ECC and keep the ECC and their employees/agents fully and effectively indemnified against all actions, costs (including without limitation the fees and disbursement of lawyers, agents and expert witnesses), claims, demands, damages, expenses and any awards and costs which may be agreed to be paid in settlement of any proceedings (where that settlement has first been proposed or approved in writing by or on behalf of the Contractor) and liabilities of whatsoever nature arising out of or in connection with any breach of the obligations, warranties and undertaking on the part of the Contractor under any provisions of this clause.

(g) The provision of this clause shall survive the termination (however occasioned) of the Contract and shall continue in full force and effect notwithstanding such termination.

10. Confidentiality

(a) All materials and data in connection with these Conditions (including any materials furnished by or on behalf of the ECC in connection herewith, or any materials collected, generated or produced by or on behalf of the Contractor under the Contract including

without limitation any personal particulars records and Personal Data (as defined in the Personal Data (Privacy) Ordinance (Cap 486) and materials of any nature (in or on whatever media)) shall be treated as confidential information. The Contractor shall not, during the continuance of the Contract or at any time thereafter, disclose to any person the terms and conditions of the Contract, or any confidential information, provided that the restrictions on disclosure contained in this clause shall not apply:

- (i) to the disclosure of any information to any person in circumstances where such disclosure is reasonably necessary for the performance of the Contractor's duties and obligations under the Contract; and
 - (ii) to the disclosure of any information with the prior written consent of the ECC.
- (b) Any disclosure permitted under **Clause 10(a)** shall be in strict confidence and shall extend only so far as may be necessary for the purpose specified in **Clause 10(a)** and the Contractor shall use its best endeavours to ensure the confidentiality of any such disclosure.
- (c) The Contractor shall not make use of or reproduce any information, reports, charts, documents, plans, software, data or other particulars or information whatsoever relating to the Contract furnished by or on behalf of the ECC other than in the performance of its duties and obligations under the Contract and shall not make use of the reports or any documents or computer models produced or created solely and exclusively in relation to the performance of its duties and obligations under the Contract other than in the performance of its duties and obligations under the Contract or with the prior written consent of the ECC.
- (d) The Contractor shall inform every person to whom any confidential information, reports, charts, documents, plans, software, data or other particulars or information relating to the Contract is disclosed pursuant to this clause of the restrictions on reproduction and disclosure attaching to such information and the Contractor shall require such a person to notify the same restrictions to any other person to whom it makes any such disclosure.
- (e) The provisions of this clause shall survive the expiration or early termination howsoever occasioned of the Contract and shall continue in full force and effect notwithstanding such termination.
- (f) The Contractor shall, upon the request of the ECC, procure every person to whom the confidential information is to be disclosed pursuant to **Clause 10** to sign a separate confidentiality Condition with the ECC in such form as may be prescribed by the ECC.
- (g) The Contractor shall promptly notify the ECC of any breach of confidence by any person(s) to whom the confidential information is disclosed and give the ECC all reasonable assistance in connection with any proceedings which the ECC may institute against such person(s).

- (h) The Contractor shall indemnify the ECC and keep the ECC and their employees/agents fully and effectively indemnified against all actions, costs (including without limitation the fees and disbursements of the lawyers, agents and experts witnesses), claims, demands, expenses, loss, damage and liabilities of whatsoever nature which the ECC may suffer, incur or sustain as a result of any breach of confidence (whether under the Contract or general law) by the Contractor or any person to whom the confidential information is disclosed by the Contractor or by any breach of any of the provisions of **Clause 10** on the part of the Contractor.

11. ECC Property

When ECC property is issued to the Contractor under the Contract, the Contractor shall be responsible for the due return of all such property. Should any such property be lost or damaged from any cause whatsoever while in the possession or control of the Contractor or his servants, workmen or agents, the Contractor shall pay for the same at total original cost plus 20%. A count of the articles or material in the possession of the Contractor may be made at any time by the ECC Representative and the Contractor shall render such assistance as is necessary for this purpose.

