

**Airport Authority Hong Kong**  
**Terms and Conditions for Registration of Retailers and Food and Beverages (“F&B”) Operators**

PLEASE READ THE TERMS AND CONDITIONS SET OUT BELOW, WHICH APPLY TO YOUR USE OF YOUR REGISTERED ACCOUNT AND YOUR APPLICATION FOR REGISTRATION OF A REGISTERED ACCOUNT VIA THIS WEBSITE (“ePROS WEBSITE”). BY PROCEEDING WITH THE REGISTRATION PROCESS, YOU HEREBY ACCEPT THESE TERMS AND CONDITIONS AND AGREE TO BE BOUND BY THEM.

**1. Definitions**

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

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

“**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 Tender Documents.

“**ePROS Website Terms of Use for Retailers and F&B Operators**” means the terms and conditions for the use of ePROS Website by Retailers and F&B Operators, which can be found at the ePROS Website.

“**Intellectual Property Rights**” means any trademarks, 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 Tender**” means an invitation to tender, and any schedules or attachments thereto, issued by the Authority inviting Tender Submissions to be submitted by a Retailer/ F&B Operator in accordance with the invitation to tender and, if applicable, includes all or any of the Tender Addenda.

“**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).

“**Privacy Policy**” means the Authority's privacy policy, which can be found at ePROS Website.

“**Private Certificate**” means a digital certificate issued by the Authority’s designated contractor.

“**Registered Account**” means an account established by the Authority in connection with the ePROS Website to enable a user to use it for the purposes set out in Clause 6.1(c) hereof.

**“Registered Retailer/ F&B Operator”** means a Retailer/ F&B Operator who holds a Registered Account issued by the Authority.

**“Response to Tender Clarification”** means a Tenderer’s response to a Tender Clarification in respect of an Invitation to Tender.

**“Retailer/ F&B Operator”** means a person, company, organisation, partnership or entity that operates a retail or F&B business.

**“Submissions”** or **“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 Tender Documents and includes, without limitation, Responses to Tender Clarifications and any other information, materials and documents submitted by the Tenderer.

**“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 “ePROS 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 appendices or attachments to that offer.

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

**“Tender Clarification”** 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 Documents”** means all or any documents issued by the Authority in relation to an intended tender and includes, without limitation, any Invitation to Tender, Tender Clarifications, instructions to tenderers, ancillary letters, forms and documents, etc. and any and all schedules and attachments to such documents.

**“Tender Enquiry”** means an enquiry raised by a Tenderer in relation to an Invitation to Tender.

**“Tenderer”** means a Retailer/ F&B Operator that has submitted a Tender Submission.

**“Terms”** means these Terms and Conditions that apply to Registered Retailer/ F&B Operator, Registered Accounts and your application for a Registered Account.

**“User”, “you”** or **“your”** means the user of the ePROS 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 or Tender Enquiries.

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 tender exercise which includes, without limitation, any Tender Documents, in an electronic format for downloading and viewing by users, and for the electronic submission and uploading of any Submissions by Registered Retailers/ F&B Operators through the use of the ePROS Website (“ePROS”).

## **3. Acceptance of these Terms**

- 3.1 By proceeding to set up a Registered Account, you agree to be bound by and accept these Terms, the ePROS Website Terms of Use for Retailers and F&B Operators and the Privacy Policy. Your use of your Registered Account and/or your application for registration for a Registered Account is contingent upon you first agreeing to be bound by these Terms, the ePROS Website Terms of Use for Retailers and F&B Operators and the Privacy Policy. You may not use the ePROS Website and apply for or hold a Registered Account if you do not agree to accept all of these Terms, the ePROS Website Terms of Use for Retailers and F&B Operators and the Privacy Policy. Terms as set out in the Invitation to Tender shall prevail in the event of any discrepancies between these Terms, the ePROS Website Terms of Use for Retailers and F&B Operators and the terms of the Invitation to Tender.

## **4. Change of Terms**

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

## **5. Applying for a Registered Account**

- 5.1 To apply for a Registered Account, you must complete the application and registration process as provided for in our ePROS Website.
- 5.2 We may, in our sole discretion and at any time, without notice or any liability to you, add to, amend, cancel or remove the application and registration process for a Registered Account on our ePROS Website.
- 5.3 The Authority has the right, in its sole discretion, to accept or decline any application to open a Registered Account.

- 5.4 You agree that in order to apply for a Registered Account, you must:
- (a) be a duly registered and/or established business, institution or legal entity under applicable law;
  - (b) establish your Registered Account in your full legal name as shown on your most up-to-date certificate of incorporation or business registration certificate, or any legally recognised equivalent document in your place of incorporation;
  - (c) provide us with your full principal office address and contact details, including an email address; and
  - (d) provide us with any other information or documents that may be required by us from time to time.
- 5.5 We may require you, at any time (whether before or after the establishment of your Registered Account), to provide any other information as required by us, or as required by applicable law or a competent government body, and you must comply with our request promptly and fully.

