

**AGREEMENT FOR SUPPLY OF
[.....]**

**BETWEEN
[LEGAL NAME OF EMPLOYER]**

**AND
[LEGAL NAME OF CONTRACTOR]**



SECTION A

CONDITIONS OF TENDER



SECTION A - CONDITIONS OF TENDER

TENDER REFERENCE NO. _____

TENDER TITLE _____

CONDITIONS OF TENDER

Unless the contrary is stated, terms defined in the Conditions of Contract (Version 01/07) will have the same meaning in this Conditions of Tender. References to Clauses refer to clauses of these Conditions of Tender.

The Tender Documents issued consist of:

- (a) Conditions of Tender;
Annex 1 Schedule of Submission;
Annex 2 Tender Particulars;
- (b) Form of Tender;
- (c) Articles of Agreement;
- (d) Conditions of Contract (Version 01/07);
- (e) Special Conditions of Contract;
Annex 3 General Specifications:
 - Schedule I Rules and Regulations;
 - Schedule II Address of Premises;
 - Schedule III Scope of Services;
 - Schedule IV Monthly Report;
 - Schedule V Service Level Agreement;Annex 4 Particular Specifications:
 - Appendix I Declaration and Undertaking;
 - Appendix II Address for Notice;
 - Appendix III Schedule of Rates;
 - Appendix IV Schedule of Machinery Tools, and Equipment;
 - Appendix V Schedule of Materials and Chemicals;
 - Appendix VI List of Qualifications, Training and Licenses;
 - Appendix VII Optional Items;
 - Appendix VIII Performance Bond; and
- (f) Any addendum issued by the Employer's Representative prior to the Tender Submission Date.

2. The Tender shall consist of one original and one duplicate copy of each of the completed Tender Documents and the documents specified in the Schedule of Submission. The Tender must be placed in ONE sealed envelope without window with all of the details set out in Clause 1 of the Tender Particulars (as defined therein) clearly stated on the face of the envelope. The envelope containing the Tender must be deposited in the tender box located at the address listed in Clause 1(b) of the Tender Particulars.

SECTION A - CONDITIONS OF TENDER

2. Contractor's company chop shall be chopped at the bottom right hand corner of every page of the Tender Documents.
3. Tender Sum and Rates (as defined in Appendix III Schedule of Rates) shall be in Hong Kong currency (HK\$).
4. The completed Tender must be received on or before the Tender Submission Date noted in Clause 1(e) of the Tender Particulars. Late submission may not be considered.
6. The Tender must remain open for consideration (unless previously withdrawn) for a period of 120 (one hundred and twenty) calendar days from the Tender Submission Date and it shall remain binding upon the Tenderer and may be accepted at any time before the expiration of that period. Once a Tender is accepted, the Tender Documents will form a binding contract between the Tenderer and the Employer. If Tenderer receives no notification from the Employer or the Employer's Representative of the acceptance of his Tender within 120 (one hundred and twenty) calendar days from the Tender Submission Date he shall treat his Tender as being rejected.
7. No alteration, erasure, qualification of, or in, to the text of the Tender is allowed. Any Tender containing such alternation or erasure may not be considered.
8. Should the Tenderer for any reason whatsoever be in doubt as to the precise meaning of any item or figure, he must address enquiries in writing to the person and address listed in Clause 2 of the Tender Particulars, at least 3 (three) Working Days before the Tender Submission Date in order that the correct meaning may be clarified before the Tender Submission Date. Any such clarification made by the Employer's Representative may, at the Employer's Representative's absolute discretion, be communicated in writing to all Tenderer's that the Employer or Employer's Representative is aware of. Late notification or enquiries (i.e. enquiries received later than the 3 (three) Working Days before the Tender Submission Date) will not be entertained.
9. Subject to this Clause 9, Clause 8 and 11(d), the Tender is accepted on an "as is" basis. The Tenderer is deemed to have checked the Tender, including the number of pages of the Tender Documents. In the event of the Tenderer discovering a genuine error in the Tenderer's submission or upon receiving clarification of any item or figure from the Employer's Representative under Clause 10, the Tenderer may notify the Employer's Representative to the error by a written letter to the person and address listed in Clause 2 of the Tender Particulars and an amendment submitted which, subject to the decision of the Employer's Representative, may be accepted, provided that the amendment shall have been deposited on or before the Tender Submission Date.
10. No liability shall be admitted, nor claim allowed, in respect of errors due to mistakes in the Tender that should have been rectified in the manner described in Clauses 8 or 9 above.
11. Tender Price
 - (a) Tenderer shall state in the Form of Tender the Tender Sum in accordance to the Schedule of Rates. Such price shall be calculated in accordance with

SECTION A - CONDITIONS OF TENDER

the quantity and scope as stated in the Tender Documents together with the respective rates quoted by the Tenderer.

- (b) In the absence of any Tender Sum in the Form of Tender the Tender shall not be considered.
 - (c) Tenderer shall state in the Schedule of Rates the rates for each item of Services specified. The rates used shall be the total inclusive rate for complete and proper execution of the particular items to which they apply, including, but not limited, to costs associated with insurance, transport, materials, tools, equipment, hardware, uniforms, protective clothing and equipment, delivery, freight, packaging, testing, certification, contribution to profit, overheads, compliance with health and safety and all other statutory legislation and all other costs of whatsoever nature incurred by the Contractor. In the absence of any sum against any item or items, any monetary cost attributable thereto shall be deemed to have been included in the Tender Sum or the Schedule of Rates.
 - (d) Prices submitted by the Tenderer will be subject to scrutiny and arithmetical verification by the Employer's Representative. Should the Tenderer make any errors in his extensions and/or computations or in carrying forward, he shall be given details of such errors by the Employer's Representative and be offered an opportunity of confirming or withdrawing his offer. Should he elect to confirm his original offer and absorb the arithmetical errors, he should submit an endorsement in writing, to the person and address listed in Clause 2 of the Tender Particulars to the effect that all rates or prices inserted in his priced items are to be considered as reduced or increased in the same proportion as the corrected total of priced items of such items without prejudice to the original Tender offer. Should he elect not to abide by his original offer and absorb the arithmetical errors, the Tender will not be considered and deemed as being withdrawn by the Tenderer. The Tenderer is deemed to have elected not to abide by his original offer if, within two (2) Working Days after the date of the Employer's Representative notification, he has not notified the Employer's Representative of his election to abide by his original offer and absorb his arithmetical errors.
 - (e) The minimum manpower deployment specified, if any, in the Schedule of Rates is based upon the Employer's Representative's assessment of the Scope of Services. The Tenderer should carry out their own assessment and may vary the minimum manpower deployment and state reasons for such variance. Any variation shall be taken as an indication of the Contractor's intention to comply with the Standard of Service
13. The Tenderer is advised to visit the Premises before submitting a tender to make themselves thoroughly acquainted with the location, general site conditions, accessibility, restrictions for loading, unloading and storage of materials, manpower deployment and other conditions that may affect their Tender in order to satisfy the requirements of the Contract or the Standard of Service. Any cost implications arising therefrom shall be deemed to have been included in the Tender Sum, claims arising from failure to do so will not be entertained.

SECTION A - CONDITIONS OF TENDER

14. The Tenderer acknowledges that the offering or giving of any gratuity, bonus, discount, bribe, loan or any other gift or consideration or advantage as an inducement or reward to any employee, personnel or agent of the Employer and/or Employer's Representative in relation to this or any other Tender may constitute an offence contrary to the Prevention of Bribery Ordinance Cap. 201, and that if the Tenderer is found to have made such an offer the Employer and/or Employer's Representative shall be at liberty to:
 - (a) before the award of the Contract, disqualify the Tenderer and hold the Tenderer liable for any loss or damage which the Employer and/or Employer's Representative may thereby sustain; or
 - (b) after the award of the Contract, cause the Contract to be terminated in accordance to Clause 6 of the Conditions of Contract and hold the Contractor liable for any loss or damage which the Employer and/or Employer's Representative may thereby sustain.
15. The Tenderer shall treat all documents or information supplied to him by the Employer and/or Employer's Representative for the purpose of submitting a Tender as private and confidential. Such information may only be used by the Tenderer for the sole purpose of assisting him in the preparation of a Tender and shall not be disclosed to any party except the employees, personnel or agents of the Tenderer who are assisting the Tenderer in preparing his Tender. Breach of this clause may result in disqualification of the Tenderer.
16. The Employer and/or Employer's Representative shall have the right, after the award of the Contract whenever they consider it appropriate or upon the request (written or otherwise) by any third party, to disclose information of the Tender or the awarded Contract without any further reference to the Tenderer or Contractor, unless the Tenderer or Contractor has indicated in writing to the Employer and/or Employer's Representative otherwise.
17. The Tenderer may be required to attend interviews after the submission of the Tender upon the request of the Employer's Representative. Failure to attend the interview may result in disqualification of the Tenderer.
18. The Tenderer agrees that if he is awarded the Contract, his subsequent performance, including results of the Service Level Agreement rating, may be disclosed and considered by the Employer and/or Employer's Representative when future lists of Tenderer's are being formulated by the Employer and/or Employer's Representative.
19. If the Tenderer, after award of the Contract, refuses to take up the Contract the Tenderer shall be liable for all costs incurred by the Employer and/or Employer's Representative including but not limited to the cost of re-tendering, the cost of having to employ someone else to perform the services until another tenderer can be appointed.
19. The Employer is not bound to accept the lowest or any Tender he may receive and will not reimburse any costs incurred in tendering and all costs incurred in the tendering process, unless otherwise stated in the Tender, shall be borne by the Tenderer.
20. Failure to satisfy any requirement of the Tender Documents may result in disqualification of the Tenderer.

ANNEX 1

SCHEDULE OF SUBMISSION



ANNEX 1 - SCHEDULE OF SUBMISSION

The Tenderer **MUST** complete each and every section specified under this Schedule of Submission in the order specified below with each section divided with a labeled file divider indicating the section. Failure to complete all the sections may result in disqualification of the Tenderer.