12. ECC Premises and Contractor's Premises

- (a) The Contractor shall ensure that all persons engaged by him in carrying out the Contract keep to such parts of ECC premises as are necessary for the due discharge of the Contractor's obligations under the Contract.
- (b) Where the Services are carried out on the Contractor's premises such premises shall be open to inspection by the ECC Representative or Inspecting Officer at all reasonable times. The Contractor shall have obtained prior written consent from the subcontractor and such other persons as may be appropriate for such site visit(s) and shall make all necessary arrangements to facilitate such site visit(s). If the Contractor fails to obtain the aforesaid prior written consent or fails to make all necessary arrangements to facilitate the site visit(s), the ECC is entitled to terminate the Contract.
- (c) The safety of any craft, vessel and vehicle used by the Contractor and brought alongside or onto ECC premises, piers or wharves, as the case may be, shall be the responsibility of the Contractor, who shall indemnify the ECC in respect of any loss or damage to such ECC premises, piers or wharves.

13. Payment for Services

13.1 The Contractor shall render to the ECC Representative:

- (a) on completion of any separate portion of the Services (in respect of which a charge is laid down in the Schedule) an account for such portion.

13.2 All such accounts shall be signed by the ECC Representative or the Inspecting Officer. Unless otherwise agreed by the ECC Representative such accounts shall be paid within 30 days of the date upon which:

- (i) where the said accounts are signed by the ECC Representative or Inspecting Officer, or
 - (ii) where the Services have been accepted pursuant to **Clause 4** of the **General Conditions of Contract** herein,
- whichever date is the earlier.

13.3 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.

13.4 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.

13.5 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 13**, 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, or (e) the payment by cheque has failed for whatever reason (excluding any fault on the part of the ECC). 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. Illegal Workers

- (a) The Contractor undertakes not to employ illegal workers in the execution of any 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 in writing, terminate the Contract and the Contractor is not entitled to claim any compensation.
- (b) The Contractor shall be liable for all expenses necessarily incurred by the ECC as a result of the termination of the Contract.

15. Default

If the Contractor shall fail to carry out all or any of the Services provided for in the Contract within the Contract period or such extended period as may be agreed in accordance with **Clause 2(b)** hereof, the ECC may at its absolute discretion terminate the whole or any part of the Contract by notice in writing to the Contractor, but without prejudice to any claims by the ECC for breach of Contract including but not limited to its right of ECC to assign the balance of the uncompleted Services to another Contractor or Contractors whereupon the Contractor shall be liable for any sums so incurred in excess (hereinafter called 'any excess') of the Contract price.

16. Recovery of Sums Due

Whenever under the Contract any sum of money shall be recoverable from or payable by the Contractor, the same may be deducted from any sum then due or which at any time thereafter may become due to the Contractor under the Contract or any other ECC contracts.

17. Liability for Damages or Compensation

- (a) ECC and its employees or agents shall not be under any liability whatsoever for or in respect of:
 - (i) 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).
 - (ii) any injury to or death of any of the Contractor's employees or agents save and except any such injury or death caused by the Negligence of the ECC or any of its

employees or agents.

- (b) The Contractor shall indemnify the ECC and its employees or agents against any claim or demand made against or liability incurred (including all costs, charges or expenses whatsoever) by the ECC or any of its employees or agents in respect of :
 - (i) any loss, damage, injury or death referred to in sub-clause(a) of this clause (save and except injury or death caused by the Negligence of the ECC or any of its employees or agents).
 - (ii) any loss or damage sustained by or any injury to or death of any third party in consequence of any Negligence of the Contractor or any of its employees or agents.
- (c) The Contractor shall indemnify the ECC against any loss of or damage to any property of the ECC or of any of its employees or agents or any injury to any employee or agent of the ECC arising out of the Negligence of the Contractor or any of its employees, sub-contractors or agents.
- (d) For the purposes of this clause ‘Negligence’ shall have the same meaning as that assigned to it in Section 2(1) of the Control of Exemption Clauses Ordinance.

