

**Hong Kong Airport Authority**  
**ePROS Website Terms of Use**

PLEASE READ THE TERMS AND CONDITIONS SET OUT BELOW, WHICH APPLY TO YOUR USE OF THIS WEBSITE ("EPROS WEBSITE"). YOUR USE OF THIS EPROS WEBSITE SIGNIFIES YOUR ACCEPTANCE OF THESE TERMS AND CONDITIONS AND AGREEMENT TO BE BOUND BY THEM.

**1. Definitions**

1.1. Capitalised terms used in these Terms shall have the following meanings:

"**Amendment Date**" has the meaning given in Clause 8.1 below.

"**Applicant**" means a Supplier/Contractor that has submitted a Prequalification Submission.

"**Authority**", "**we**", "**us**" or "**our**" means the Airport Authority of Hong Kong having its registered office at HKIA Tower, 1 Sky Plaza Road, Hong Kong International Airport, Lantau, Hong Kong.

"**Award Notice**" means a notice of award of an Invitation to Tender or Invitation to Provide a Proposal issued by the Authority and posted onto the ePROS Website.

"**Clarification**" means a clarification issued by the Authority, whereby the Authority has raised certain queries and is asking for certain clarification from a Proponent or Tenderer with regard to a Proposal or Quotation, as the case may be, submitted by it.

"**Closing Date**" means the closing date and time specified by the Authority for Tenderers, Proponents or Applicants to submit their Submissions to the Authority in respect of a relevant Request for Quotation, Invitation to Tender, Invitation to Provide a Proposal or Prequalification Invitation.

"**Confidentiality Undertaking**" means the letter of undertaking to be executed by a Supplier/Contractor confirming that it will keep confidential all relevant Procurement Documents or Prequalification Documents, as the case may be, and information related to the Authority as specified in the letter of undertaking;

"**Disabling Code**" means any virus, "back door", "time bomb", "logic bomb", "Trojan Horse", "worm", "drop dead device" or any other software, computer program or malicious code intended or designed to:

- (a) permit access to or use of our computer systems or the computer systems of any third party (including other users); or
- (b) disable, damage, corrupt, erase, interfere, monitor, intercept, copy, or disrupt or impair the normal operation of, our computer systems, the computer systems of any third party (including other users), the ePROS Website, the System or any associated data or information.

"**ePROS**" has the meaning given in Clause 2 below.

"**ePROS Website Content**" means any data, material, communications or information, in any format whatsoever, including, without limitation, any data files, text, computer software, images, graphics, photos, videos, sound, audio files, recordings directories, documents or any other materials used, displayed on, or transmitted or made available by the Authority through

this website, including, without limitation, any Procurement Documents, Tender Notices, Letters of Acceptance, Letters of Clarification, Award Notices, Prequalification Documents, Prequalification Notices or Letters of Notification.

**"Intellectual Property Rights"** means any trade marks, service marks, logos, trade names, corporate names, internet domain names, patents, registered designs, copyrights, design rights, database rights, inventions, semiconductor topography rights, know-how, trade secrets or any similar right exercisable in any part of the world, whether registered or not, and including any applications for the registration of any such rights, whether presently existing or created in the future, anywhere in the world, whether registered or not, and all benefits, privileges, rights to sue, recover damages and obtain relief from any past, current or future infringement, misappropriation or violation of the foregoing rights.

**"Invitation to Provide a Proposal"** means an invitation to provide a proposal and any schedules or attachments thereto, issued by the Authority inviting a Proposal to be submitted by a Supplier/Contractor in accordance with the invitation to proposal and the applicable Procurement Documents, for any goods, works, materials and/or services that the Authority requires and, if applicable, includes all or any of the Revisions.

**"Invitation to Tender"** means an invitation to tender, and any schedules or attachments thereto, issued by the Authority inviting Tender Submissions to be submitted by a Supplier/Contractor in accordance with the invitation to tender, for any goods, works, materials and/or services that the Authority requires and, if applicable, includes all or any of the Tender Addenda.

**"Letter of Acceptance"** means a letter and any schedules or attachments thereto issued by the Authority to a Tenderer confirming that it accepts the Tenderer's offer in its Tender Submissions or Quotation or a Proponent's Proposal, as applicable.

**"Letter of Clarification"** means a letter and any schedules or attachments thereto issued by the Authority to a Tenderer or Proponent summarizing all the clarified terms on which the Authority may issue a Letter of Acceptance to that Tenderer or Proponent and includes all modifications, amendments and supplements thereto.

**"Letter of Notification"** means a letter issued by the Authority to an Applicant informing it of the result of a Prequalification Invitation.

**"Loss"** means losses, liabilities, judgments, awards, damages, fines, penalties, sanctions, settlements, claims, demands, actions, costs, charges, expenses and liabilities of whatsoever nature (including attorney/legal fees for both internal and external counsel, and costs related to investigation, arbitration, litigation or settlement).

**"Prequalification Clarification"** means a prequalification clarification issued by the Authority, whereby the Authority has raised certain queries and is asking for certain clarification from an Applicant with regard to a Prequalification Submission submitted by it.

**"Prequalification Documents"** means all or any documents issued by the Authority in relation to a prequalification exercise and includes, without limitation, any Prequalification Invitations, template Confidentiality Undertakings, Response to Prequalification Queries, Prequalification Clarifications, instructions to applicants, ancillary letters, forms and documents etc. and any and all schedules and attachments to such documents, including any amendments to them and the form of declaration etc.

**"Prequalification Invitation"** means a prequalification invitation, and any schedules or attachments thereto, issued by the Authority inviting Prequalification Submissions to be submitted by an Applicant in accordance with the prequalification invitation and the applicable Prequalification Documents and, if applicable, includes all or any of the Revisions.

**"Prequalification Notice"** means a notice issued by the Authority notifying organisations that a Prequalification Invitation has been issued and inviting Suppliers/Contractors to download copies of the Prequalification Documents.

**"Prequalification Query"** means a query raised by an Applicant in relation to a Prequalification Invitation.

**"Prequalification Submissions"** means all or any documents submitted by an Applicant in response to and in accordance with the requirements of the relevant Prequalification Invitation and the applicable Prequalification Documents and includes, without limitation, executed Confidentiality Undertaking, Responses to Prequalification Clarifications and any other information, materials and documents submitted by the Applicant (including, without limitation, any supplemental submissions thereto).

**"Privacy Policy"** means the Authority's privacy policy that can be accessed at the ePROS Website.

**"Private Certificate"** means a digital certified issued by the Authority's designated contractor.

**"Procurement Documents"** means all or any documents issued by the Authority in relation to an intended procurement and includes, without limitation, any Invitation to Tender, Requests for Quotations, Invitation to Provide a Proposal, template Confidentiality Undertakings, Response to Tender Queries, Response to Queries, Clarifications, Tender Clarifications, instructions to tenderers, instructions to proponents, ancillary letters, forms and documents, etc., and any and all schedules and attachments to such documents, including any amendments to them and the form of tender, form of proposal, form of contract or form of tender bond.