SECTION	DETAIL
A.	Fully completed, executed Tender Documents, including completed Appendices.
B.	Copy of any current Public Liability or Employees Compensation Insurance Policies.
C.	Proposed designated key personnel responsible for this Tender including name, position and role, experience, contact telephone number, emergency contact number, facsimile number, and email address. A copy of the proposed on-site organization chart shall be included.
D.	A list of proposed Sub-Contractors to be used stating which trade each will be used for.
E.	The Tenderer shall provide evidence of compliance with all statutory requirements for the provision of the Services such as licenses, certificates, approvals or other requirements as required under the laws of Hong Kong and any industry bodies.
F.	Quality Assurance Statement (as defined herein): The Tenderer must submit all of the elements comprising the safety management system for their company as specified under the Code of Practice on Safety Management issued by the Occupational Safety and Health Branch, Labour Department.
G.	Company Profile and Organisation Chart.
H.	Copy of valid Business Registration Certification. A copy of the DUNS number, if available.
I.	The previous financial years audited financial reports of the Tenderer, and that of the parent company (if the Tenderer is a subsidiary).
J.	Current and past job references with contact details for services carried out by the Tenderer of a similar nature and/or size. Statement of whether or not the Tenderer has had any contract terminated within the preceding twenty-four (24) months from the Tender Submission Date and details of such termination.
K.	A chart showing the monthly salary range and minimum take home pay with calculating formulae for all classes of staff.
L.	Details of staff benefits and leave entitlement for all classes of staff.
M.	Rules for salary deduction due to unsatisfactory performance, lateness, etc.
N.	Proposed time schedule and transition plan for the hand-over of the Premises.
O.	Copy of the valid ISO 9000 registration or statement of fact that ISO certification is in progress or details of any other equivalent quality system of the Tenderer, and any other quality systems in place e.g. OHAS18001 or ISO14001.
P.	The Tenderer is to produce evidence to indicate that he/she has environmental programmes in place e.g. waste-recycling programmes, noise management etc.
Q.	Any further information useful in this submission.

ANNEX 2

TENDER PARTICULARS



ANNEX 2 - TENDER PARTICULARS

1. TENDER DELIVERY

The Tender envelope MUST have on the face of it ALL of the following:

- (a) Attention: [.....]
- (b) Return Address: **[Address the tender is to be delivered to]**
- (c) Tender Reference Number: [.....]
- (d) Tender Title: Provision of Services for [.....]
- (e) Tender Submission Date: [.....](am/pm) on **[dd/mm/yy]**

In the event of a typhoon signal no. 8 or above or black rainstorm warning being hoisted or in effect in the 5 (five) hours immediately preceding the Tender Submission Date the Tender Submission Date will be postponed to the following Working Day.

2. ENQUIRIES

Any enquiry in relation to this Tender should be addressed in writing to:

Address: **[that enquiry should be addressed to]**

Attn: **[Person the enquiry should be addressed to]**

Telephone No: [.....]

Fax No: [.....]

Email: [.....]

3. SITE VISIT

*To arrange a visit to the Premises please contact:

Name: **[Person the enquiry should be addressed to]**

Telephone No: [.....]

Fax No: [.....]

Email: [.....]

*A visit to the Premises has been arranged on the following date and time:

The [.....] day of [.....] 20[.....]

Please complete the reply slip and return it in accordance with the instructions contained therein.

*Please delete as appropriate (If no site visit has been arranged, please delete the below attached reply slip also).

4. Contract Commencement Date and Completion Date

#Provisional Commencement Date: [.....]

#Provisional Completion Date: [.....]

#Subject to final confirmation by the Employer.

5. CONTRACT AMENDMENTS

The following table sets out which Clauses, Appendices and Schedules of the Tender, if any, do not form part of the Contract. Should the table not state whether or not the particular Clause, Appendix or Schedule is or is not included it shall be deemed to form part of the Contract.

ANNEX 2 - TENDER PARTICULARS

Name	Included in Contract
Monthly Report - Clause 2 and Schedule IV Special Conditions of Contract	Part of Contract/ Not Part of Contract
Service Level Agreement - Clause 3 and Schedule V Special Conditions of Contract	Part of Contract/ Not Part of Contract
Performance Bond - Clause 4 and Appendix VIII Special Conditions of Contract	Part of Contract/ Not Part of Contract
Schedule of Machinery, Tools and Equipment – Appendix IV Special Conditions of Contract	Part of Contract/ Not Part of Contract
Schedule of Materials and Chemicals – Appendix V Special Conditions of Contract	Part of Contract/ Not Part of Contract
List of Qualification, Training and Licenses – Appendix VI Special Conditions of Contract	Part of Contract/ Not Part of Contract
Optional Items – Appendix VII Special Conditions of Contract	Part of Contract/ Not Part of Contract

6. **INSURANCE**

The amount of Third Party Public Liability Insurance required under Clause 25.1 of the Conditions of Contract is amended from providing cover of a sum of not less than **HK\$20 million to require insurance providing cover of a sum not less than HK\$[.....]** in respect of any one event and unlimited in aggregate in respect of all claims during the Contract Period. In no instance should the cover be less than HK\$20 million. This clause takes precedent over Clause 25.1 of the Conditions of Contract.

ANNEX 2 - TENDER PARTICULARS

REPLY SLIP

TO: [Employer/Employer's Representative's name]
Attention: [Name of relevant ISS / Employer's Personnel]
PHONE: [Number]
FAX: [Number]
EMAIL: [Email address]

RE: [Tender Reference No. and Tender Title]

This is to confirm that the following member's of our staff will attend the site visit scheduled below.

Name of staff:	Position:
1 _____	_____
2 _____	_____
3 _____	_____

NAME (in block letters) : _____
Authorized Signature : _____
Contact Telephone Number : _____
Name of Company and Chop : _____
Date : _____

Date for site visit : [dd/mm/yy]
Site visit start time : [.....] am/pm
Site visit completion time : [.....] am/pm
Meeting Point : [.....]

SECTION B

FORM OF TENDER



SECTION B - FORM OF TENDER

TENDER REFERENCE NO. _____

TENDER TITLE _____

FORM OF TENDER

From (Company) : _____

(Note 1: If a Tender is being submitted by a sole proprietor, partnership or an unincorporated body, the names and residential addresses of all partners should be given in the space below)

To: Employer

1. Having inspected the Premises and examined the Tender Documents we offer to complete and maintain the whole of the said Contract in the manner specified and in conformity with the said Tender Documents for the Contract Period at the all inclusive Tender Sum of:
Hong Kong Dollars (in words): _____

Hong Kong Dollars (in figures): \$ _____
2. I/we undertake if my/our Tender is accepted to carry out the Services throughout the Contract Period, subject to any variations or extensions authorised under the Contract.
3. Unless and until the Articles of Agreement are executed, the Tender, any correspondence raised during the Tender assessment process that is expressly incorporated into the Contract by both parties, together with written acceptance by the Employer or Employer's Representative of my/our Tender shall constitute a binding contract subject to the provisions of this Contract.
4. I/we understand and accept the terms and conditions stated in the Tender Documents.

SECTION B - FORM OF TENDER

Name in full of Person authorised to sign Tender: _____

Signature of Person authorised to sign Tender: _____

Registered Company Name: _____

Date: _____ Company Chop: _____

In the capacity of: _____

Duly authorized to sign tenders for and on behalf of: _____

Registered address: _____

Name of Witness: _____

Signature of Witness: _____

Address of Witness: _____

Date: _____

In the case that the Tenderer is an incorporated entity a valid board resolution and member resolution approving and authorizing the submission of this Tender on its terms has to be attached to this Form of Tender.

SECTION C

ARTICLES OF AGREEMENT



SECTION C - ARTICLES OF AGREEMENT

TENDER REFERENCE NO. _____

TENDER TITLE _____

ARTICLES OF AGREEMENT

This Agreement is made in Hong Kong on the _____ day of _____ 20 ____

BETWEEN _____

of (or whose registered office is situated at) _____
_____ (the "Employer")

AND _____

of (or whose registered office is situated at) _____
_____ the ("Contractor")

WHEREAS

Recitals

The Employer wishes to enter into a contract (the "Contract") with the Contractor for the supply of the following services _____

_____ to be executed in accordance with the Contract for the Contract Period under the administration of _____

_____ (the "Employer's Representative"), the agent and authorized representative of the Employer in relation to the performance of the Contract, in consideration of the total sum of Hong Kong Dollars (in words): _____

_____ Hong Kong \$: _____ (the "Contract Sum") with payments to be made by the Employer to the Contractor in accordance with the Contract.

NOW THEREFORE EMPLOYER AND CONTRACTOR AGREE AS FOLLOWS: -

1. DEFINITIONS

In this Agreement words and expressions shall have the same meaning as are respectively assigned to them in Clause 1 of the Conditions of Contract.

SECTION C - ARTICLES OF AGREEMENT

2. CONTRACT DOCUMENTS AND PREVIOUS COMMUNICATIONS

The Contract shall comprise the Tender and any documents referred to within the below table or later incorporated, annexed hereto and marked with the Contract Reference Number [...../.....]. All such letters or documents listed below shall be attached to this Article of Agreement and bear the company chop of the Contractor and the authorized signatures of both the Employer or the Employer's Representative and the Contractor. This Agreement supersedes all previous communications not listed below, whether written or oral, between the parties in relation to the supply of the Services.

Date Sent	Reference Number	From	To	Subject

The terms and conditions within the Contract constitute the only agreement between the parties. Without prejudice to any of the Employer's and/or Employer's Representative rights under the Contract, no agreement or understanding between the parties varying or extending the same will be binding upon either party hereto unless in writing, signed by the person authorized to sign the Tender for the Tenderer and by any authorised representative of the Employer or Employer's Representative, in which this Contract shall be specifically referred.

3. DURATION OF THE CONTRACT

The Contract shall commence on the day of _____ 20 _____ (the "Commencement Date") and shall continue thereafter until the _____ day of _____ 20 _____ (the "Completion Date"); subject to any rights the Employer and/or Employer's Representative may have to terminate, vary or extend the Contract.

This Clause shall supersede the Provisional Commencement Date and Provisional Completion Date stated in the Tender Particulars.

4. SERVICES

In consideration of the Contract Sum, the Contractor shall carry out and complete the Contract at the times and in the manner set forth in the Contract. In consideration of the Services provided by the Contractor the Employer shall pay to the Contractor in accordance with the Contract the Contract Sum at the times and in the manner set forth in the Contract.

SECTION C - ARTICLES OF AGREEMENT

STAMPED with the Company Chop of)

)

and SIGNED by)

in the presence of:)

Witness

STAMPED with the Company Chop of)

)

and SIGNED by)

in the presence of:)

Witness

CONDITIONS OF CONTRACT



CONTRACT REFERENCE NO. _____

CONTRACT TITLE _____

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CONDITIONS OF CONTRACT

References to clauses are to clauses in this Conditions of Contract, unless otherwise stated.