## **6. Your Warranties, Representations and Undertakings**

- 6.1 You agree that:
- (a) you cannot download any Tender Documents or submit any Submissions through the ePROS Website, unless you are a Registered Retailer/ F&B Operator and you have logged into your Registered Account;
  - (b) you must apply for and hold a valid Private Certificate, and must verify your Private Certificate through your Registered Account, before you can submit any Submission through the ePROS Website, unless the Authority, in its sole discretion, decides that the relevant Submission does not need to be submitted through the use of a Private Certificate and such is stated in writing by the Authority beforehand;
  - (c) you shall only use your Registered Account for the ePROS purposes, including for the submission of any Submissions; to download or view any Tender Documents or any other documents issued by us and made available to you via the ePROS Website; to provide or update any information, documents or details required by us; for any purpose directly related to the foregoing but not further or otherwise;
  - (d) you shall only use your Registered Account in accordance with these Terms, the ePROS Website Terms of Use for Retailers and F&B Operators and any other terms and conditions issued by the Authority in relation to the Registered Account;
  - (e) any information you provide or submit to the Authority in relation to or via your Registered Account (including any application for a Registered Account) shall be current, true, accurate, complete and correct;
  - (f) you shall notify us promptly upon any changes to your details and/or any other information provided by you to us in relation to the Registered Account;
  - (g) you will not allow or suffer your Registered Account to be used by another business,

institution, individual or legal entity;

- (h) you shall at all times keep your password, token and login details for your Registered Account secure and confidential to prevent any unauthorised access, use or submissions;
- (i) without prejudice to Clause 6.2 and 6.3 below, you shall notify us immediately in writing upon becoming aware of any unauthorised use of your password, token or access to your Registered Account; and
- (j) you shall ensure that all of your employees, officers, directors, representatives or agents comply with this Clause 6.1.

6.2 You shall be solely and fully responsible for all activities that occur under your Registered Account, and the Authority shall not be responsible or liable to you or any third party for any loss or damage, whatsoever, as a result of any unauthorised access to your Registered Account caused by your actions or omissions, including your failure (or any of your employees, officers, members, owners, representatives or agents' failure) to keep passwords and token in respect of your Registered Account confidential. This applies irrespective of whether or not the Authority has been notified of such unauthorised access in accordance with Clause 6.1(i).

6.3 You shall remain fully responsible for and be bound by the actions of any person who uses your password and/or token and/or who submits any documents, or submissions through the use of your password or token or Registered Account, regardless of whether or not such persons are in fact authorised to do so.

## **7. Termination or Suspension of Your Registered Account**

7.1 The Authority has the right, in its sole discretion, with or without notice, to suspend, terminate or impose any limitations on your Registered Account, and any privileges with respect to your Registered Account.

7.2 Upon termination or suspension in accordance with Clause 7.1 above, you agree to immediately cease using or accessing your Registered Account or any related services (as required by the Authority). Any termination, suspension or limitation to your right to use or access (in whole or in part) your Registered Account or any related services, shall be without prejudice to any other rights or remedies available to the Authority against you.

## **8. Personal Data Privacy**

8.1 Any personal data that may be collected by the Authority shall be governed by the Privacy Policy and this Clause 8. In the event of any inconsistencies between this Clause 8 and the terms of the Privacy Policy, this Clause 8 shall take precedence over any conflicting provision in the Privacy Policy.

8.2 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;
- (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 or in connection with any Tender Documents,;
- (vii) to communicate with you in respect of your Registered Account or the ePROS Website and any related services;
- (viii) any purpose directly related to any of the above.

## **9. Hyperlinks**

9.1 The ePROS Website may include hyperlinks to other websites, contents 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, contents, or resources;
- (b) the Authority makes no guarantee or warranty, and is not responsible for any such external sites, contents 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.

9.2 You understand and agree that you access such external websites, contents 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, contents or resources, or goods, services or materials posted, viewed, accessed, advertised, provided, referred to or made available via such external websites or resources.

## **10. Warranties and Disclaimers**

10.1 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.

- 10.2 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”.
- 10.3 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.
- 10.4 Without prejudice to the generality of Clause 10.3 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.
- 10.5 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.

## **11. Limitation of Liability**

- 11.1 Nothing in this Clause 11, or Clause 10 above, shall exclude or restrict any warranty or liability 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.
- 11.2 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 ePROS Terms of Use, 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.

11.3 Without prejudice to Clause 10 or the generality of Clause 11, 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.

11.4 Clause 11.2 and 11.3 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.

## **12. Indemnity**

12.1 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, ePROS Website Terms of Use for Retailers and F&B Operators or any other 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.

12.2 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 12.1 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.

### **13. 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.

### **14. Language**

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

### **15. 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 is 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.

**16. Force Majeure**

Without prejudice to the generality of Clauses 10 and 11 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.

**17. 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.

**18. Entire Agreement**

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

**19. 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.

**20. Assignment**

You shall 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.

**21. No Partnership or Agency**

Nothing in these Terms is intended to, or shall be deemed to, establish any partnership or joint venture between you and 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.