**"Proponent"** means a Supplier/Contractor that has submitted a Proposal.

**"Proposal"** means the offer (including, without limitation, any supplemental proposals thereto) submitted by a Proponent in response to and in accordance with the terms of the relevant Invitation to Provide a Proposal and the applicable Procurement Documents, including any schedules or attachments to that offer.

**"Public Certificate"** means a digital certificate issued by the Hong Kong Post Certification Authority of the Postmaster General, Digi-Sign Certification Services Limited, or any other recognised certification authority as defined under the Hong Kong Electronic Transactions Ordinance (Cap. 553) from time to time.

**"Query"** means a query raised by a Proponent in relation to a Invitation to Provide a Proposal or a query raised by a Tenderer in relation to a Request for Quotation.

**"Quotation"** means a quotation (including, without limitation, any supplemental quotations thereto) and any other information, materials and documents submitted by a Tenderer in response to and in accordance with the terms of the relevant Request for Quotation and the applicable Procurement Documents, including any schedules or attachments to that quotation.

**"Registered Account"** means an account established by the Authority in connection with the ePROS Website to enable a user to use it for purposes set out in Clause 6.1(c) of the Terms of Supplier/Contractor Registration.

**"Registered Supplier/Contractor"** means a Supplier/Contractor who holds a Registered Account issued by the Authority.

**"Request for Quotation"** means an invitation to quote, and any schedules or attachments thereto, issued by the Authority inviting Quotations to be submitted by a Supplier/Contractor, in accordance with the request for quotation for any goods, services, materials or works that the Authority requires and, if applicable, includes all or any of the Revisions.

**"Response to Clarification"** means a Tenderer's response to a Clarification in respect of a Request for Quotation or a Tenderer's response to a Tender Clarification in respect of an Invitation to Tender or a Proponent's response to a Clarification in respect of an Invitation to Provide a Proposal .

**"Response to Prequalification Clarification"** means an Applicant's response to a Prequalification Clarification.

**"Response to Prequalification Queries"** means any response issued by the Authority to a Prequalification Query.

**"Response to Tender Queries"** means any response issued by the Authority to a Tender Query.

**"Response to Queries"** means any response issued by the Authority to a Query.

**"Revision"** means any written document issued by the Authority for the purposes of modifying, supplementing or amending any part of the Invitation to Provide a Proposal, Request for Quotation or Prequalification Invitation.

**"Submissions"** means all or any of the Tender Submissions, Proposals, Quotations and Prequalification Submissions.

**"Supplier/Contractor"** means a person, company, organisation, partnership or entity that carries out the business of providing goods, services, materials or works, which may be required by the Authority from time to time.

**"Supplemental Tenders"** means any document issued by a Tenderer that amends, alters or supplements any Tender already submitted by it to the Authority.

**"System"** means the electronic platform and all hardware, software, networks, technology, interfaces and any other information technology systems, that are owned, licensed, used, controlled and/or operated by us in relation to the ePROS Website. All references to the "ePRO Website" shall be deemed to include references to the "System".

**"Tender"** means the offer submitted by a Tenderer in response to and in accordance with the terms of the relevant Invitation to Tender, including and schedules or attachments to that offer and, if applicable, includes all or any of the Supplemental Tenders.

**"Tender Addendum"** or **"Tender Addenda"** means any written document issued by the Authority for the purposes of modifying, supplementing or amending any part of the Invitation to Tender.

**"Tender Clarifications"** means a tender clarification issued by the Authority, whereby the Authority has raised certain queries and is asking for certain clarification from the Tenderer with regard to the Tender Submission submitted by it.

**"Tender Notice"** means a notice issued by the Authority notifying organisations that an Invitation to Tender has been issued and inviting Suppliers/Contractors to download copies of the relevant Procurement Documents.

“Tender Query” means a query raised by a Tenderer in relation to an Invitation to Tender.

**"Tender Submissions"** means all or any documents submitted by a Tenderer in response to and in accordance with the requirements of the relevant Invitation to Tender and the applicable Procurement Documents and includes, without limitation, executed Confidentiality Undertaking, Responses to Clarifications and any other information, materials and documents submitted by the Tenderer (including, without limitation, any supplemental submissions thereto).

**"Tenderer"** means a Supplier/Contractor that has submitted a Tender Submission or Quotation.

**"Terms"** means these Terms and Conditions for use of the ePROS Website.

**"Terms of Supplier/Contractor Registration"** means the terms and conditions governing the use of a Registered Account and the application for registration for a Registered Account, which can be found at the ePROS Website.

**"user", "you" or "your"** means the user of the ePROS Website which includes any company, organisation, partnership or entity whose employee, officer, director, representative or agent is accessing or using the ePROS Website on its behalf.

**"Your Content"** means any data, material, communications or information, in any format whatsoever, including, without limitation, any data files, text, computer software, images, graphics, photos, videos, sound, audio files, recordings directories, documents, that is made available on or transmitted through the ePROS Website by you, your employees, directors, representatives or agents, including, without limitation, any Submissions, Response to Clarifications, Response to Prequalification Clarifications, Tender Queries or Prequalification Queries.

1.2 Whenever the words include, includes, including or in particular (or similar derivatives) are used in these Terms, they are deemed to be followed by the words without limitation.

1.3 Clause headings and the division of these Terms into separate parts are for ease of reference only and are not intended to be part of or to affect the meaning, interpretation, construction or enforceability of any of the terms and conditions contained in these Terms, and are not intended and shall not affect the application of any of the provisions to the entirety of these Terms. You shall be bound by and be fully obligated to comply with all the terms and conditions of these Terms.

## 2. **Introduction**

2.1 The ePROS Website is provided for the purposes of enabling the posting or transmission by us of any notice, information or document in relation to an intended procurement or prequalification exercise which includes, without limitation, any Tender Notices, Procurement

Documents, Letters of Clarification, Letters of Acceptance, Award Notices, Prequalification Notices, Prequalification Documents, or Letters of Notification, etc. in an electronic format for downloading and viewing by users, and for the electronic submission and uploading of any Submissions by Registered Suppliers/Contractors through the use of the ePROS Website and System ("ePROS").

**3. Acceptance of these Terms**

3.1 By accessing the ePROS Website, you agree to be bound by and accept these Terms, the Terms of Supplier/Contractor Registration and the Privacy Policy. Your access and use of the ePROS Website is contingent upon you first agreeing to be bound by these Terms, the Terms of Supplier/Contractor Registration and the Privacy Policy. You may not use the ePROS Website if you do not agree to accept all of these Terms, the Terms of Supplier/Contractor Registration and the Privacy Policy.