1. DEFINITION AND INTERPRETATION

- 1.1 "Address for Notice" means the address stated for service of notices under this Contract for each party, in the form set out in Appendix II of Annex 4 of the Special Conditions of Contract.
- 1.2 "Address of Premises" means the location of the Premises as set out in Schedule II of Annex 3 of the Special Conditions.
- 1.3 "Commencement Date" means the date on which the Contract shall commence as defined in the Articles of Agreement or as otherwise notified under Clause 3 of this Conditions of Contract.
- 1.4 "Completion Date" means the date on which the Contract shall finish as defined in the Articles of Agreement or as otherwise notified under Clause 3 of this Conditions of Contract or upon date of termination, whichever is the earlier, or if an extension is granted in accordance with this Contract the date upon which the extension finishes.
- 1.5 "Contract" means the fully completed and executed Tender, any other information relating to the award of this Contract annexed hereto and marked with the Tender Reference Number and listed in the Articles of Agreement and the master programme under Clause 8, as subsequently varied or amended by the Employer or the Employer's Representative and the Contractor in accordance to the terms of the Contract.
- 1.6 "Contract Reference Number" means the Tender Reference Number, which upon execution of the Contract becomes the Contract Reference Number as stated in the Articles of Agreement.
- 1.7 "Contract Sum" is the lump sum cost of the services listed in the Scope of Service, as stated in the Articles of Agreement.
- 1.8 "Contract Period" means the period starting from the Commencement Date to the Completion Date.
- 1.9 "Contractor" means the entity whose submitted Tender is accepted by the Employer's Representative on behalf of the Employer and includes the Contractors' personal representatives, successors and assigns.
- 1.10 "Declaration and Undertaking" means the declarations made by the Contractor, from time to time, of any potential or actual conflicts of interest or other material facts, in the form set out in Appendix I of Annex 4 of the Special Conditions of Contract.
- 1.11 "Employer" means the party named as such in the Articles of Agreement.
- 1.12 "Employer's Representative" shall refer to the party nominated as such by the Employer in the Articles of Agreement.

CONDITIONS OF CONTRACT

- 1.13 "Force Majeure" means any event beyond the reasonable control or foresight of the party of the Contract claiming to be affected thereby including, without limitation, acts of God, wars, incidents, riots, natural calamities, prohibition by law and/or any other similar or like events beyond their control.
- 1.14 "Hong Kong" means the Hong Kong Special Administrative Region of The People's Republic of China.
- 1.15 "Letter of Confirmation of Variation of Services" means the letter sent by the Contractor to the Employer's Representative setting out in writing the verbal request for variation of Services made by the Employer's Representative and containing the following information, date of letter, reference number, Contract Reference Number, date of request from Employer's Representative, date that variation of Services requested are to be or were supplied; the scope of the variation of Services requested; who requested the variation Services; the additional cost or the adjusted cost of the variation of Services requested; and who is to confirm the request.
- 1.16 "List of Qualifications, Training and Licenses" means the list setting out the qualifications, training and licences of employees of the Contractor and any Sub-Contractor against the Service to be performed by such employee for which he is qualified, trained or licensed to perform, in the form set out in Appendix VI of Annex 4 of the Special Conditions of Contract.
- 1.17 "Monthly Report" is a report stating all of the information requested, and in the form specified, in Schedule IV of Annex 3 of the Special Conditions of Contract.
- 1.18 "Optional Items" means any and all services offered to be performed by the Contractor, more particularly set out in Appendix VII of Annex 4 of the Special Conditions of Contract.
- 1.19 "Premises" means all Premises listed in the Address of Premises and includes each and every building, area of land or other place on, under, in or through which the Services in this Contract are to be performed.
- 1.20 "Performance Bond" means the guarantee to be provided by a third party as surety for the Contractor's performance of its obligations under this Contract, in the form set out in Appendix VIII of Annex 4 of the Special Conditions of Contract.
- 1.21 "Probation Period" shall be for a period of 60 (sixty) calendar days commencing from, and including, the Commencement Date.
- 1.22 "Rules and Regulations" refers to the safety rules for Contractor's and code of conduct and ethical polices more particularly set out in Schedule I of Annex 3 of the Special Conditions of Contract.
- 1.23 "Schedule of Machinery, Tools and Equipment" means the list of all the machinery, tools and equipment to be used by the Contractor or any Sub-Contractor for performing the Services and permitted to be kept at the Premises, in the form set out in Appendix IV of Annex 4 of the Special Conditions of Contract.

CONDITIONS OF CONTRACT

- 1.24 "Schedule of Materials and Chemicals" means the list of all the materials and chemicals to be used by the Contractor or any Sub-Contractor for performing the Services and permitted to be kept at the Premises, in the form set out in Appendix V of Annex 4 of the Special Conditions of Contract.
- 1.25 "Schedule of Rates" means the details of the manpower and/or detail of the task to be deployed by the Contractor in performing the Services, in the form set out in Appendix III of Annex 4 of the Special Conditions of Contract and/or associated costs identified under the Scope of Services.
- 1.26 "Scope of Services" refers to the detailed list of Services set out in Schedule III of Annex 3 of the Special Conditions of Contract.
- 1.27 "Service Level Agreement" means the method of measurement of the quality of the provision of the Services as indicated in Schedule V of Annex 3 of the Special Conditions of Contract.
- 1.28 "Service Provider's Attendance Record" means the logbook into which every Contractor's employee and Sub-Contractor's employee carrying out any services under this Contract must enter their name, the date and time they arrived on the Premises to carry out the Services. They must also enter their name and the date and time they leave the Premises.
- 1.29 "Services" refers to the supply of services or goods, products and materials identified under the Special Conditions of Contract to be provided by the Contractor in compliance with the terms and conditions of this Contract. This includes all Services listed in the Scope of Service, and Variations of Services as directed by the Employer's Representative under Clause 30.
- 1.30 "Standard of Service" means obtaining a rating of 81% or more in the Service Level Agreement and/or compliance with the minimum manpower deployment under the Schedule of Rates.
- 1.31 "Sub-Contractor" means any party, as approved by the Employer's Representative under this Contract, the Contractor enters an agreement with to undertake the full or partial performance of this Contract on behalf of the Contractor.
- 1.32 "Tender" is the submitted, fully completed and executed Tender Documents together with all information required in the Schedule of Submission.
- 1.33 "Tenderer" refers to the incorporated or unincorporated entity, submitting the Tender.
- 1.34 "Tender Documents" comprise the list of documents stated in Clause 1 of the Conditions of Tender and any addendum issued by the Employer's Representative.
- 1.35 "Tender Reference Number" is the reference number stated in Clause 1(c) of the Tender Particulars.

CONDITIONS OF CONTRACT

- 1.36 "Tender Submission Date" means the date and time specified in Clause 1(e) of the Tender Particulars, or the same time on the following Working Day the event of postponement of the Tender Submission Date.
- 1.37 "Tender Sum" the lump sum cost of the Services as identified in the Form of Tender.
- 1.38 "Working Day" means Monday to Friday, excluding public holidays.
- 1.39 Words importing the singular only shall also include the plural and vice versa where context requires.
- 1.40 Words used in the Contract which import one gender (whether masculine, feminine or neutral) shall be taken to include any other gender where the context so admits.

2. GENERAL OBLIGATIONS

- 2.1 The Contractor shall carry out and complete the Services in accordance with this Contract during the Contract Period with due care and diligence within the time specified for completion, or within a reasonable period if no time is specified.
- 2.2 The Contractor shall forthwith comply with all instructions issued to him by the Employer's Representative in regard to any matter in respect of which the Employer's Representative is expressly empowered by this Contract to issue instructions for.
- 2.3 The Employer's Representative, acting as an agent of the Employer under the Contract, shall be responsible to the Employer. The Employer's Representative shall issue all instructions in accordance with the Contract and any further information necessary for the proper execution of the Services.
- 2.4 The Contractor when called upon to do so, shall enter into and execute the Articles of Agreement which will be in the form annexed hereto as Articles of Agreement with such modifications as may be necessary.
- 2.5 The Employer shall have the right to appoint a third party to provide services that overlap with any part or the whole of the Scope of Service. Subject to any variation of the Contract, in no event shall such appointment affect the obligations of the Contractor to carry out the Services. The Contractor shall have no entitlement or right to compensation whatsoever from such appointment.

CONDITIONS OF CONTRACT

3. COMMENCEMENT AND DURATION

3.1 The Contractor shall commence the provision of the Services on the Commencement Date, provided that if the Employer's Representative gives 7 (seven) Working Days notice in writing to the Contractor the Employer's Representative may defer or bring forward the Commencement Date in which event the Contractor shall commence the provision of the Services at the later or earlier date as the Employer's Representative may notify to the Contractor in writing; and

(a) the Contractor shall, if the deferral was necessary as a consequence of any act or omission on his part, be liable to reimburse the Employer and/or Employer's Representative in respect of any costs or expenses necessarily incurred by the Employer and/or Employer's Representative as a result of the deferral; and

(b) the Contractor shall have no entitlement to compensation whatsoever from the Employer or Employer's Representative in respect of such deferral or early commencement.

3.2 Without prejudice to any other rights the Employer and/or Employer's Representative have under this Contract, the Contractor shall continue to provide the Services until, and shall complete the provision of Services by, the end of the Contract Period.

4. EXTENSION OF CONTRACT

Upon the completion of this Contract, the Contractor agrees that it shall, if required by the Employer's Representative, for a period of not more than 60 (sixty) calendar days following the end of the Contract Period be obliged to carry out or supply Services in accordance with the conditions of this Contract. The Employer's Representative must give the Contractor not less than 1 (one) months' advance notice in writing for such extension of the Contract.

5. TERMINATION DURING PROBATION PERIOD

Without prejudice to the Employer's rights under Clause 6, the Employer or Employer's Representative may at any time during the Probation Period terminate the Contract without any compensation to the Contractor by giving 10 (ten) Working Days' written notice to that effect to the Contractor.

6. TERMINATION

6.1 Without prejudice to the right under Clause 6.2 the Employer or Employer's Representative is entitled to terminate this Contract at anytime after the Probation Period and before the expiry of this Contract without any compensation to the Contractor by either the Employer or the Employer's Representative giving not less than 1 (one) calendar month's written notice to the Contractor.