18. Policy of Insurance and Compensation

- (a) The Contractor shall effect a policy of insurance against all claims, demands or liability under the Contract with an insurance company approved by ECC (which approval shall not be unreasonably withheld) and shall continue such insurance during the continuance of the Contract and shall when required, deposit with the ECC Representative for safe keeping during the Contract period such policy of insurance together with the receipt of payment of the current premium.
- (b) Except where this Contract does not require that the Contractor shall have any employees in Hong Kong to perform the Contract and that the Contractor indeed does not have any employee, the Contractor shall effect and maintain, and where applicable, shall procure its sub-contractor(s) or agents to effect and maintain, the employee’s compensation insurance policy in respect of its employees throughout all applicable times (including, where applicable, the Contract Period) in accordance with Part IV of the Employees’ Compensation Ordinance (Chapter 282 of the Laws of Hong Kong).
- (c) If the Contractor shall fail to effect and keep in force the insurance referred to or any other insurance which he may be required to effect under the terms of the Contract then and in any such cases ECC may effect and keep in force any such insurance and pay such premium or premiums as may be necessary for that purpose and from time to time deduct the amount so paid by ECC as aforesaid from any moneys due or which may become due to the Contractor or recover the same as a debt due from the Contractor.

- (d) In the event of any of the Contractor's employees or agents 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 within 7 clear working days give notice in writing of such injury or death to the ECC Representative.

19. Bankruptcy

The ECC Representative may at any time by notice in writing summarily terminate the Contract without entitling the Contractor to compensation in any of the following events:

- (a) if the Contractor shall at any time be adjudged bankrupt, or shall have a receiving order or orders for administration of his estate made against him, or shall take any proceedings for liquidation or composition under any Bankruptcy Ordinance for the time being in force, or make any conveyance or assignment of his effects or composition or arrangement for the benefit of his creditors or purports so to do; or
- (b) if the Contractor, being a company shall pass a resolution or the court shall make an order for the liquidation of its assets, or a receiver or manager shall be appointed on behalf of the debenture holders, or circumstances shall have arisen which entitled the court or debenture holders to appoint a receiver or manager.

Provided always that such determination shall not prejudice or affect any right or action or remedy which shall have accrued or shall accrue thereafter to the ECC.

20. Corrupt Gifts

- (a) If the Contractor, any employee or agent or sub-contractor of the Contractor shall be found to have committed an offence under the Prevention of Bribery Ordinance (Chapter 201) or any subsidiary legislation made thereunder or under any law of a similar nature in relation to the Contract or any other ECC contracts, the ECC Representative may, on behalf of the ECC, summarily terminate the Contract, without entitling the Contractor to any compensation therefor.
- (b) The Contractor shall be liable for all expenses necessarily incurred by the ECC as the result of the termination of the Contract.

21. Consent to Disclosure

The ECC shall have the right to disclose whenever it considers appropriate or upon request by any third party (written or otherwise) information on the awarded contract, without any further reference to the successful Bidder, the name and address of the successful Bidder, description of services and the contract amount.

22. Publicity

22.1 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.

22.2 The Contractor shall submit to the ECC Representative all advertising or other publicity materials relating to the Contract or the 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. The Contractor shall not publish or use any advertising or other publicity material without the prior written consent of the ECC Representative.

22.3 Notwithstanding any consent or approval given, whenever required by the ECC, the Contractor shall remove all advertisement and publicity material 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.

23. Governing Law

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

24. Termination and Effects of Termination

24.1 Without prejudice to any rights and claims of the ECC under the Contract or otherwise at law, the ECC shall be entitled to forthwith terminate the Contract if any one event mentioned in any of the **Clauses 24.1(a) to (m)** below occurs-

- (a) the Contractor fails to observe or perform any of the terms and conditions of the Contract and (in the case of a breach capable of being remedied but not otherwise) has failed to remedy the breach to the satisfaction of the ECC Representative within seven (7) days (or such longer period as the ECC Representative may, in its sole discretion, allow) after the issuance by the ECC Representative to the Contractor of a request in writing requiring it to do so; or
- (b) the Contractor is persistently in breach of any provision of the Contract (whether the persistent breaches relate to the same provision or different provisions); or
- (c) any warranties or undertakings, representations made or deemed to have been made by the Contractor to the ECC in the Contract or in its quotation for the Contract or otherwise from time to time during the term of the Contract is untrue; or