**4. Change of Terms**

4.1 We may amend the Terms, the Terms of Supplier/Contractor Registration and the Privacy Policy from time to time in our sole discretion without notice or liability to you. Any amended version of the Terms, the Terms of Supplier/Contractor Registration and the Privacy Policy shall be made available on the ePROS Website. You are responsible for regularly reviewing the Terms, the Terms of Supplier/Contractor Registration and the Privacy Policy. By continuing to access and use the ePROS Website following such amendments to the Terms, the Terms of Supplier/Contractor Registration and the Privacy Policy you agree to be bound by the latest version of the Terms, the Terms of Supplier/Contractor Registration and the Privacy Policy.

**5. Changes to the ePROS Website**

5.1 We may, in our sole discretion and at any time, without notice or any liability to you, add to, amend or remove any ePROS Website Content, or modify, discontinue, suspend or terminate the ePROS Website (or any part thereof).

**6. Procurement Documents and Prequalification Documents**

6.1 You acknowledge and agree that you must be a Registered Supplier/Contractor and must log onto your own Registered Account in order to download and view the ePROS Website Content.

6.2 You shall be solely and fully responsible for ensuring that you have the appropriate hardware, equipment and software that enables you to use the ePROS Website and/or to view or download any or all of the ePROS Website Content through the ePROS Website.

6.3 You acknowledge and agree that during the transmission or downloading of any ePROS Website Content through the ePROS Website, the ePROS Website may fail, be interrupted, breakdown, contain viruses, malfunction, be slow to process, contain errors or any other defects or defaults. No guarantee, representation, undertaking or warranty is provided by us to avoid, prevent or rectify such circumstances. In the event of any failure, interruption, breakdown, malfunction, slow processing, error or any other defect or default in the ePROS Website, you agree that you shall contact the Authority who may agree (in its sole discretion) to provide you with an alternate method to receive or view the ePROS Website Content of the relevant intended procurement or prequalification exercise, as the case may be.

6.4 The Authority shall in no way be responsible or liable to you for any losses, damages, costs or expenses incurred or suffered by you as a result of any delay, failure, interruption, breakdown, viruses, malfunctions, errors, defects or defaults in the transmission or downloading of any of the ePROS Website Content.

## **7. Submissions**

7.1 You acknowledge and agree that you must:

- (a) be a Registered Supplier/Contractor and must log onto your own Registered Account in order to submit or upload any Submissions through the ePROS Website;
- (b) you must hold a valid Public Certificate, which has been verified beforehand by the Authority, or a valid Private Certificate, as applicable and in accordance with Clause 13 below, in order to submit any Tender Submission or Prequalification Submission through the ePROS Website; and
- (c) you must use your relevant password in order to submit any Quotations or Proposals through the ePROS Website, or to submit any Tender Submissions or Prequalification Submissions that the Authority has decided, in its sole discretion, does not need to be submitted through the use of a Public Certificate or Private Certificate, in accordance with Clause 13.1(b) below.

7.2 You represent and warrant that:

- (a) you hold the full rights and title to all Submissions submitted, transmitted or uploaded by you through the ePROS Website, free of all encumbrances, liens and charges;
- (b) your Submissions are accurate and complete and shall not infringe upon the rights or Intellectual Property Rights of any third party; and
- (c) your Submissions have been internally approved and any digital signature used by you on the Submissions is valid and enforceable against you (the Tenderer or the Applicant, as the case may be).

7.3 The ePROS Website shall not accept and/or the Authority shall not be obligated to consider any Submissions where you are in breach of these Terms, including Clause 7.2 above. Without prejudice to the generality of the foregoing, if any Submission submitted through the use of the ePROS Website:

- (a) does not comply with any of the formatting requirements specified by the Authority;
- (b) is not in accordance with the Terms;
- (c) is contaminated with a virus or Disabling Code, or is otherwise corrupted, or not readable or printable into readable text; or
- (d) has not successfully completed its transmission by the relevant Closing Date;

then such Submission shall not be considered by the Authority and the Authority shall not be liable for any failure to consider your Submission in such circumstances.

7.4 It is your sole responsibility to ensure that your Submissions are fully compliant with our terms and conditions contained in the relevant Procurement Documents or Prequalification

Documents, as the case may be, and that your Submissions complete their transmission through the ePROS Website and are received by the Authority by the relevant Closing Date specified by the Authority.

- 7.5 You acknowledge and agree that any Submissions that are not fully and successfully transmitted to and received by the Authority by the relevant Closing Date shall be invalid. The Authority has no obligation to and shall not take into consideration any Submissions that are not fully and successfully transmitted to and received by the Authority by the relevant specified Closing Date.
- 7.6 All notices or messages that appear on the ePROS Website that display any date, time, time zone, or time remaining for any Submissions to be filed, are for reference purposes only. Notwithstanding the foregoing, any upload end time generated automatically by the Authority's System, which specifies exactly when the transmission of your Submission through the ePROS Website was completed, shall be final and binding and shall be relied on by the Authority to determine whether or not your Submission was submitted by the relevant Closing Date. Such upload end time will be shown in an acknowledgement notice displayed on the screen, The Tenderer or Applicant who has successfully completed the uploading and transmission of its Submission through the ePROS Website by the relevant Closing Date will receive an email confirming the same from the Authority sent to your Registered Account.
- 7.7 You shall be solely and fully responsible for ensuring that you have the appropriate hardware, equipment and software that enables you to access the ePROS Website, your Registered Account and the System, and to upload and submit your Submissions through the ePROS Website.
- 7.8 You acknowledge and agree that during the transmission, uploading and/or submission of any Submissions (or any other of Your Content) through the ePROS Website, the ePROS Website may fail, be interrupted, breakdown, contain viruses, malfunction, be slow to process, contain errors or any other defects or defaults. No guarantee, representation, undertaking or warranty is provided by us to avoid, prevent or rectify such circumstances. In the event of any such failure, interruption, breakdown, malfunction, slow processing, error or any other defect or default in the ePROS Website, you agree that you shall contact the Authority who may agree (in its sole discretion) to provide you with an alternate method to submit your Submissions to the Authority by the relevant Closing Date.
- 7.9 The Authority shall in no way be responsible or liable to you for any losses, damages, costs or expenses incurred or suffered by you as a result of any delay, failure, interruption, breakdown, viruses, malfunctions, errors, defects or defaults in the transmission or uploading of any Submissions or any other of Your Content.
- 7.10 All of Your Content, including any information, material and data in your Submissions shall be encrypted for security reasons when uploaded or submitted by you and transmitted through the ePROS Website and the System. You agree that any of Your Content or information, material and data that is so encrypted, shall be complete and accurate after decryption and, in any event, you accept any error, misstatement or omission that may occur upon decryption or encryption.
- 7.11 The results of Your Content, Submissions or any information, material or data that has been encrypted and decrypted, shall be used and relied on by the Authority as received by the



Authority, and you agree to be bound by such contents of Your Content, Submissions, or any information, material or data as decrypted and as received by the Authority.