CONDITIONS OF CONTRACT

- 6.2 The Employer or Employer's Representative may at any time by giving notice in writing summarily terminate the Contract without any notice in advance or compensation to the Contractor on the occurrence of a Material Breach. A "Material Breach" for the purposes of this Clause 6 shall mean and include where the Contractor:
- (a) has abandoned this Contract or expressed his intention to abandon the Contract; or
 - (b) has ceased performance of the Contract for more than one month without prior approval from the Employer or Employer's Representative; or
 - (c) is found to have been negligent in the performance of its duties under this Contract; or
 - (d) has, for the number of times specified in the Service Level Agreement, if any, failed to obtain a "satisfactory" performance rating under the Service Level Agreement and/or has failed to comply with the minimum manpower deployment under the Schedule of Rates; or
 - (e) has failed to lodge any material document within the time frame or in the form required in this Contract; or
 - (f) has failed to observe any secrecy or security requirements as provided in this Contract; or
 - (g) has failed to have in place any insurance as provided for in this Contract, or takes or omits to take any steps the taking or omitting of which may result in any insurance policy or the cover under such policy becoming voidable or void or reducing the coverage below the specifications required under Clause 25; or
 - (h) has assigned or transferred any of its rights and obligations under this Contract to a third party not in accordance with this Contract; or
 - (i) is found to have breached any statutory requirements; or
 - (j) has failed to observe the approved Quality Assurance Plan or Quality Assurance Statement, if any, or the Rules and Regulations; or
 - (k) has failed to obtain or maintain all appropriate, valid licensing or approvals from the relevant authorities necessary to provide the Services throughout the Contract Period; or
 - (l) has failed to observe the use of Premises requirements under Clause 16; or
 - (m) has failed to inform the Employer or Employer's Representative of any material change in circumstances under the Declaration and Undertaking; or
 - (n) has failed to indemnify the Employer or the Employer's Representative in accordance with the terms of this Contract.

CONDITIONS OF CONTRACT

- 6.3 If the Contractor shall at any time be adjudged insolvent or bankrupt, or shall have a winding-up order, bankruptcy order, receiving order or order for administration of his estate made against him, or takes or has instituted against it an action or proceedings whether voluntary or compulsory which has the object of or which may result in the winding up or bankruptcy of the Contractor, or if the Contractor makes any conveyance or assignment of his property or composition or arrangement for the benefit of his creditors or purports so to do, or is a party to the appointment of or has an official administrator, receiver, provisional liquidator or liquidator appointed to the whole or any part of its property or undertakings, the Employer or Employer's Representative may at any time by notice in writing summarily terminate the Contract without compensation to the Contractor.
- 6.4 Such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Employer.
- 6.5 The Contractor shall have no entitlement to compensation or reimbursement of any expenses whatsoever from the Employer or Employer's Representative in respect of such termination.
- 6.6 Where the Employer or the Employer's Representative exercises their right to summarily terminate the Contract in accordance with Clauses 6.2 and 6.3, the Employer or the Employer's Representative may employ and pay another contractor or engage its own staff to carry out and complete the Services in accordance with Clause 33.
- 6.7 Upon the termination becoming effective the Contractor must, at their own cost, immediately remove from the Premises all their personnel, and remove within 24 (twenty-four) hours machinery, equipment, tools and any other material associated with the provision of the Services. If the Contractor does not comply, the Employer's Representative may employ on behalf of the Employer and pay other persons to remove the machinery, equipment, tools and materials and all costs incurred in connection with such employment shall be recoverable from the Contractor by the Employer.
- 6.8 The contract can be terminated at the Contractor's wish by mutual agreement between the Contractor and Employer subject to the Contractor giving a minimum of 3 (three) months written notice to the Employer's Representative indicating reasons for the request for termination.
- 6.9 Upon the termination, the Contractor and the Employer shall be discharged from all obligations of this Contract but without prejudice to any rights or remedies that have arisen prior to such termination.

CONDITIONS OF CONTRACT

7. PREMISES ACCEPTED AS FOUND

- 7.1 The Contractor shall within 10 (ten) Working Days from the Commencement Date, unless otherwise specified in the Special Conditions of Contract, advise the Employer's Representative, in writing of any existing defects in the Premises that will, in the Contractor's opinion, adversely affect the fulfilment of its obligations under this Contract with a written report on the defect diagnosis and supporting evidence and reason of how the Contractor will be adversely affected. The Employer's Representative, at his sole and absolute discretion, shall determine whether the defect(s) identified will adversely affect the Contractor's ability to fulfil the obligations under the Contract. All defects approved by the Employer's Representative shall be listed and the Contractor shall acknowledge this list by signing and affixing the company's chop on it.
- 7.2 If the Contractor fails to observe the requirements in Clause 7.1, it shall be deemed that no defects exist, and the Contractor shall be obliged to rectify all defects found to exist in relation to the Premises to enable it to carry out and perform its obligations under this Contract. If the Contractor does not comply with the Employer's Representative's instructions to rectify such defects within the time stipulated in the instructions the Employer's Representative may without further notice employ and pay other persons to rectify the defects and all costs incurred in connection with such employment shall be recoverable by the Employer from the Contractor.

8. PROGRAMME

- 8.1 Within 10 (ten) Working Days from the Commencement Date the Contractor shall prepare a detailed master programme for all Services for the entire Contract Period in accordance with the frequencies and time frames specified in the Scope of Service, in the form specified by the Employer's Representative, if any and submit it to the Employer's Representative. If frequency and time frames are not specified in the Scope of Services the Contractor must include in the master programme a proposed schedule. The master programme shall be strictly maintained and adhered to. Any change to the master program shall be identified by the Contractor and submitted to the Employer's Representative.
- 8.2 The Employer's Representative may at any time during the Contract Period instruct the Contractor to submit a further detailed and updated master programme.
- 8.3 The Contractor shall organize his labour and equipment to fulfill the agreed master programme and any instructions and variations from the Employer's Representative.
- 8.4 Owing to the nature of the Services and operational requirements of the respective users of the Premises, it is possible that the delivery of Services may need to be changed from time to time and deviation from the master program is unavoidable. When such circumstances arise the Contractor shall advise the Employer's Representative of the next best suitable time at least 1 (one) Working Day before the delivery of the Services.

CONDITIONS OF CONTRACT

8.5 The master programme, including any amendments and/or updates, shall form part of this Contract. The revised master programme shall supersede any previous master programme.

9. MEETINGS

9.1 The Contractor shall be available for regular meetings, to be at times specified by the Employer's Representative. Should the Contractor be unable to attend the meeting the Contractor shall give at least 3 (three) Working Day's notice to the Employer's Representative and propose a new meeting date.

9.2 The Contractor's key personnel must attend any other meeting at times requested by the Employer's Representative.

9.3 The Contractor shall take minutes of these meetings, if requested by the Employer's Representative, in a format agreed by the Employer's Representative, and shall within 7 (seven) Working Days after the meeting submit the written minutes to the Employer's Representative for approval.

10. QUALITY OF LABOUR AND STANDARD OF SERVICES

10.1 Without limiting any other obligation or warranty of the Contractor under the Contract, all the employees of the Contractor and/or any Sub-Contractor must perform the Services with the degree of skill, care, competence and diligence expected of skilled persons in performing such Services set out in the Scope of Service.

10.2 The Contractor is solely responsible for ensuring its employees' legal status to work in Hong Kong. The Employer shall not pay for any Services executed by the Contractor's employees who are not legally permitted to work in Hong Kong, and the Contractor shall indemnify the Employer in respect of any loss or damage suffered as a result thereof.

10.3 Every employee of the Contractor shall be physically fit and able to carry out the Services to be performed by them.

10.4 All Contractor's, and any Sub-Contractor's, employees shall be adequately supervised by designated key personnel qualified and trained in directing the type of Service described in the Scope of Service. The designated key personnel of the Services, joint site inspections at the Premises, meetings with the Employer's Representative, to receive notices, reports, or requests from the Employer's Representative, and provide replies or feedback to such notices, reports or request as necessary.

CONDITIONS OF CONTRACT

- 10.5 Designated key personnel should be able to receive and act promptly, on behalf of the Contractor, on all instructions issued by the Employer's Representative, and act alone and promptly and in the best interests of the Employer and Employer's Representative in handling any emergencies should no immediate instructions be available from the Employer or Employer's Representative. The Contractor should inform the Employer's Representative of any costs likely to be incurred as a result of the emergency.
- 10.6 Without limiting any other obligation or warranty of the Contractor under this Contract, all of the Contractor's and any Sub-Contractor's respective employees shall be properly trained, qualified and licensed, where appropriate, to carry out the Services of the type and scope as described in the Scope of Service. If Contractor's and Sub-Contractor's employees are required under the laws or regulations of Hong Kong to be trained, qualified or licensed, the Contractor shall ensure they are trained, qualified or licensed. The Contractor shall submit to the Employer's Representative the List of Qualifications, Training and Licenses, and ensure that such list is kept up-to-date at all times.
- 10.7 The Employer's Representative may direct the Contractor to immediately remove from the Premises, so as not to have any further connection with the provision of the Services, any of the Contractor's and any Sub-Contractor's respective employee who, in the opinion of the Employer's Representative, misconducts himself or is incompetent or reckless or negligent in the performance of his duties or fails to carry out his duties in connection to the provision of the Services or affects the Contractor's performance in the execution of the Contract or creates a danger or nuisance to any person or property or is abusive or carries out any acts of vandalism, or fraud or any other similar act. The Contractor must comply with such direction immediately, remove such employee, provide a suitable replacement at his own cost, and shall compensate, reimburse and/or indemnify the Employer for any direct loss and expense incurred as a result thereof.

11. NUMBER OF PERSONNEL/ MANPOWER DEPLOYMENT

- 11.1 If the Contractor fails to provide the minimum manpower deployment specified under the latest approved Schedule of Rates, the Employer's Representative shall without having to serve any prior notice:
- (a) deduct from any amount due the value of the number of personnel absent according to the corresponding manpower hourly rates as stated in the Schedule of Rates; or
 - (b) employ other contractors to carry out the Services that should be done by the absent personnel in accordance with Clause 33.

The Service Provider's Attendance Record shall be used to determine the number of personnel present. Such adjustment to the amount due shall be without prejudice to the Employer's rights to further action in the recovery of any direct loss and expense incurred, and to any other rights or remedies that the Employer and/or Employer's Representative may possess.