- (d) the Contractor becomes bankrupt or goes into liquidation or a petition has been filed for the bankruptcy or the winding up of the Contractor otherwise than for the purpose of a solvent reconstruction or amalgamation previously approved by the ECC Representative in writing or the Contractor has become insolvent or make any composition or arrangement with creditors; or
- (e) the Contractor abandons the Contract in part or in whole; or
- (f) the Contractor assigns or transfers or purports to assign or transfer all or any part of the Contract without the prior written consent of ECC; or
- (g) the Contractor is found to have provided or supplied any incomplete, false or incorrect statement or information or document in bidding for the Contract or from time to time during the continuance of the Contract; or
- (h) the Contractor is found to have employed illegal workers in the execution of this Contract; or
- (i) 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; or
- (j) the continued engagement of the Contractor or the continued performance of the Contract is contrary to the interest of national security; or
- (k) the Contractor has made any false declaration or untruthful revelation in regard to the record of convictions of offences under any of the relevant Ordinances in its quotation submission made during the bidding process of this Contract; or
- (l) the ECC considers that it is in the public interest to terminate the Contract; or
- (m) the ECC reasonably believes that any of the events mentioned above is about to occur.

24.2 Notwithstanding anything herein to the contrary, the ECC may at any time during the continuance of the Contract, at its discretion and without cause, terminate the Contract by giving the Contractor one month's prior written notice of such termination.

24.2A Instead of terminating the Contract in relation to all Items of the Services pursuant to **Clause 24.2** above, the ECC may at any time and from time to time during the Contract Period, at its discretion and without cause, partially terminate the Contract in relation to one or more Items of the Services only with immediate effect and serve a written notice (which may be served after

the partial termination takes effect in case the ECC considers it not reasonably practicable to serve the written notice beforehand) to the Contractor (“Partial Termination Without Cause”). The written notice (whether being served before or after the Partial Termination Without Cause) shall specify the scope of the partial termination, such as the Items of the Services affected thereby, and other details, as the case may be.

24.2B The ECC may at any time and from time to time during the Contract Period, at its discretion and without cause, suspend the Contract with immediate effect and serve a written notice (which may be served after the suspension takes effect in case the ECC considers it not reasonably practicable to serve the written notice beforehand) to the Contractor. The written notice (whether being served before or after the suspension) shall specify the period of the suspension (“Suspension Period”) and the scope of the suspension (viz. the Item(s) of the Services to be suspended, which may be all or any of the Items of the Services covered by the Contract) (“Suspended Services”).

24.3 Instead of terminating the Contract in relation to all Items of the Services pursuant to **Clause 24.1 or 24.2** above, the ECC may elect, but is not obliged, to partially terminate the Contract in relation to any one or more Item(s) of the Services only with immediate effect and serve a written notice (which may be served after the partial termination takes effect in case the ECC considers it not reasonably practicable to serve the written notice beforehand) to the Contractor (“Partial Termination Due to Default”). The written notice (whether being served before or after the Partial Termination Due to Default) shall specify the scope of the partial termination, such as the Items of the Services affected thereby, and other details, as the case may be.

24.3A The term “Partial Termination” may mean a Partial Termination Due to Force Majeure or a Partial Termination by Notice Without Cause or a Partial Termination Due to Default and in each case a “Partial Termination”. The Item(s) of the Services to which a Partial Termination relates are referred to as “Terminated Services”. The Terminated Services may cover all or any Item(s) of the Services which have not been accepted up to the time of the Partial Termination.