- 7.12 Submissions that are successfully uploaded and transmitted through the ePROS Website shall be encrypted and electronically stored in a secure location, which shall be accessed by the Authority for processing and consideration.
- 7.13 You shall ensure that Your Content, including your Submissions, which are uploaded, transmitted or submitted through the ePROS Website must be in a standardised electronic format that allows the ePROS Website to capture, record, store, transmit and/or process it and any other formatting requirements specified by the Authority on the ePROS Website or the Procurement Documents or the Prequalification Documents.
- 7.14 YOU HEREBY WAIVE ANY AND ALL RIGHTS YOU MAY HAVE TO CHALLENGE THE VALIDITY OF OR ACCURACY OF ANY INFORMATION CONTAINED IN A PRIVATE CERTIFICATE OR PUBLIC CERTIFICATE, OR OF ANY SUBMISSIONS SUBMITTED BY YOU THROUGH THE EPROS WEBSITE, OR ANY CONTRACT THAT ARISES FROM SUCH SUBMISSIONS AND/OR OUR ACCEPTANCE OF SUCH, ON THE BASIS THAT THE DOCUMENT WAS NOT PHYSICALLY SIGNED BY YOU OR THAT THE PUBLIC CERTIFICATE, PRIVATE CERTIFICATE OR PASSWORD, AS APPLICABLE, WAS USED WITHOUT YOUR AUTHORISATION.

## **8. Tender Addendum, Revisions and Other Amendments to the Procurement Documents or Prequalification Documents**

- 8.1 The Authority may at any time issue one or more Tender Addenda, Revisions or any other amendments to the relevant Procurement Documents or Prequalification Documents, prior to the relevant Closing Date. The Authority shall send an email to your Registered Account on the ePROS Website once a Tender Addendum or Revision has been issued or any other amendments to the relevant Procurement Documents or Prequalification Documents have been made, and the date of sending such email will be deemed to be the effective date of such Tender Addendum, Revision or any amendment to the relevant Procurement Documents or Prequalification Documents,, as applicable ("**Amendment Date**"). The Authority shall in no way be liable in the event that you fail to receive any such email from the Authority.
- 8.2 You shall be fully responsible for checking the ePROS Website on a regular basis to ensure that you are kept up-to-date and aware of any Tender Addenda, Revisions or other amendments to the relevant Procurement Documents or Prequalification Documents,, and shall be responsible for ensuring that your Submissions fully comply with and take into account the Tender Addenda, Revisions or any other amendments to the relevant Procurement Documents or Prequalification Documents,. The Authority shall in no way be liable for any failure by you to take into account any Tender Addenda, Revisions or other amendments to the relevant Procurement Documents or Prequalification Documents, in your Submissions.
- 8.3 In the event that the Authority issues any relevant Tender Addendum, Revision or any other amendments to the relevant Procurement Documents or Prequalification Documents in accordance with Clause 8.1 above, you acknowledge and agree that:
- (a) all of your relevant Submissions submitted to the Authority before and/or after the relevant Amendment Date shall represent the full and entire offer made by you in response to the relevant Procurement Documents or Prequalification Documents, as applicable; or

- (b) if no amendments to Submissions are submitted by you to the Authority following the Amendment Date, then the relevant Submissions which were submitted by you prior to the relevant Amendment Date shall represent the full and entire offer made by you in response to the relevant Procurement Documents or Prequalification Documents, as applicable.

**9. Query, Response to Query, Tender Query, Response to Tender Query, Prequalification Query and Response to Prequalification Query**

9.1 You acknowledge and agree that you must be a Registered Supplier/Contractor and must log onto your own Registered Account in order to submit any Query, Tender Query or Prequalification Query through the ePROS Website.

9.2 You represent and warrant that your Queries, Tender Queries or Prequalification Queries have been internally approved and is valid and enforceable against you (the Proponent, the Tenderer or the Applicant, as the case may be).

9.3 The ePROS Website shall not accept and/or the Authority shall not be obligated to consider or provide any response to any Query, Tender Query or Prequalification Query where you are in breach of these Terms, including Clause 9.1 above. Without prejudice to the generality of the foregoing, if any Query, Tender Query or Prequalification Query submitted through the use of the ePROS Website:

- (a) does not comply with any of the formatting requirements specified by the Authority;
- (b) is not in accordance with the Terms;
- (c) is contaminated with a virus or Disabling Code, or is otherwise corrupted, or not readable or printable into readable text; or
- (d) has not successfully completed its transmission by the relevant deadline imposed by the Authority;

then such Query, Tender Query or Prequalification Query shall not be considered by the Authority and the Authority shall not be liable for any failure to consider or provide any response to your Query, Tender Query or Prequalification Query in such circumstances.

9.4 It is your sole responsibility to ensure that your Query, Tender Queries or Prequalification Queries are fully compliant with our terms and conditions contained in the relevant Procurement Documents or Prequalification Documents, as applicable, and that your Query, Tender Queries or Prequalification Queries complete their transmission through the ePROS Website and are received by the Authority by the relevant deadline specified by the Authority.

9.5 You acknowledge and agree that any Query, Tender Queries or Prequalification Queries that are not fully and successfully transmitted to and received by the Authority by the relevant deadline specified by the Authority shall be invalid. The Authority has no obligation to and shall not take into consideration any Query, Tender Queries or Prequalification Queries that are not fully and successfully transmitted to and received by the Authority by the relevant deadline specified by the Authority.

9.6 If applicable, the Authority will issue a Response to Queries or Response to Tender Queries to the relevant Procurement Documents or a Response to Prequalification Queries to the

Prequalification Documents prior to the relevant Closing Date. The Authority shall send an email to your Registered Account on the ePROS Website once a Response to Queries, Response to Tender Queries or a Response to Prequalification Queries has been issued, and the time and date of sending such email will be final and conclusive evidence of the Authority's issue of the relevant Response to Queries, Response to Tender Queries or Response to Prequalification Queries. The Authority shall in no way be liable in the event that you fail to receive any such email from the Authority.

- 9.7 You shall be fully responsible for checking the ePROS Website on a regular basis to ensure that you are kept up-to-date and aware of any Response to Queries, Response to Tender Queries or a Response to Prequalification Queries, and shall be responsible for ensuring that your Submissions fully comply with and take into account the Response to Queries, Response to Tender Queries or a Response to Prequalification Queries, as the case may be. The Authority shall in no way be liable for any failure by you to take into account any Response to Queries, Response to Tender Queries or a Response to Prequalification Queries in your Submissions.
- 9.8 In the event that the Authority issues any Response to Queries, Response to Tender Queries or Response to Prequalification Queries in accordance with Clause 9.6 above, you acknowledge and agree that:
- (a) all of your relevant Submissions submitted to the Authority before and/or after the date of the Response to Queries, Response to Tender Queries or the Response to Prequalification Queries, as the case may be, shall represent the full and entire offer made by you in response to the relevant Procurement Document, or the full and entire submission made by you in response to the relevant Prequalification Document, as applicable; or
  - (b) if no amendments to your Submissions are submitted by you to the Authority following the date of the Response to Queries, Response to Tender Queries or Response to Prequalification Queries, then the relevant Submissions which were submitted by you prior to the date of the Response to Queries, Response to Tender Queries or Response to Prequalification Queries shall represent the full and entire offer made by you in response to the relevant Procurement Documents or Prequalification Documents, as applicable.