CONDITIONS OF CONTRACT

11.2 The minimum manpower deployment, as indicated in the Schedule of Rates is the estimated number of personnel, having the qualities as set out in Clause 10, and believed sufficient to achieve the Standard of Services, if any, or sufficient to satisfy the Employer's Representative. Compliance with the minimum manpower deployment is an indication of the intention by the Contractor to achieve the Standard of Service, if any, or to satisfy the Employer's Representative. Should the Contractor fail to meet the Standard of Service, if any, or satisfy the Employer's Representative the Contractor is required to deploy extra personnel at the Contractor's own cost, within the time instructed by the Employer's Representative to meet the Standard of Service, if any, or sufficient to satisfy the Employer's Representative.

12. ATTENDANCE AND PUNCTUALITY

12.1 In the event of any of the Contractor's or any Sub-Contractor's respective employees arriving at the Premises later than the time specified in the Scope of Service or the Employer's Representative's written instruction, as evidenced by the Service Provider's Attendance Record, the Employer shall be entitled to deduct from any sum due to the Contractor an amount equivalent to the hourly or overtime rate (whichever is higher) corresponding to the period of absence. The Employer reserves the right to employ other contractor's in accordance with Clause 33.

12.2 The Contractor must instruct each of his and any Sub-Contractor's employees attending the Premises to sign in and out in the Service Provider's Attendance Record at the Premises each and every time they report to and leave the Premises. The Service Provider's Attendance Record is to be kept at locations designated by the Employer's Representative from time to time.

12.3 The Contractor shall ensure that the information entered into the Service Provider's Attendance Record is true and correct in all respects.

13. UNIFORM AND SAFETY EQUIPMENT

13.1 The Contractor's or any Sub-Contractor's respective employees shall wear proper uniform, of a design approved by the Employer's Representative, at all times during the provision of the Services with the employee's identity card stating the individual's name, company, position, and photograph displayed prominently for easy identification. Such identity cards and uniforms are to be provided by the Contractor at the Contractor's own cost.

13.2 Such uniform shall include all necessary protective clothing and equipment, including but not limited to goggles, safety shoes, gloves, hard hats and earmuffs, either as required by the laws and regulations of Hong Kong or necessary in the provision of Services. All protective clothing and equipment are to be provided by the Contractor at the Contractor's own cost.

CONDITIONS OF CONTRACT

- 13.3 Any employee of the Contractor or any Sub-Contractor failing to wear, carry or use the correct uniform, equipment and identity card may, subject to the discretion of the Employer's Representative, be refused entry or evicted from the Premises until such time as the requirements are met and the Employer's Representative approves the return of the employee. All such employees so refused entry or evicted shall be immediately replaced by the Contractor at the Contractor's own cost. Should the Contractor fail to immediately replace the employee, the Employer shall be entitled to deduct from any sum due to the Contractor an amount equivalent to the hourly or overtime rate (whichever is higher) corresponding to the period of absence. The Employer reserves the right to employ other contractors in accordance with Clause 33.
- 13.4 The Contractor shall continue to perform the Services despite any of its employees being refused entry or evicted under this Clause 13. If the Contractor is unable to perform the Services the Employer may employ other contractors in accordance with Clause 33.
- 13.5 In any event, the Contractor shall not claim against the Employer or the Employer's Representative for any loss or expenses incurred in relation to the eviction of any employees or the replacement thereof under this Clause 13.

14. QUALITY CONTROL

- 14.1 The Contractor shall submit before Commencement Date, a Quality Assurance Plan which is defined as a detailed, bespoke Quality Assurance Statement, to the Employer's Representative for review. The Employer shall not pay for any Services provided not in compliance with the Quality Assurance Statement. A Quality Assurance Plan takes priority over a Quality Assurance Statement.
- 14.2 The Employer's Representative may inspect the Services performed by the Contractor at any time to ensure compliance with the Quality Assurance Plan and the Contract.
- 14.3 Notwithstanding Clause 14.2, it is the Contractor's sole responsibility to ensure that at all times the Services are performed in compliance with the Quality Assurance Plan and the Contract.
- 14.4 The Employer's Representative may issue instruction(s) in accordance with Clause 31 to the Contractor for any rectification and remedial work due to non-compliance by the Contractor under this Contract. The Contractor shall complete such rectification and remedial work to the satisfaction of the Employer's Representative within the time limit specified in the instructions at the Contractor's own cost.

CONDITIONS OF CONTRACT

15. RULES AND REGULATIONS OF THE PREMISES

- 15.1 Use of the passenger lifts is not permitted unless the prior approval of the Employer's Representative has been obtained or no service lift is available in which case temporary protection to the interior of the lift car shall be provided by the Contractor at their own cost.
- 15.2 The Contractor, any Sub-Contractor and any of their respective employees shall observe all statutory health and safety regulations in force and the Rules and Regulations, and any other rules, regulations or practices from time to time made known to the Contractor by the Employer's Representative or which are required in order to legally perform the Services. In the event of any conflict between the statutory health and safety regulations and the Rules and Regulations the statutory health and safety regulations shall prevail but the Employer's Representative should be informed of any conflict immediately.
- 15.3 Each time the Contractor's and any Sub-Contractor's respective employee's register at the Premises they will be required to acknowledge and comply with the Rules and Regulations and the statutory health and safety regulations.
- 15.4 Without prejudice to any other warranties expressed elsewhere in the Contract or implied by law the Contractor warrants to the Employer that the Contractor has the appropriate valid licenses and has obtained all necessary approvals from the relevant authorities to carry out all Services under this Contract during the Contract Period and shall maintain and keep such licenses and approvals valid throughout the entire Contract Period.
- 15.5 The Contractor shall provide evidence of compliance with statutory requirements to the Employer's Representative, if requested to show such evidence at any time during the Contract Period, and produce such evidence within 2 (two) Working Days of any request.

16. USE OF PREMISES

- 16.1 If the Premises are occupied during the Contract Period the Services are to be conducted in such a manner as not to interfere with the normal activities of the occupants of the Premises and not to cause nuisance to the occupants or public.
- 16.2 The Contractor is not to carry out any Services within the Premises other than those stated in this Contract unless prior written approval is granted by the Employer's Representative.
- 16.3 The Contractor is required to co-ordinate if necessary with other parties working in the Premises during the Contract Period.

CONDITIONS OF CONTRACT

17. SECURITY AND TRESPASSING

- 17.1 Before the Commencement Date, the Contractor shall submit a list of all employees of the Contractor and any Sub-Contractor to be engaged in carrying out the Services in the Premises to the Employer's Representative. The list shall contain the Contractor's and any Sub-Contractor's employees' names, location of deployment and Hong Kong Identity Card numbers. Such details shall be in accordance with the Personal Data (Privacy) Ordinance, Cap 486.
- 17.2 The Contractor is only allowed access to areas where Services are required. The Contractor must seek the prior written permission of the Employer's Representative to access any other areas.
- 17.3 The Employer's Representative may direct the Contractor to immediately remove from the Premises, so as not to have any further connection with the provision of the Services, any of the Contractor's or Sub-Contractor's respective employees if found in an area where they are not authorised to be. The Contractor must comply with such direction immediately and provide a suitable replacement at his own cost. Should the Contractor fail to immediately replace the employee, the Employer shall be entitled to deduct from any sum due to the Contractor an amount equivalent to the hourly or overtime rate (whichever is higher) corresponding to the period of absence. The Employer reserves the right to employ other contractor's in accordance with Clause 33 in addition to claiming from the Contractor any loss or damage incurred as a result of such unauthorized access.

18. DAMAGE TO PROPERTY

- 18.1 The Contractor, any Sub-Contractor and their respective employees must take care at all times not to damage any part of the Premises, adjoining premises, public carriageways and pavements, fixed assets, machinery, equipment or tools not belonging to the Contractor or any Sub-Contractor or their respective employees. The Contractor shall provide, maintain and dismantle upon completion of Services adequate protection to existing structures, installations or fixtures on the Premises, adjoining premises, public carriageways and pavements.
- 18.2 The Contractor shall notify the Employer's Representative immediately of any incident, whether due to the negligence or willful act or omission of the Contractor, any Sub-Contractor or their respective employees or otherwise, and submit a detailed, written incident report with accompanying photographs, name of the personnel or employees involved in the accident (if known) and details of witnesses (if known) to the Employer's Representative within 24 (twenty-four) hours of an incident's occurrence or discovery.

CONDITIONS OF CONTRACT

- 18.3 Any defects or damage to the Premises, adjoining premises, public carriageways and pavements, fixed assets, machinery, equipment or tools due to the negligence or willful act or omission of the Contractor, any Sub-Contractor or their respective employees or otherwise, or any defects or damage to the Premises, adjoining premises, public carriageways and pavements, fixed assets, machinery, equipment or tools resulting from the Contractor's failure to report any such defects or damage to the Employer's Representative immediately upon discovery of such defect or damage if discovered after the expiration of the 10 (ten) Working Day period stated in Clause 7, unless it is expressly acknowledged and agreed in writing otherwise by the Employer's Representative, are to be made good by the Contractor at the Contractor's own expense within 5 (five) Working Days after receipt of written notice by the Employer's Representative. If the Contractor does not comply with the Employer's Representative's instructions to rectify such defects or damage within the time stipulated in the instructions the Employer's Representative may without further notice and on behalf of the Employer employ and pay other persons to rectify the defects and all costs incurred in connection with such employment shall be recoverable by the Employer from the Contractor, in accordance with Clause 33.
- 18.4 The Contractor's compliance, or failure to comply, with the reporting requirement set out in Clause 18.3 shall not affect the Employer's right to recover damages from the Contractor in relation to any damage to the Premises, public carriage ways and pavements, fixed assets, machinery, equipment or tools.

19. RUBBISH

- 19.1 The Contractor shall remove all rubbish ensuing from the Contractor's or any Sub-Contractor's work from the Premises prior to leaving the Premises daily or at any other time agreed by the Employer's Representative.
- 19.2 The Contractor shall not litter or dump any used or unused materials in any areas inside or on the Premises. If the Contractor fails to remove all rubbish or materials in accordance with Clause 19.1, the Employer's Representative may without further notice on behalf of the Employer employ and pay other persons to remove such rubbish or materials from the Premises and all costs incurred in connection with such employment shall be recoverable by the Employer from the Contractor in accordance with Clause 33.