24.4 In the event that the Contract is terminated for whatever reason or upon expiry of the Contract Period:

- (a) save for those provisions which are expressed to or which in their context appropriately survive termination, the Contract shall be of no further force and effect, provided always the ECC’s rights and claims under the Contract or otherwise at law (1) arising from antecedent breaches of the Contract by the Contractor (including any breach(es) which entitle the ECC to terminate the Contract) or (2) which have otherwise accrued or arisen prior to termination, shall not be prejudiced;

- (b) subject to any rights and remedies which the ECC may have under this Contract or

otherwise (including any right of set off or counterclaim which the ECC may have), the ECC shall pay to the Contractor such portion of fee as indicated in the Contract Schedule for such part of the Services actually performed by the Contractor in strict accordance with the Contract and to the satisfaction of the ECC (if not paid already);

- (c) other than any payment under above **Clause 24.4(b)** above, the ECC shall have no obligation to pay to the Contractor any money whatsoever;
- (d) 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), damage (including any direct, special, indirect or consequential damage of whatsoever nature) or any cost or expense, suffered or incurred by the Contractor due to the termination of the Contract;
- (e) in the case of termination other than pursuant to **Clause 24.2** above, the Contractor shall be liable for all costs and expenses actually incurred by the ECC arising from or in the termination of the Contract; and
- (f) in the case of termination, the ECC may, without prejudice to any accrued rights and claims of ECC, assign the uncompleted Services to another contractor or contractors or undertake the Services itself whereupon in the case of termination pursuant to **Clause 24.1** above, the Contractor shall be liable for the contract price payable to such other contractor(s) or the costs incurred by the ECC for undertaking such services (as the case may be) in excess of the contract price which would have been payable to the Contractor had the Contract not been terminated plus ECC's administrative charge as and for liquidated damages and not as a penalty.

25. Conflict of Interest

25.1 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.

25.2 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.

25.3 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 25.1** above.

26. Probity

26.1 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.

26.2 The Contractor shall inform its officers, employees (whether permanent or temporary), agents and sub-contractors that the soliciting or accepting of advantages (within the meaning of 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 advantage or entertainment which may impair their impartiality in relation to the performance of the Contract.

26.3 The ECC shall have the right to terminate the entire Contract pursuant to **Clause 24** of the **General Conditions of Contract** 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).

26.4 The Contractor shall within two (2) weeks after the commencement of the Contract draw up and submit a staff code of conduct^{Note} governing its officers, director and employees related to the execution of the Contract, to the ECC Representative. The code of conduct shall cover probity issues, including prohibition from offering, soliciting or accepting any form of advantages in discharging their duties under the Contract, and requirements on avoidance and management of conflict of interest and non-divulgence of confidential information. It shall ensure that these

personnel are well aware of the prohibited acts explicitly stated in **Clause 26.2** above and of the staff code of conduct. The code of conduct should form part of the contractual arrangement (e.g. director's service or employment contract) to ensure acknowledgement and compliance by them. Note : The Corruption Prevention Department of the Independent Commission Against Corruption has compiled a Sample Code of Conduct (available at https://cpas.icac.hk/EN/Info/Lib_List?cate_id=3&id=2365) for reference by the Contractor, setting out basic standard of conduct expected of all of its directors and staff. The Contractor is advised to make reference the Sample Code of Conduct when compiling its own code of conduct.

26.5 The same integrity management provisions, i.e. prohibition from offering, soliciting or accepting of advantages, and requirements on avoidance and management of conflict of interest and non-divulgence of confidential information, shall also be included in the relevant contractual agreement between the Contractor and its agent or sub-contractor (if any).

27. Deduction of Fees

Where the actual scope of services delivered is less than expected set out in the **Services Specifications** in the Contract, the ECC shall deduct from the price stated in the Contract the amount in accordance with that shortfall for the tasks outlined in the Contract on the basis of unit cost specified therein.

28. Use of ECC's Name

The Contractor agrees not to use the ECC's name in any document, publication, advertisements or publicity materials without the prior written consent of the ECC except pursuant to the Contractor's performance of the Services and to the extent that the relationship between the ECC and the Contractor in relation to the Services is public knowledge.

29. Disclosure of Contractor's Name and Fees by ECC

- (a) The Contractor shall irrevocably authorise, consent and agree that the ECC or the ECC Representative may, whenever it/he 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 or the ECC Representative deems fit:
 - (i) the name of the Contractor whose proposal is accepted by the ECC in the selection exercise on the provision of Services; and
 - (ii) the fee payable to the Contractor pursuant to the Contract.
- (b) The Contractor shall waive and forego its rights, if any, to make any claims against the ECC and/or the ECC Representative for any actions, proceedings, liabilities, losses, damages, demands, charges, costs and expenses that may arise out of or in consequence of the above disclosure made by the ECC or the ECC Representative.