**10. Clarifications, Tender Clarification, Response to Clarification, Prequalification Clarification and Response to Prequalification Clarification**

- 10.1 The Authority may, at any time prior to the issuance of the relevant Letter of Acceptance or Letter of Notification, issue one or more Clarifications, Tender Clarifications or Prequalification Clarification to you via the ePROS Website to your Registered Account. The Authority shall not be liable in the event that you fail to receive any Clarifications, Tender Clarification or Prequalification Clarification sent by the Authority to you in accordance with the foregoing. The Authority shall in no way be liable for any failure by you to take into account any Clarifications, Tender Clarification or Prequalification Clarification sent by it to you.
- 10.2 You shall be responsible for submitting your Response to Clarification or Response to Prequalification Clarification through the ePROS Website by the deadline imposed by the Authority as stated in the Clarification, Tender Clarification or Prequalification Clarification,

as the case may be. The Authority shall in no way be liable for any failure by you to submit a Response to Clarification or Response to Prequalification Clarification.

## **11. Letter of Clarification**

11.1 The Authority may, at any time prior to the issuance of the relevant Letter of Acceptance , issue one or more Letter of Clarifications to you via the ePROS Website to your Registered Account. The Authority shall not be liable in the event that you fail to receive any Letter of Clarification sent by the Authority to you in accordance with the foregoing. The Authority shall in no way be liable for any failure by you to take into account Letter of Clarification sent by it to you.

11.2 You shall be responsible for submitting your response to any Letter of Clarification through the ePROS Website by the deadline imposed by the Authority. The Authority shall in no way be liable for any failure by you to submit a response to any Letter of Clarification.

## **12. Result of the Intended Procurement or Prequalification Exercise**

12.1 The Authority will notify you the result of the intended procurement or prequalification exercise, as the case may be, via the ePROS Website.

12.2 Subject to Clause 12.3 below, the Authority may issue any Letter of Acceptance or Letter of Notification to you, as the case may be, via the ePROS Website to your Registered Account.

12.3 Any Letter of Acceptance , as the case may be, issued by the Authority to you, shall be subject to any relevant Letter of Clarification (if any) issued by the Authority and/or any relevant Response to Clarification submitted by you (if applicable) in accordance with these Terms.

12.4 In the event that the Authority issues any Letter of Acceptance to you in accordance with this Clause 12, you acknowledge and agree that you are legally bound by the Letter of Acceptance in accordance with its terms and are liable to perform your obligations as set out in the Letter of Acceptance, Letter of Clarification, the Procurement Documents and your Submissions.

12.5 In the event that the Authority issues any Letter of Notification to you in accordance with this Clause 12, you acknowledge and agree that you are legally bound by the result of the Prequalification Invitation in accordance with its terms.

## **13. Digital Certificates and Other Requirements**

13.1 Prior to submitting any Submissions (except for Proposals and Quotations), you must hold a valid Public Certificate, and must verify your Public Certificate through your Registered Account, unless:

(a) you do not have an office or presence in Hong Kong and are unable to obtain a Public Certificate, in which case you must apply for and obtain a valid Private Certificate in respect of each Submission (except for Proposals and Quotations) before you can submit them through the ePROS Website; or

(b) the Authority, in its sole discretion, decides that the relevant Submission does not need to be submitted through the use of a Public Certificate or Private Certificate (for example, in relation to Request for Quotation or Invitation to Provide a Proposal), and such is stated in writing by the Authority beforehand. In such an event, the relevant

Submission may be submitted through the use of a password in accordance with Clause 9.1(c) above.

- 13.2 A Private Certificate must only be used and applied for, and will only be accepted by the Authority, where you do not have an office or presence in Hong Kong and are unable to obtain a Public Certificate. Any application or use of a Private Certificate will be subject to a charge by the Authority's designated contractor and such charge will be subject to revision by the Authority from time to time and at any time without any prior notice to you. Private Certificates that are issued to you shall only be used by you for the purpose for which the Private Certificate has been issued and in accordance with any policies, procedures, terms and conditions provided in relation to the Private Certificates but not further or otherwise. A Private Certificate is not a recognized digital certificate under the Hong Kong Electronic Transactions Ordinance (Cap. 553). Use by you of a Private Certificate issued and assigned to you in relation to any Submission shall indicate that: (i) you intend to be legally bound by that Submission and all applicable terms and conditions thereto; (ii) the Private Certificate correctly identifies you, the Tenderer or the Applicant, as the case may be; and (iii) all information contained in the Private Certificate is correct and has not been altered or tampered with. All disclaimers and limitations of liability under Clauses 19 and 20 shall apply in relation to the registration and use of the Private Certificates.
- 13.3 Upon the submission of any Submissions (except for Proposals and Quotations) via the ePROS Website, you must use a valid Public Certificate or a Private Certificate, as applicable, in order to encrypt and digitally sign the Submissions (except for Proposals and Quotations).
- 13.4 You agree and acknowledge that all responses sent by you to the Authority in relation to any Procurement Document or Prequalification Document through the ePROS Website must be submitted with a valid Public Certificate or Private Certificate or password, as the case may be.
- 13.5 You are responsible for ensuring that you obtain or renew your Public Certificate or Private Certificate, as applicable, in time to submit any Submissions (except for Proposals and Quotations) through the ePROS Website prior to the relevant Closing Date, and the Authority shall not be liable or responsible for any failure of you to do so.

#### 14. **Hardcopy Submissions**

- 14.1 The Authority may, in its sole discretion, allow or require you to submit your Submissions (in whole or in part) in hard copy as well as through the ePROS Website, either by stating such in the Procurement Documents or Prequalification Documents or otherwise issuing a notice to you or on the ePROS Website. In the event that any of your Submissions (in whole or in part) are submitted by you to the Authority in hard copy, as well as electronically through the ePROS Website:
- (a) you represent, warrant and undertake that the hard copy version of your Submissions submitted by you shall be fully identical to the electronic version submitted by you through the ePROS Website;
  - (b) you acknowledge and agree that the electronic version submitted by you through the ePROS Website shall prevail in the event of any discrepancies between the electronic version or hard copy version of the Submissions;

- (c) you shall indemnify the Authority for any loss, damages, costs or expenses suffered by the Authority as a result of any discrepancies between the hard copy version and electronic version of the Submissions ; and
- (d) you shall duly sign all hard copy versions of any Submissions submitted by you to the Authority in hard copy.