20. WATER SUPPLY

- 20.1 The Contractor, if so permitted by the Employer's Representative, may use any water supplies which may be available at the Premises to perform the Services. The Employer shall not be responsible for the availability of the water supply during the Contract Period. The Contractor, in the absence of a water supply at the Premises, shall source their own water in carrying out the Services.
- 20.2 The Contractor is responsible for installing and removing upon completion of the Contract any temporary water supply installations installed by the Contractor. The Contractor must obtain the written approval of the Employer's Representative prior to making any such installations and maintain such installations, including all regulatory approvals required, at his own expense.

CONDITIONS OF CONTRACT

- 20.3 If the Contractor fails to remove any temporary water supply installation(s) installed by him after the completion of the Services, the Employer's Representative may without further notice employ and pay other persons to remove such installation at the Premises and all costs incurred in connection with such employment shall be recoverable by the Employer from the Contractor, in accordance with Clause 33.
- 20.4 The Employer reserves the right to claim damages against the Contractor for any loss or damage to the Premises as a result of any water leakage or other associated problems resulting from the usage of the water supply by the Contractor.

21. ELECTRICITY SUPPLY

- 21.1 The Contractor, if so permitted by the Employer's Representative, may consume electricity for lighting, power and testing installations from supply points which may be available at the Premises to perform the Services. The Employer shall not be responsible for the availability of the electricity supply during the Contract Period. The Contractor, in the absence of the electricity supply, shall procure, at his own cost and expense, an alternative electricity supply in carrying out the Services.
- 21.2 The Contractor is responsible for installing and removing upon completion of the Contract any temporary electricity supply installations installed by the Contractor. The Contractor must obtain the written approval of the Employer's Representative prior to any such installations. All installations must comply with the Institute of Electrical Engineers Hong Kong requirements and regulations and the supply rules of the power company and any regulatory requirements and approvals.
- 21.3 If the Contractor fails to remove any temporary electricity supply installation(s) installed by him after the completion of the Services, the Employer's Representative may without further notice employ and pay other persons to remove such installation at the Premises and all costs incurred in connection with such employment shall be recoverable by the Employer from the Contractor, in accordance with Clause 33.
- 21.4 The Employer reserves the right to claim damages against the Contractor for any loss or damage to the Premises as a result of any electricity leakage or other associated problems during the usage of the electricity supply by the Contractor.

22. EQUIPMENT, MACHINERY AND MATERIALS

- 22.1 The Contractor shall provide all machinery, equipment and/or tools, and materials and chemicals required in performing the Services at his own cost unless otherwise specified and agreed to by the Employer's Representative in writing. Should the Contractor fail to provide or use any of the materials, machinery, equipment or tools that the Contractor specified they would use in performing the Services as listed in the Schedule of Machinery Tools, and Equipment and the Schedule of Materials and Chemicals the Employer's Representative may purchase any such listed machinery, equipment, tools, materials or chemicals for the Contractor's use in carrying out of the Services. All costs incurred in connection with such purchase shall be recoverable from the Contractor by the Employer.

CONDITIONS OF CONTRACT

- 22.2 Such machinery, equipment, tools, materials or chemicals shall be of a high standard, calibrated and certified, where required by law, well-maintained and suitable for use in the Premises. The Contractor shall ensure that all machinery, equipment, tools, materials or chemicals are in good working order and that they are suitable and safe to use in carrying out the Services.
- 22.3 The Contractor shall ensure all machinery, equipment, tools, materials or chemicals are manned and operated by his or any Sub-Contractor's competent employees suitably skilled and possessing valid licenses for the use of the relevant machinery, equipment, chemical, materials and tools.
- 22.4 No machinery, equipment, tools, materials or chemicals shall be left unattended anywhere in the Premises, except in specifically designated storage areas, and are not to cause danger, inconvenience, and/or nuisance to occupants or public in the Premises whether or not in use at the time. If the Contractor fails to store such machinery, equipment, tools, materials or chemicals properly or to comply with the Employer's Representatives instructions to remove such machinery, equipment, tools, materials or chemicals within the time stipulated in the instructions of the Employer's Representative, the Employer's Representative may without further notice employ and pay other persons to remove such machinery, equipment, tools, materials or chemicals and all costs incurred in connection with such employment shall be recoverable by the Employer from the Contractor in accordance with Clause 33.
- 22.5 All materials and chemicals to be used are to be new and of a quality acceptable to the industry or the Employer's Representative. The Contractor shall ensure that all machinery, equipment, tools, materials or chemicals are fit for the purpose, safe for use and are hazard free.
- 22.6 Where any machinery, equipment, tools, materials or chemicals are specified under the Contract or the laws of Hong Kong to comply with a British Standard, another product complying with a comparable or higher grade or category within a national standard of another Member State of the European Union or an international standard recognised in the United Kingdom specifying equivalent requirements and assurances in respect of materials, safety, reliability, fitness for purpose and, where relevant, appearance may be substituted, with the written consent of the Employer's Representative. The Contractor shall provide written acknowledgement and evidence to the Employer's Representative that the substituted materials or products are of a comparable or higher grade or category.
- 22.7 Where any machinery, equipment, tools, materials or chemicals are specified under the Contract or the laws of Hong Kong to be a particular brand, another brand complying with a comparable or higher grade or category may be substituted with the written consent of the Employer's Representative. The Contractor shall provide written acknowledgement and evidence to the Employer's Representative that the substituted machinery, equipment, tools, materials or chemicals are of a comparable or higher grade or category.
- 22.8 Where any machinery, equipment, tools, materials or chemicals are not fully specified under the Contract they are to be suitable for the specific purpose, such machinery, equipment, tools, materials or chemicals shall be of a quality acceptable to the industry or the Employer's Representative and free from faults.

CONDITIONS OF CONTRACT

- 22.9 Should the Contractor use the Employer's or the Employer's Representative's machinery, equipment or tools the Contractor shall accept full responsibility and liability for use and care of the machinery, equipment or tools as if the Contractor was the owner of such, including, but not limited to, arranging adequate insurance cover for the machinery, equipment or tools. The machinery, equipment or tools must be returned to the Employer or the Employer's Representative in the same state and condition as when they were given to the Contractor for use. Should the Employer's or the Employer's Representative's machinery, equipment or tools not be returned in the same state and condition as when they were given to the Contractor, any charges for the repair of such damages or replacement of any machinery, equipment or tools are to be borne by the Contractor.
- 22.10 The Contractor shall be liable to bear the cost of any statutory license necessary for the use of the Employer's or the Employer's Representative's machinery, equipment or tools.
- 22.11 The Contractor should notify the Employer's Representative immediately of any equipment damage, abnormalities or operational misuse to the Employer or Employer's Representatives machinery, tools, or equipment, whether due to the negligence of the Contractor, any Sub-Contractor, or their respective employees or otherwise, and submit a detailed, written incident report with accompanying photographs to the Employer's Representative within 24 (twenty-four) hours of the discovery of such abnormality or operational misuse.
- 22.12 The Contractor's compliance, or failure to comply, with the reporting requirement set out in Clause 22.11 shall not affect the Employer and/or the Employer's Representative's right to be indemnified by the Contractor in relation to all claims, actions, demands, damages, costs, charges, liabilities, losses and expenses for injuries or damages to any person or any property under the Contract or the laws of Hong Kong.

23. OFF LOADING, SITE STORES AND OFFICE

- 23.1 The Contractor may apply to the Employer's Representative for permission to use areas within the Premises as the Contractor's site office or for storage of materials and equipment necessary for the sole purpose of fulfillment of this Contract. Use of areas will be at the Employer's Representatives' sole and absolute discretion. Such permission shall cease at the end, or sooner termination, of the Contract, or at such earlier time as may be notified to the Contractor by the Employer's Representative.
- 23.2 The contracting parties agree that there is no intention on the part of the Employer or Employer's Representative to create a tenancy or licence of whatsoever nature in favour of the Contractor or any Sub-Contractor or their respective employees and that no such tenancy or licence has or shall be deemed to come into being. The Employer and/or Employer's Representative or any authorized person retains the right to enter and use any areas used by the Contractor pursuant to Clause 23.1 at any time without the need to obtain the consent of the Contractor.
- 23.3 The Contractor shall at all times keep the designated area clean, tidy, in good state of repair and properly secured, as appropriate.

CONDITIONS OF CONTRACT

- 23.4 The Contractor must provide a key or combination code to the Employer's Representative for each area used by the Contractor pursuant to Clause 23.1.
- 23.5 The Contractor shall provide any storage equipment or office equipment (such as shelving, computers, faxes etc.) together with any installations necessary to operate these services (such as telephone lines) at his own costs unless otherwise instructed by the Employer's Representative. Prior permission from the Employer's Representative shall be obtained for the installation of any fixtures or fittings therein. Upon completion or sooner termination of the Contract, or at such earlier time as may be instructed by the Employer's Representative, the Contractor shall, if so requested by the Employer's Representative, remove all fixtures and fittings installed by the Contractor at the Contractor's own cost and the Contractor shall be responsible for the reinstatement of the storage area concerned to its original state.
- 23.6 Material and/or equipment shall not be left on the Premises outside of designated areas after the daily completion of the Services unless the Employer's Representative has given prior approval.
- 23.7 The Contractor shall give 3 (three) Working Day's notice in advance in writing to the Employer's Representative for any loading or unloading of materials or equipment at the Premises.
- 23.8 In the event that the Contractor fails to notify the Employer's Representative in writing regarding the loading or unloading of material and equipment the Employer's Representative is entitled to prevent or stop any unauthorized loading or unloading.
- 23.9 The Contractor will be responsible for the safe custody of machinery, equipment, tools, materials or chemicals delivered to and/or stored on the Premises. The Employer and/or Employer's Representative shall not be liable for any loss or damage to any machinery, equipment, tools, materials or chemicals stored inside the storage area or otherwise placed at the Premises.

24. INDEMNITY

- 24.1 The Contractor shall take every reasonable precaution not to, and ensure that any Sub-Contractor does not, damage any property or injure any person in the performance of the Services or otherwise at the Premises. The Contractor shall indemnify the Employer and/or the Employer's Representative against all claims, actions, demands, damages, costs, charges, liabilities, losses and expenses for injuries to any person or loss or damage to any property whatsoever where occasioned by the omission, negligence or breach of statutory duty or any other reasons caused by the failure of the Contractor, any Sub-Contractor or their respective employees in carrying out their duties as outlined in this Contract or the failure of the Contractor, any Sub-Contractor or their respective employees to take or omit to take reasonable steps to prevent the loss, damage or injury, and whether such claims are made by the Employer and/or the Employer's Representative or by a third party against the Contractor, any Sub-Contractor or their respective employees or against the Employer and/or Employer's Representative.