30. Gender Mainstreaming

The Contractor shall ensure that all the Deliverables supplied by the Contractor under this Service Specifications or the Contract is presented in the absence of gender bias or inequality. The following checklist items, taken from the Gender Mainstreaming released by the Women's Commission in 2009¹, should be helpful with any type of communication, in particular the written documents that are made available to the public:

- (a) Has the promotional content been presented in a gender-sensitive manner? ☐
- (b) Has the medium of promotion (e.g. venues, channels or time slots) effectively reached women? ☐

31. Admission of Contractor Personnel to Government/ECC Premises

- (a) Upon request from time to time by the ECC, the Contractor shall provide to the ECC a list of the names, posts, staff identity card numbers, addresses and telephone numbers of all Contractor's employees, agents, sub-contractors and those employees and agents of the aforementioned sub-contractors (collectively "Relevant Personnel") who may at any time require admission on behalf of the Contractor to any premises occupied by the Government/ECC for the purposes of the Contract if so required by the ECC Representative, and in that event such list shall specify the capacities in which those persons are employed by or connected with the Contractor and shall contain such other particulars as the ECC Representative may reasonably require.
- (b) The Contractor shall ensure that while any of the Relevant Personnel is on the Government/ECC's premises they will conform to the Government/ECC's normal codes of staff and security practice.
- (c) The ECC Representative reserves the right to refuse to admit to the Government/ECC premises any person, whose admission would be, in the reasonable opinion of the Government Representative, undesirable.
- (d) In the event that the Contractor fails to comply with this **Clause 31** and it is determined that such failure is prejudicial to the interests of the Government or the ECC, the ECC Representative may thereupon terminate the Contract forthwith pursuant to **Clause 24** of the **General Conditions of Contract**.

32. Dispute Resolution and Jurisdiction

32.1 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.

¹ https://www.women.gov.hk/en/enabling_envir/gender_mainstreaming/checklist.html

32.2 If the said dispute or difference is not settled by mediation according to **Clause 32.1**, 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.

33. Assistance in Legal Proceedings

33.1 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/Government's premises. If requested by the ECC Representative, 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.

33.2 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.

34. Green Management Requirements

- (a) The Contractor is required to follow "A Waste Reduction Guidebook for Large Event Organisers" published by the Environmental Protection Department to minimise waste generation during the entire process of organisation of event(s)/activities. The Guidebook is retrievable at:

https://www.wastereduction.gov.hk/sites/default/files/GreenEvent_Guidebook_Eng_201801.pdf

- (b) In preparing any submissions, the Contractor shall adopt the green measures below:-

- (i) All submissions are to be printed on both sides and preferably on recycled and unbleached paper. Paper exceeding 80gsm is not recommended as a general rule.
- (ii) Unnecessary or excessive use of plastic laminates, glossy covers or double covers should be avoided. If a cover for the submission is necessary, the use of recyclable non-glossy art board paper is encouraged.

- (iii) Excessive white space around the borders and in between the paragraphs of all

documents prepared by the Bidder or the Contractor should be avoided. A margin of 2 cm should be sufficient. Excessive use of blank paper for presentation purposes should be avoided as well.

- (iv) The number of pages in a submission can be reduced by reducing the size of typeface (font). For example, “Times New Roman” or “C.G. Times” font size not larger than point 12 or 10 characters per inch should be used in balancing legibility and clarity against the waste reduction objective. The appearance and readability of the document can be improved by using two columns where the font size used is point 12.

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

The ECC and Contractor agree that the provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract.

36. Order of Precedence

In the event that there is any conflict, contradiction or ambiguity between any documents which form part of the Contract, the following order of precedence shall be applied in order to resolve any such conflict, contradiction or ambiguity:

- (a) Specification of Services in the Contract
- (b) General Conditions of Contract
- (c) Any other materials which were submitted by the Contractor as part of its Tender/Quotation and attached to the Contract.