## **GENERAL PROVISIONS**

### **15. Your General Obligations**

- 15.1 You agree to use the ePROS Website or any ePROS Website Content only for purposes that are permitted by:
  - (a) these Terms;
  - (b) Terms of Supplier/Contractor Registration;
  - (c) the Privacy Policy; and
  - (d) any applicable law, regulation or generally accepted practices or guidelines in the relevant jurisdiction.
- 15.2 You agree not to use the ePROS Website or any ePROS Website Content in any way that:
  - (a) is unlawful and/or breaches any applicable laws, regulations, codes, guidelines or orders; or
  - (b) contravenes or infringes upon any of our rights or any third parties' rights (including Intellectual Property Rights).
- 15.3 You agree that:
  - (a) you will not engage in any activity that interferes with or disrupts the ePROS Website or the System;
  - (b) you will not copy, reproduce, download, re-publish, sell, exploit or distribute any part of the ePROS Website or ePROS Website Content (subject to Clause 15.3(c) below);
  - (c) you shall only use the ePROS Website, your Registered Account or ePROS Website Content, and may only download and copy the ePROS Website Content, solely and exclusively as needed for the ePROS purposes;
  - (d) you will not use the ePROS Website, your Registered Account or any ePROS Website Content for any purpose not expressly permitted in the Terms;
  - (e) you, and your employees, sub-contractors, agents, representatives or affiliates, shall not install, import or transmit (and shall take reasonable measures to prevent against the installation, importation or transmission of) any Disabling Codes or similar malicious instructions, codes, techniques or devices capable of disrupting, disabling, damaging or shutting down the ePROS Website or System (or any part thereof) or any other telecommunications or computer systems, networks or devices, or otherwise attempt to gain unauthorised access to the ePROS Website, System or any

other telecommunications, computer systems, networks or devices connected to the ePROS Website;

- (f) you shall not take any action or allow any third party to take any action that would enable you, or any third party, to gain unauthorised access to, or to tamper with or use the System or any of our computer systems or networks;
- (g) you are solely responsible for, and the Authority has no responsibility to you or to any third party for any breach of your obligations under these Terms, and for the consequences of any such breach;
- (h) you shall not use the ePROS Website, your Registered Account or any ePROS Website Content to post, send, communicate, transmit, knowingly receive, upload or download any material that is (or engage in any behaviour that is or encourages any) harassing, disruptive, offensive, abusive, threatening, indecent, defamatory, obscene, unlawful, fraudulent, misleading, causes annoyance, or are intended to deceive, or are otherwise objectionable or unreasonable;
- (i) you shall not use the ePROS Website, your Registered Account or any ePROS Website Content to post, communicate or transmit any advertisements or other unsolicited commercial communications, or engage in spamming;
- (j) you shall not interfere with another persons use and enjoyment of the ePROS Website or ePROS Website Content;
- (k) you shall not commit fraud or otherwise impersonate any person or falsely state or misrepresent yourself as being or being affiliated with another person; and
- (l) we have the right at any time, and without notice, to monitor and record your access to and use of the ePROS Website, your Registered Account and ePROS Website Content.

## 16. **Your Content**

- 16.1 You agree that you are solely and fully responsible and liable for all of Your Content.
- 16.2 You represent and warrant that Your Content is accurate, current and complete and shall not infringe the rights of any third party (including Intellectual Property Rights).
- 16.3 You agree that we have the exclusive, worldwide, irrevocable, royalty-free and transferrable right to use, modify, copy, or create derivative works from Your Content unless express contrary provisions are clearly stated in the Procurement Documents or the Prequalification Documents.

## 17. **Intellectual Property Rights**

- 17.1 You acknowledge and agree that the Authority and/or its licensors or contractors own all legal rights, title and interest, including any Intellectual Property Rights, in and to the ePROS Website, the System, the ePROS Website Content and all Procurement Documents and Prequalification Documents.
- 17.2 You shall not modify, copy, rent, lease, loan, sell, distribute or create derivative works based on the ePROS Website Content or Procurement Documents or Prequalification Documents

(either in whole or in part) unless expressly authorised under these Terms or by the Authority beforehand in writing.

17.3 Nothing in these Terms shall give you a right to use any of the Authority's trade names, trade marks, service marks, logos or domain names for any purpose whatsoever.

17.4 You agree that you shall not remove, obscure, or alter any proprietary rights notices (including copyright and trade mark notices) which may be affixed to or contained within the ePROS Website, ePROS Website Content or Procurement Documents or the Prequalification Documents.

## 18. **Hyperlinks**

18.1 The ePROS Website may include hyperlinks to other websites, content or resources, which are hosted, offered or provided by third parties unrelated to the Authority. You understand and agree that:

(a) the Authority has no control over and does not monitor such third party websites, content, or resources;

(b) the Authority makes no guarantee or warranty, and is not responsible for any such external sites, content or resources (or any products, goods or services promoted, referred to or offered on such external sites or resources); and

(c) the Authority does not endorse any websites linked to the ePROS Website, or any advertising, products, goods, services or other materials on or available through such websites or resources.

18.2 YOU UNDERSTAND AND AGREE THAT YOU ACCESS SUCH EXTERNAL WEBSITES, CONTENT OR RESOURCES AT YOUR OWN RISK, AND THE AUTHORITY SHALL NOT BE RESPONSIBLE OR LIABLE FOR ANY LOSS OR DAMAGE, WHATSOEVER (WHETHER INDIRECT, DIRECT OR CONSEQUENTIAL), IN RELATION TO THIRD PARTY WEBSITES, CONTENT OR RESOURCES, OR GOODS, SERVICES OR MATERIAL POSTED, VIEWED, ACCESSED, ADVERTISED, PROVIDED, REFERRED TO OR MADE AVAILABLE VIA SUCH EXTERNAL WEBSITES OR RESOURCES.

## 19. **Warranties and Disclaimers**

19.1 The ePROS Website Content is provided for your general reference only, and is not intended to amount to any advice on which you should rely. You must obtain professional or specialist advice before taking or refraining from taking any action based on the ePROS Website Content. You are responsible to ensure that your use of the ePROS Website Content and/or ePROS Website complies with your requirements and all applicable legal requirements.

19.2 YOU EXPRESSLY UNDERSTAND AND AGREE THAT YOUR USE OF THE EPROS WEBSITE, EPROS WEBSITE CONTENT AND YOUR REGISTERED ACCOUNT, AND YOUR PARTICIPATION IN THE APPLICATION AND REGISTRATION PROCESS FOR A REGISTERED ACCOUNT, ARE AT YOUR SOLE RISK AND THAT SUCH IS PROVIDED "AS IS" AND "AS AVAILABLE".

19.3 TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE AUTHORITY EXPRESSLY DISCLAIMS ALL WARRANTIES AND CONDITIONS OF ANY KIND,



WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, COMPATIBILITY, SECURITY, COMPLETENESS AND ACCURACY.