CONDITIONS OF CONTRACT

- 24.2 If the Contractor is convicted by the Court of an offence in relation to any statute, ordinance or regulation the Contractor shall indemnify the Employer and/or Employer's Representative against any liability for loss or damage incurred as a result thereof. If the Contractor is convicted by the Court of an offence in relation to any statute, ordinance or regulation the Employer may exercise its right to terminate the Contract in accordance to Clause 6 immediately without any compensation to the Contractor. The Contractor shall under no circumstances have any right to claim against the Employer and/or Employer's Representative for its losses.
- 24.3 The Contractor shall indemnify the Employer and/or the Employer's Representative against all actions, claims, demands, costs, charges and expenses arising from any infringement or alleged infringement of letters patent, designs, copyrights, trademarks or any other industrial or intellectual property rights arising out of or in connection with the Services provided.
- 24.4 This Clause 24 shall survive termination of the Contract.

25. INSURANCE

- 25.1 Without prejudice to any of the Contractor's obligations and liabilities under the Contract, the Contractor shall effect and maintain throughout the Contract Period for the benefit of and in the joint names of the Contractor, the Employer, the Employer's Representative and any Sub-Contractor's but subject to a cross liability clause to the effect that the insurance shall apply to the Contractor, the Employer, the Employer's Representative and any Sub-Contractor as separate insureds, Third Party Public Liability insurance against any liability on the part of the Contractor, the Employer, the Employer's Representative and any Sub-Contractor for the death of, or personal injury to, any person, or damage to any property arising out of or in consequence of the provision of the Services, such insurance providing cover of a sum of not less than HK\$20,000,000 in respect of any one event and unlimited in aggregate in respect of all claims during the Contract Period.
- 25.2 The insurance referred to in the Clause 25.1 shall be effected with reputable insurers who are members of the Hong Kong Federation of Insurers' list of general insurance members and who, if required, meet the approval of the Employer. The Contractor shall comply with all conditions of such insurance and all requirements of the insurers in connection with the settlement of claims, the recovery of losses and the prevention of accidents and shall bear at his own cost the consequence of any failure to do so. The Contractor shall procure the cooperation of any Sub-Contractor with him or the Employer or the Employer's Representative in the settlement of claims, the recovery of losses and the prevention of accidents. The Contractor shall bear the cost of all excesses, deductibles, exclusions or limitations applying under the said insurance in respect of claims made against the Contractor and of claims made against the Employer or the Employer's Representative or any Sub-Contractor. The Contractor shall not take or omit to take any step the taking or omission of which may result in any insurance policy or the cover under such policy becoming void or voidable.

CONDITIONS OF CONTRACT

- 25.3 Without prejudice to any of the Contractor's obligations and liabilities under the Contract, the Contractor shall effect and maintain throughout the Contract Period Employees' Compensation Insurance in respect of any liability of the Contractor or of any Sub-Contractor to their respective employees arising out of and in the course of their employment, such insurance being extended so as to provide an indemnity to the Employer and/or Employer's Representative against any claim made against the Employer and/or Employer's Representative by an employee of the Contractor or of any Sub-Contractor and for which the Contractor or any Sub-Contractor would also be liable.
- 25.4 The insurance required by Clause 25.3 shall be effected with reputable insurers who are members of the Hong Kong Federation of Insurers' list of members authorized to write Employee Compensation Insurance and on terms meeting all the requirements of the Employees' Compensation Ordinance or any statutory modification or re-enactment thereof for the time being in force, and shall be taken out in the joint names of the Contractor, the Employer, the Employer's Representative and any Sub-Contractor but subject to a cross liability clause to the effect that the insurance shall apply to the Contractor, the Employer, the Employer's Representative and any Sub-Contractor as separate insureds.
- 25.5 The Contractor shall within 10 (ten) Working Days after the Commencement Date and when required by the Employer's Representative, provide satisfactory evidence (including, without limitation, evidence of payment of the relevant premium and a certified copy of the policies) that the insurance required by the Clauses 25.1 and 25.3 has been effected and is in force. If the Contractor fails upon reasonable request to produce satisfactory evidence to the Employer's Representative, the Employer's Representative may effect and keep in force such insurance and pay such premium or premiums as may be necessary for that purpose and from time to time deduct the amount so paid as aforesaid from any monies due or which may become due to the Contractor or recover the same as a debt due from the Contractor or may without advance notice terminate the Contract. Any insurance taken out by the Employer's Representative shall not affect the obligation of the Contractor to take out and effect valid insurance under Clauses 25.1 and 25.3. In the event that the insurance taken out by the Employer's Representative is invalid for any reason, the Contractor shall indemnify the Employer or the Employer's Representative in accordance with Clause 24. The Contractor shall under no circumstances have any right to claim against the Employer and/or Employer's Representative for any losses due to its failure to take out the required insurance.
- 25.6 In the event that any insurance maintained by the Contractor under Clauses 25.1 and 25.3 is claimed, and proceeds awarded, such proceeds shall either be used for making good the loss or damage in respect of which the money is received or in or towards the discharge of any liability of the Contractor under the Contract.

CONDITIONS OF CONTRACT

26 COMPLIANCE WITH LAWS AND REGULATIONS

The Contractor warrants that it shall at its own cost and expense and at all times comply with all laws, rules, regulations, decrees and/or official governmental orders of Hong Kong or of any authority which now or may in the future become applicable to the Contractor's business, equipment, and personnel. The Contractor shall not engage in activities properly objectionable to such authorities. In the event of breach of such warranty, the Contractor agrees to release, defend, indemnify and hold the Employer and/or the Employer's Representative harmless from and against any liability, fines, penalties, damages, demands, losses, claims, suits, judgments, costs and expenses or cause of action directly or indirectly arising out of or resulting from the Contractor's failure to comply with any and all applicable laws, rules and regulations (including the Rules and Regulations), decrees, and/or official government orders.

27. GOVERNING LAW AND DISPUTE RESOLUTION

- 27.1 The construction, validity and performance of the Contract shall be governed by the laws of Hong Kong.
- 27.2 The party ("Claimant") to the Contract claiming that a dispute has arisen under the Contract must give a written notice to the other party ("Respondent") and designate a person with the authority to settle the dispute for the Claimant, being the Claimant's authorized representative in negotiations relating to the dispute, and the Respondent must within five (5) Working Days from the date of receipt of the notice, give a reply in writing to the Claimant, and designate a person with the like authority as its representative in negotiations relating to the dispute.
- 27.3 If the dispute is not resolved within 28 (twenty-eight) calendar days from the date that the Respondent received the notice, the dispute shall be finally and conclusively settled by arbitration in accordance with the domestic arbitration rules and procedures of the Hong Kong International Arbitration Centre in force from time to time including such additions to those as are therein contained. It is agreed that:
- (a) there shall be only one (1) arbitrator, to be mutually agreed by the Parties;
 - (b) in default of the parties' agreement as to the arbitrator, the appointing authority shall be the Hong Kong International Arbitration Centre;
 - (c) the place of the arbitration shall be Hong Kong; and
 - (d) the language of the arbitration shall be English, unless otherwise agreed.
- 27.4 The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this Clause 27 is an attempt to settle the dispute. Neither party may use any information or documents obtained through the dispute resolution process established by this Clause 27 for any purpose other than for the purpose of settling the dispute.

CONDITIONS OF CONTRACT

27.5 Notwithstanding the existence of a dispute between the parties the Contractor must, unless otherwise directed by the Employer's Representative, at all times continue to perform his obligations under the Contract in accordance with the Contract and the Employer's Representative's instructions, including any instructions in relation to the subject matter of the dispute.

28 CONFLICT OF INTEREST

28.1 The Contractor shall declare to the Employer's Representative, by submitting the Declaration and Undertaking, any conflict of interest, whether actual or potential, which exists or may arise at any time during the Contract Period or arises from the Contractor's engagement in any capacity, by any interest in or any other form of relationship or connection with any staff of the Employer or Employer's Representative, the Contractor, the Contractor's representative, personnel or employees, any Sub-Contractor or their representative or employees, any other contractors, sub-contractors or manufacturers or suppliers of any machinery tools, equipment, chemicals or materials in relation to this Contract, or any distributors or dealers in such machinery, tools, equipment, chemicals or materials or their respective agents, or any other person, firm, contractor or other organisation where in the sole opinion of the Employer's Representative such engagement, interest, relationship or connection on the part of the Contractor will or is likely to affect the Contractor's integrity or impartiality in the performance of the Contractor's duty as an independent contractor, or might have or could be perceived as having such effect.

28.2 Should any conflict of interest arise or shall potentially arise at any time during the Contract Period the Contractor shall immediately declare, in writing, the nature of the conflict and the parties involved to the Employer's Representative.

29. FORCE MAJEURE

29.1 The Employer and/or the Employer's Representative and the Contractor shall not be liable to each other for non-performance, delay and/or deficiency in the performance of their respective obligations under this Contract occasioned or caused by Force Majeure provided that the Employer and/or the Employer's Representative and the Contractor take all steps reasonably possible to mitigate such failure or delay.

29.2 Strikes, lockouts or disputes with employees, which are limited to the Contractor's employees or any Sub-Contractor's employees, or the inability of either party to secure funds, shall not be regarded as Force Majeure.

29.3 Upon the occurrence of Force Majeure the party affected shall give prompt notice thereof to the other party and shall, at its own cost and expense, do all things reasonable to remove or mitigate its effect.

30. VARIATIONS

30.1 The Employer's Representative, on behalf of the Employer, shall have the right to vary the Services as and when required and no such variation shall vitiate this Contract.