19.4 WITHOUT PREJUDICE TO THE GENERALITY OF CLAUSE 19.3 ABOVE, THE AUTHORITY MAKES NO REPRESENTATIONS OR WARRANTIES:

- (A) AS TO THE ACCURACY, QUALITY, COMPLETENESS, CURRENTNESS, ADEQUACY, RELIABILITY OR VALIDITY OF ANY INFORMATION OR MATERIAL PROVIDED ON OR THROUGH THE EPROS WEBSITE, YOUR REGISTERED ACCOUNT AND/OR DURING YOUR REGISTRATION AND APPLICATION PROCESS FOR A REGISTERED ACCOUNT, INCLUDING, WITHOUT LIMITATION, THE EPROS WEBSITE CONTENT;
- (B) THAT THE EPROS WEBSITE, EPROS WEBSITE CONTENT OR REGISTERED ACCOUNT WILL MEET YOUR REQUIREMENTS, OR ARE FREE OF DEFECT, ERROR, OMISSION, VIRUS OR ANYTHING WHICH MAY CHANGE, ERASE, ADD TO OR DAMAGE YOUR SOFTWARE, DATA OR EQUIPMENT;
- (C) THAT YOUR USE OF THE EPROS WEBSITE, EPROS WEBSITE CONTENT OR REGISTERED ACCOUNT, OR THE APPLICATION AND REGISTRATION PROCESS FOR A REGISTERED ACCOUNT, WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE; OR
- (D) THAT DEFECTS IN THE OPERATION OR FUNCTIONALITY OF THE EPROS WEBSITE, EPROS WEBSITE CONTENT, YOUR REGISTERED ACCOUNT OR THE APPLICATION AND REGISTRATION PROCESS FOR A REGISTERED ACCOUNT, WILL BE CORRECTED.

19.5 ANY MATERIALS, INCLUDING EPROS WEBSITE CONTENT, DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE EPROS WEBSITE OR YOUR REGISTERED ACCOUNT IS DONE AT YOUR OWN DISCRETION AND RISK AND YOU SHALL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR OTHER DEVICES OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOADING OF ANY SUCH MATERIAL.

## 20. **Limitation of Liability**

20.1 Nothing in this Clause 20.1, or Clause 19 above, shall exclude or restrict any warranty or liability:

- (a) for death or personal injury caused by the Authority's negligence;
- (b) for fraud or fraudulent misrepresentation; or
- (c) that may not be lawfully excluded or limited by applicable law.

Only the limitations and/or exclusions that are lawful under the applicable law will apply, and the Authority's liability will be limited to the maximum extent permitted by the applicable law.

- 20.2 THE AUTHORITY SHALL NOT BE LIABLE TO YOU IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY OR OTHERWISE FOR ANY LOSS WHATSOEVER (INCLUDING WHETHER GENERAL, SPECIAL, INDIRECT, DIRECT, NOMINAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL), INCLUDING LOSS OF PROFIT; LOSS OF REVENUE; LOSS OF TIME; LOSS OF ANTICIPATED SAVINGS; LOSS OF OPPORTUNITY; LOSS OR CORRUPTION OF DATA; LOSS OF USE; LOSS OF BUSINESS; WASTED EXPENDITURE; LOSS OF OR DAMAGE TO PHYSICAL PROPERTY; BUSINESS INTERRUPTION; LOSS OF OR DAMAGE TO GOODWILL; OR COST OF PROCURING SUBSTITUTE SERVICES, WHICH MAY ARISE IN RELATION TO THESE TERMS, THE TERMS OF SUPPLIER/CONTRACTOR REGISTRATION, THE EPROS WEBSITE CONTENT, THE EPROS WEBSITE, YOUR CONTENT OR YOUR REGISTERED ACCOUNT WHETHER OR NOT THE AUTHORITY WERE ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH LOSS.
- 20.3 WITHOUT PREJUDICE TO CLAUSE 19 OR THE GENERALITY OF CLAUSE 20.2, THE AUTHORITY SHALL NOT BE LIABLE TO YOU FOR ANY LOSS (WHETHER SPECIAL, INDIRECT, DIRECT, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL), WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), EQUITY OR OTHERWISE, OR ANY OTHER LOSS RESULTING FROM OR IN RELATION TO:
- (A) YOUR USE, ACCESS OR INABILITY TO USE OR ACCESS THE EPROS WEBSITE, EPROS WEBSITE CONTENT, YOUR CONTENT, YOUR REGISTERED ACCOUNT OR THE APPLICATION AND REGISTRATION PROCESS FOR A REGISTERED ACCOUNT;
  - (B) ANY CHANGES MADE BY THE AUTHORITY TO THE EPROS WEBSITE, EPROS WEBSITE CONTENT, YOUR REGISTERED ACCOUNT OR THE APPLICATION AND REGISTRATION PROCESS FOR A REGISTERED ACCOUNT, OR FOR ANY PERMANENT OR TEMPORARY CESSATION (IN WHOLE OR IN PART) IN THE PROVISION OF THE EPROS WEBSITE, THE EPROS WEBSITE CONTENT, YOUR REGISTERED ACCOUNT OR THE APPLICATION AND REGISTRATION PROCESS FOR A REGISTERED ACCOUNT;
  - (C) ANY DELETION OF, CORRUPTION OF OR FAILURE TO STORE ANY OF YOUR CONTENT AND OTHER COMMUNICATIONS DATA MAINTAINED OR TRANSMITTED BY YOU THROUGH THE USE OF THE EPROS WEBSITE OR REGISTERED ACCOUNT OR DURING THE APPLICATION AND REGISTRATION PROCESS FOR A REGISTERED ACCOUNT;
  - (D) YOUR FAILURE (OR ANY OF YOUR EMPLOYEES, OFFICERS, MEMBERS, OWNERS, REPRESENTATIVES OR AGENTS' FAILURE) TO KEEP ANY PASSWORD, TOKEN OR ACCOUNT DETAILS REQUIRED TO ACCESS YOUR REGISTERED ACCOUNT OR THE EPROS WEBSITE, CONFIDENTIAL AND SECURE;
  - (E) ANY THIRD PARTY MATERIALS ACCESSED, VIEWED, DOWNLOADED, USED, RELIED ON OR OTHERWISE OBTAINED BY YOU IN RELATION TO OR VIA THE EPROS WEBSITE, YOUR REGISTERED ACCOUNT OR DURING

THE APPLICATION AND REGISTRATION PROCESS FOR A REGISTERED ACCOUNT, OR THE EPROS WEBSITE CONTENT;

- (F) ANY STATEMENTS MADE BY, OR THE CONDUCT OF, ANY THIRD PARTY ON OR THROUGH THE EPROS WEBSITE; OR
- (G) VIOLATION OF YOUR INTELLECTUAL PROPERTY RIGHTS BY ANY THIRD PARTY.

20.4 Clause 20.2 and 20.3 shall apply irrespective of whether or not the Authority has been advised or should have been aware of the possibility of any such losses arising.

## **21. Indemnity**

21.1 You hereby agree to indemnify, defend and hold harmless the Authority, its employees, contractors, partners, officers, directors, agents, affiliates, and licensors (“**the Indemnified Parties**”) from and against all Losses that may arise directly or indirectly out of or in connection with:

- (a) any breach or non-compliance by you of any of these Terms, Terms of Supplier/Contractor Registration or applicable policies and terms and conditions;
- (b) your use of the ePROS Website, ePROS Website Content or your Registered Account;
- (c) Your Content, including:
  - (i) any use by the Authority or other third parties of Your Content;
  - (ii) any claim that Your Content violates any applicable laws or infringes the rights of any third party (including a third party's Intellectual Property Rights);
- (d) any violation, contravention, breach or infringement of the Authority's or any third party's Intellectual Property Rights, or the unauthorised use or misappropriation of any trade secret or confidential information of the Authority or any third party, caused by you, or your employees, officers, members, owners, agents or affiliates; or
- (e) any breach by you of the Hong Kong Personal Data (Privacy) Ordinance (Cap. 486) and/or any other applicable data protection laws.

21.2 You shall cooperate fully with the Authority in the defence of any claim made by any third parties. The Authority reserves the right to assume the exclusive defence and control of any matter or claim that is subject to indemnification by you in accordance with Clause 21.1 above. You hereby acknowledge that damages for improper use of the ePROS Website or any ePROS Website Content may be irreparable, and the Authority is entitled to seek equitable relief, including injunctions and preliminary injunctions, in addition to all other remedies.

## **22. Personal Data Privacy**

22.1 Any personal data that may be collected by the Authority shall be governed by the Privacy Policy and this Clause 22. In the event of any inconsistencies between this Clause 22 and the

terms of the Privacy Policy, this Clause 22 shall take precedence over any conflicting provision in the Privacy Policy.

22.2 You shall:

- (a) fully comply with the Hong Kong Personal Data (Privacy) Ordinance (Cap. 486) and/or any other applicable data protection laws in respect of any personal data provided by you to us;
- (b) ensure (and you hereby represent and warrant) that we have the right and the required consent to use any personal data provided by you to us for the purposes of:
  - (i) processing your application for a Registered Account;
  - (ii) managing or administering your Registered Account;
  - (iii) providing you with any services related to your Registered Account or the ePROS Website;
  - (iv) processing, assessing, evaluating or communicating with you with regard to any Submissions submitted by you or any Procurement Documents or Prequalification Documents;
  - (v) any site visits or briefings organised by the Authority which your employees, officer, owners, members, representatives or agents may attend and, if necessary, application for permits for the above purposes;
  - (vi) to communicate with you in respect of any Procurement Documents, Letter of Clarification, Letter of Acceptance, Prequalification Documents, Letter of Prequalification Clarification and Letter of Notification;
  - (vii) to communicate with you in respect of your Registered Account or the ePROS Website and any related services;
  - (viii) the procurement process contemplated under the ePROS; and
  - (ix) any purpose directly related to any of the above.

## 23. **Termination**

23.1 We may terminate your use of and access to any part of or all of the ePROS Website or any related services at any time, with immediate effect and without notice to you, for any reason whatsoever, including without limitation, due to:

- (a) your breach these Terms;
- (b) the Authority being unable to verify or authenticate any information provided by you;
- (c) if the Authority believes that your actions or omissions may give rise to any liability, or are otherwise objectionable, inappropriate or illegal.

23.2 Upon termination in accordance with Clause 23,1above, you agree to immediately cease using or accessing the ePROS Website or any related services (as required by the Authority), and shall immediately destroy all material obtained from the ePROS Website and any copies

thereof. Termination of your right to use or access (in whole or in part) the ePROS Website or any related services, shall be without prejudice to any other rights or remedies available to the Authority against you.

23.3 This Clause 23 is in addition and without prejudice to the provision concerning "Termination and Suspension of Your Registered Account" in the Terms of Supplier/Contractor Registration.

24. **Governing Law and Jurisdiction**

These Terms are governed by the laws of Hong Kong, and are subject to the exclusive jurisdiction of the courts of Hong Kong.

25. **Language**

These Terms are drafted in the English language. If these Terms are translated into any other language, such translation is provided for reference purposes only and the English language version shall prevail.

26. **Notices**

All legal notices or demands to or upon you shall be effective and deemed to be in writing if transmitted to you through the use of the ePROS Website, or otherwise delivered personally, sent by courier, certified mail, by facsimile or email to the last-known correspondence address, fax number or email address provided by you to us, or by posting such notice or demand on an area of the ePROS Website that is publicly accessible, without a charge. You shall be deemed to have received any such notice, if and when:

- (a) the Authority are able to demonstrate that the notice has been sent to you; or
- (b) immediately upon the Authority posting such notice on an area of the ePROS Website that is publicly accessible without charge,

whichever date is earlier.

27. **Force Majeure**

Without prejudice to the generality of Clauses 19 and 20.1 above, under no circumstances shall the Authority be liable for any delay or failure or disruption in relation to the ePROS Website, your Registered Account or any related services, including the application and registration process for a Registered Account, or the ePROS Website Content or Your Content resulting directly or indirectly from anything beyond our reasonable control, including without limitation, Internet failures, computer, telecommunications or any other equipment failures, electrical power failures, labour disputes, war, riots, civil disturbances, shortages of labour or materials, fires, flood, typhoons, earthquakes, explosions, acts of God, actions or orders issued by governmental or regulatory authorities or any courts or tribunal with applicable jurisdiction, or non-performance of third parties.

28. **Severability**

If any of these Terms are held invalid, illegal or unenforceable by any court or tribunal of competent jurisdiction, it will be severed and the remaining terms will continue in full force and effect as if these Terms had been made without the invalid, illegal or unenforceable terms.

Each clause and sub-clause herein shall be treated as a separate and independent provision, and the unenforceability of any one clause shall in no way impair the enforceability of any of the other clauses herein.

29. **Entire Agreement**

These Terms contain the entire agreement between you and the Authority and replaces all previous written or oral agreements relating to its content.

30. **Waiver**

A failure or delay by the Authority to exercise any right or act upon a breach under these Terms will not be a waiver of that right or breach. Any waiver by the Authority of any of its rights or of a breach of these Terms must be in writing, and such waiver is limited to the particular right or breach stated therein.

31. **Assignment**

You may not transfer any of your rights or obligations under these Terms without the written consent of the Authority. The Authority may transfer its rights or obligations or both to any person or entity, including any of its affiliates, without your consent.

32. **No Partnership or Agency**

Nothing in these Terms is intended to, or shall be deemed to, establish any partnership or joint venture between you or the Authority, constitute you as the agent of the Authority, or authorise you to make or enter into any commitments for or on behalf of the Authority.