CONDITIONS OF CONTRACT

- 30.2 Any variations are to be governed by this Contract.
- 30.3 Under a variation issued pursuant to Clause 30.1, the Employer's Representative may give instructions to the Contractor:
- (a) to perform Optional Items and/ or services not stated in the Scope of Services; and/or
 - (b) that part of the Services is no longer required or temporarily not required and that the said Services will cease to form part of the Services from the date of receipt of the direction until further notification from the Employer's Representative; and/or
 - (c) to vary the quantity of Services; and/or
 - (d) to reschedule the Services; and/or
 - (e) to increase or decrease the minimum manpower deployment.
- All of the above variations, once instructed, are hereinafter called Variation of Services.
- 30.4 If the Employer's Representative varies the Services under this Clause 30, the amount payable under the Contract will be adjusted by an amount to be valued by the Employer's Representative on a fair and reasonable basis, based as far as possible on the cost breakdown stated in the Schedule of Rates and the Optional Items. The Contractor shall under no circumstances have any right to claim against the Employer and/or Employer's Representative for any losses, including any additional expenditure or loss of profit.
- 30.5 All variations to this Contract must be documented in writing. Any verbal variations issued by the Employer's Representative shall be recorded by the Contractor in writing by a Letter of Confirmation of Variation of Services and submitted to the Employer's Representative for confirmation within 3 (three) Working Days of receipt of the verbal variation.
- 30.6 The Employer's Representative may amend the Rules and Regulations, Service Level Agreement, the required content of the Monthly Report, Scope of Services, Schedule of Machinery, Tools and Equipment, Schedule of Materials and Chemical together with the material safety data sheet, Optional Items, and the Schedule of Rates in order to reflect the variation as recorded in the Letter of Confirmation of Variation of Services.
- 30.7 Any variations must be clearly identified in the request for payment referenced by the Letter of Confirmation of Variation of Services, so that payment will not be delayed. Neither the Employer nor the Employer's Representative will be responsible for any delay in the payment of the Services as a result of incomplete or incorrect information in the request for payment.
- 30.8 All the variations made by the Employer's Representative, whether verbally or in writing, shall be treated as a variation made by the Employer and all such variations shall be treated as a condition of the Contract.

CONDITIONS OF CONTRACT

31. INSTRUCTIONS

- 31.1 The Employer's Representative shall have full power and authority to issue instructions to the Contractor or the designated key personnel for and on behalf of the Employer.
- 31.2 Notwithstanding Clause 31.1, such Contractor's or any Sub-Contractor's respective designated key personnel and employees shall at all times be deemed to remain under the direct employment, supervision and control of the Contractor.
- 31.3 The Contractor shall comply with all instructions issued by the Employer's Representative. If the Contractor does not fully comply with the instructions or within the time stipulated in the instructions the Employer's Representative may, without having to give further notice employ and pay other persons to execute any work whatsoever which may be necessary to give effect to such instructions and all costs incurred in connection with such employment shall be recoverable by the Employer from the Contractor in accordance with Clause 33.

32. DELIVERY OF VARIATIONS, INSTRUCTIONS AND NOTICES

- 32.1 All variations, instructions or notices under this Contract shall be given in writing unless otherwise specified and delivered by hand, courier, registered post, fac simile or email to the address of the party as listed in the Address for Notice and shall take effect on the date of confirmation of receipt by the recipient or successful transmission unless otherwise specified in the variation, instruction or notice.
- 32.2 Letters and faxes must be on company letterhead and emails must be from the organisation's domain name or other recognizable variation or an email address as agreed by the Employer's Representative.
- 32.3 The parties shall ensure that its email system is maintained in good and working condition at all times, and shall immediately notify the other party if its email system is inoperable so that an alternative means of communication may be used in the interim period.

33. NON-COMPLIANCE

- 33.1 The Employer reserves the right to obtain Services from another contractor in the event that the Contractor is unable to meet his obligations under this Contract. The Contractor agrees and undertakes to indemnify and keep the Employer indemnified against all costs incurred by him in connection with such employment on a full indemnity basis. In addition, an administrative fee of 20% (twenty percent) of the total value of the Services carried out under this Clause 33 will be recoverable by the Employer from the Contractor.

34. CONTRACT SUM

- 34.1 There will be no adjustment to the Contract Sum during the Contract Period for any variation in the cost of labour, materials, exchange rates and insurance premiums or any other costs to the Contractor.

CONDITIONS OF CONTRACT

35. PAYMENT

- 35.1 The Employer shall not pay for any Services which are not in accordance with the Scope of Service or a Letter of Confirmation of Variation of Services or to the Standard of Service or which were not executed or completed within the time or standard as specified in the Scope of Service or in the Letter of Confirmation of Variation of Services, or are considered by the Employer's Representative in their sole and absolute discretion as incomplete for any other reason.
- 35.2 The Contractor shall submit to the Employer's Representative a request for payment, accompanied by evidence of completion, as soon as practicable after completion of the preceding month's Services. Should the Contractor fail to submit any request for payment and corresponding evidence in a timely manner, which is deemed to be no more than 2 (two) months from the last day of completion of the Services in respect of the month in which the Services were purportedly rendered, the Services will be either deemed incomplete or the Contractor is considered to have waived his right for payment under this Contract in respect of the Services the subject thereof and no retrospective payment shall be made.
- 35.3 The request for payment and the evidence of Services completed shall be verified and approved by the Employer's Representative within 15 (fifteen) working days of the date of submission. Should there be any discrepancies in the request for payment and/or evidence of Services completed the Contractor shall clarify the discrepancies in writing or, when necessary, resubmit a corrected request for payment and/or evidence of Services completed.
- 35.4 Payment will be made to the Contractor by cheque or direct into the Contractor's bank account within 60 (sixty) days of the date when request for payment is approved.
- 35.5 If the Commencement Date is not on the first day of a calendar month, the first payment will be calculated pro-rata according to the number of days during that calendar month on which the Contractor carried out the Services. If the Completion Date or the date of the termination of Contract is not the last day of calendar month, the last payment will be calculated pro-rata according to the number of days during that calendar month on which the Contractor carried out the Services.

36 RECOVERY OF SUMS DUE

- 36.1 Without limiting any other right or remedy the Employer and/or Employer's Representative may have, whenever under this Contract any sum of money shall be recoverable from or payable by the Contractor to the Employer or Employer's Representative, the same may be deducted by the Employer or Employer's Representative from any sum then due or which at any time thereafter may become due from the Employer to the Contractor under this Contract and/or recover the same as debt due from the Contractor.

CONDITIONS OF CONTRACT

37. TRANSFER OR ASSIGNMENT OF CONTRACT

- 37.1 The Contractor is prohibited from transferring, sub-letting, sub-contracting (except to any Sub-Contractor) or assigning, directly or indirectly, any rights or duties under this Contract to any person or persons, contractor or companies, all or any portion of this Contract without the prior written permission of the Employer's Representative. The Contractor's right to transfer, sub-let, sub-contract or assign, directly or indirectly, shall not in any way relieve it from any obligations under the Contract.
- 37.2 It shall be the duty of the Contractor if so required by the Employer's Representative to furnish the Employer's Representative with all particulars concerning any Sub-Contractor employed or to be employed for the execution of the Services.

38. WAIVER

- 38.1 Unless otherwise stated, failure by any party at any time to enforce any of the provisions of the Contract shall not be construed as a waiver by such party of such provision or in any way affect the validity of the Contract or any part thereof.

39. WARRANTIES

- 39.1 Without prejudice to any other warranties expressed elsewhere in the Contract or implied by law, the Contractor warrants and represents to the Employer that:
- (a) the Services will be provided in all respects in accordance with the Contract; and
 - (b) in providing the Services the Contractor will exercise such care and diligence as is reasonably to be expected of an appropriately and legally qualified contractor with experience of carrying out work of a similar scope, type, nature and complexity to that comprised in the Services in accordance with the best modern principles and practices.
- 39.2 The Contractor shall provide all necessary and valid warranty certificates completed in the name of the Employer within 10 (ten) Working Days of the delivery of the Services to the Employer's Representative for any Services that come with a warranty specific to a part or the entirety of the Services. Failure to complete a warranty certificate in the Employer's name and deliver a valid and completed certificate to the Employer's Representative will result in the Services being deemed incomplete. The Services will not be accepted as complete until a valid and complete certificate in the Employer's name is provided to the Employer's Representative.

CONDITIONS OF CONTRACT

40. SECRECY AND PUBLICITY

- 40.1 The Contractor shall not publish in any media for any purpose, alone or in conjunction with any other person, any information, names of individuals or companies, photographs or other illustrations of any of the Employer's or Employer's Representative's staff, the Premises, the occupants, the visitors, any machinery, or equipment, installations or property, physical or intangible, in or at the Premises without the Employer's Representative's prior written consent.
- 40.2 The Contractor shall not divulge to any third party any information given by the Employer or Employer's Representative in connection with the Contract or which becomes known to the Contractor as a result of providing the Services.
- 40.3 The Contractor is to take all appropriate measures against unauthorised or unlawful possession, usage or processing of information, whether it relates to this Contract specifically or not, which is the property of any organizations or persons on the Premises, regardless if it is placed in a refuse or recycling container.

41. SEVERANCE CLAUSE

- 41.1 If at any time any one or more provisions hereof is or becomes invalid, illegal, unenforceable or incapable of performance in any respect, the validity, legality, enforceability or performance of the remaining provisions hereof shall not thereby in any way be affected or impaired, and this Contract shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- 41.2 If any provision of this Contract is so found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted, the provision in question shall apply with such modification(s) as may be necessary to make it valid and enforceable.
- 41.3 The parties agree, in the circumstances referred to in Clause 41.1, and if Clause 41.2 does not apply, to attempt to substitute for any invalid or unenforceable provision a valid and enforceable provision which achieves to the greatest extent possible the same effect as would have been achieved by the invalid or unenforceable provision. The obligations of the parties under any invalid or unenforceable provision of this Contract shall be suspended while an attempt at such substitution is made.

42. CONFLICT BETWEEN CLAUSES

- 42.1 In the event that there is any conflict between clauses, the Employer's Representative shall have the final say to determine which clause prevails without prejudice to the Contractor's right to resolve the dispute under Clause 27.

CONDITIONS OF CONTRACT

43. SURVIVAL

43.1 Any provision of this Contract which is capable of being performed but which has not been performed at or before Completion Date or earlier termination of this Contract, and all undertakings, agreements representations and warranties and indemnities contained in or entered into pursuant to this Contract shall remain in full force and effect notwithstanding the termination of this Contract (except insofar as they set out obligations which have been fully performed).

44. PRIVACY OF CONTRACT

44.1 This Contract records the agreement between the Employer and the Contractor. The Contractor acknowledges that the Employer's Representative acts in the capacity as the Employer's agent in respect of this Contract and is authorised by the Employer to perform such duties as specifically set out herein or as the Employer shall think fit. All exercise of any powers under this Contract by the Employer's Representative shall be deemed to be for and on behalf of the Employer.