

GENERAL CONDITIONS OF CONTRACT FOR CONSULTANCY SERVICES

Assignment, Subcontracting and Change of Control

- 1.1 The Appointed Consultant shall not, without the prior written consent of the HKSIL, assign, transfer or otherwise dispose the benefit of the Agreement (or any interest therein) or sub-Agreement the Agreement or any part thereof. Any such consent shall not relieve the Appointed Consultant from any of its obligations under the Agreement. In addition, this Agreement and/or its proceeds shall not be used as a collateral security for a loan or any type of financing arrangements.
- 1.2 Any change of control in the Appointed Consultant (as a legal person) shall be deemed to be an assignment by the Appointed Consultant. A change of control means any change in the identity of the ultimate person or persons who have the ability to direct the affairs of the Appointed Consultant whether by way of Agreement, direct or indirect ownership of shares or otherwise.

Termination by Default of the Appointed Consultant

- 2.1 Without prejudice to Clause 2.3 of General Conditions of the Agreement, if the Appointed Consultant defaults in carrying out all or any of the Services satisfactorily provided for in the Agreement, fails to perform any of its obligations under the Agreement or to observe any conditions under the Agreement, the HKSIL may terminate the Agreement forthwith by notice in writing, but without prejudice to any claims by the HKSIL or remedies for breach of the Agreement and in particular, the HKSIL shall thereafter at its absolute discretion to assign the Services which were unsatisfactorily performed by the Appointed Consultant to another consultant whereupon the Appointed Consultant shall be liable for all and any costs so incurred. The HKSIL may make full use of all or any printing matters, information or other documents or intellectual property produced or prepared by the Appointed Consultant pursuant to and for use under the Agreement. The aforesaid balance of the unsatisfactory Services and any sums so incurred shall be identified by the HKSIL as conclusive.
- 2.2 If the HKSIL chooses, at its sole discretion, to appoint another Consultant under the circumstances described under Clause 2.1 of General Conditions of the Agreement, the Appointed Consultant shall be liable to the HKSIL, but without prejudice to any claims by the HKSIL, to pay for any additional expenditure, expenses, disbursements, costs and fees so incurred by the HKSIL.
- 2.3 If the Appointed Consultant shall default in any one or more of the following respects, that is to say:

- 2.3.1 if it without reasonable cause wholly suspends the provision of the Services (or any part thereof) during the Agreement Period, or
- 2.3.2 if it has abandoned the Services (or any part thereof); or
- 2.3.3 if it fails to diligently provide the Services despite previous warning by the HKSIL in writing, or
- 2.3.4 if it refuses or persistently neglects to comply with a written notice from the HKSIL requiring him to improve the standard of the Services; or
- 2.3.5 if there shall be any breach of any of the terms and conditions on the Appointed Consultant's part to be observed and performed;

then the HKSIL may, without prejudice to any other rights or remedies of HKSIL and without prejudice to Clause 2.1 of the General Conditions of Agreement, forthwith terminate the appointment of the Appointed Consultant and this Agreement, immediately with or without prior notice to the Appointed Consultant.

2.4 In the event of the appointment of the Appointed Consultant being terminated as aforesaid and so long as it has not been reinstated and continued, the following shall be the respective rights and duties of the HKSIL and Appointed Consultant:

2.4.1 The HKSIL may, in its absolute discretion consider fit, appoint and pay other persons to carry out and provide the Services.

Termination of Agreement

3.1 Notwithstanding Clauses 2.1 and 2.3 of General Conditions of Agreement, the HKSIL or the Appointed Consultant may give the other party **7 days written notice** to terminate the Agreement.

3.2 Subject to Clause 3.1 of General Conditions of Agreement, in the event of the Agreement being terminated whether by effluxion of time, notice, breach or otherwise, the Appointed Consultant shall immediately refund to the HKSIL any excess sum which have been made to the Appointed Consultant by the HKSIL before the termination of the Agreement and if such refund is made **within 7 days**, without interest.

**Bankruptcy
or Insolvency
of
the Appointed
Consultant**

- 3.3 Termination shall be without prejudice to the rights and remedies of either party in respect of any antecedent breach of the other party (if any).
- 4.1 The HKSIL may at any time by notice in writing unilaterally and immediately terminate the Agreement forthwith without entitling the Appointed Consultant to compensation in any of the following events:
- 4.1.1 If applicable, if the Appointed Consultant shall at any time be adjudged bankrupt, or shall have a bankruptcy order or orders for administration of its estate made against it or shall take any proceedings for liquidation or composition under any applicable laws or regulations or make any conveyance or assignment of its effects or composition or arrangement for the benefit of its creditors or purports so to do.
- 4.1.2 If the Appointed Consultant, being a limited company or corporation, shall pass a resolution for voluntary winding up or a petition for winding up shall be filed or other step has been taken by any person for the winding up or dissolution of the Appointed Consultant, or the Court shall make an order for the liquidation of its assets, or a receiver or manager shall be appointed on behalf of the creditors and/or debenture holders of the Appointed Consultant, or possession taken by or on behalf of the holders of any debentures secured by a floating charge, of any property comprised in or subject to the floating charge or circumstances shall have arisen which entitled the Court or creditors and/or debenture holders to appoint a receiver or manager.
- 4.2 Provided always that such termination shall not prejudice or affect any right or action or remedy which shall have accrued or shall accrue thereafter to the HKSIL. Provided always that the appointment of the Appointed Consultant may be continued if the HKSIL and the Appointed Consultant (its trustee in bankruptcy liquidator, receiver or manager) as the case may so agree.

**Notice to /
from the
Appointed
Consultant**

- 5.1 All notices to be given under the Agreement shall be given by either party to the other in writing. Any notice to be given by either party to the other shall be delivered personally or sent by registered post to the addressee at the addressee's registered office (if being a limited company or corporation) or its last known address to the despatching party (in any other case) for the time being or by fax or electronic mail (e-mail) to such fax number or e-mail address last known to the despatching party. The notice shall be deemed to be received:

5.1.1 if delivered personally, at the time of receipt;

5.1.2 if sent by post, at the expiration of **48 hours** after posting (having been correctly addressed) whether or not received;

5.1.3 if sent by fax or e-mail, **24 hours** after dispatch to the correct fax number or e-mail address of the addressee.

Authorised Representative

6.1 The HKSIL shall appoint an authorised representative to liaise with the Appointed Consultant and supervise the performance of the Appointed Consultant in relation to the requirements as detailed in the Agreement.

6.2 The Appointed Consultant shall appoint an authorised representative to liaise with the HKSIL's authorised representative on all necessary co-ordination/co-operation works to ensure the smooth commencement, progress and completion of the Agreement. The authorised representative of the Appointed Consultant must be able to communicate fluently in Cantonese, Putonghua and English.

Replacement of Appointed Consultant's Employee

7.1 The Appointed Consultant shall provide suitable and sufficient staff for all the purposes set out in this Agreement.

7.2 The Appointed Consultant shall ensure so far as is possible that all persons employed by it are efficient sober and honest and will not employ for the purposes of this Agreement any person to whose employment reasonable objection is taken by or on behalf of the HKSIL.

7.3 The Appointed Consultant shall comply with all applicable laws and regulations in carrying out and providing the Services and in performing its obligations under this Agreement and shall procure its employees to comply with all applicable laws and regulations in carrying out and providing the Services.

7.4 The HKSIL shall have the right, at its sole discretion, to require the Appointed Consultant to remove any employee, if he/she is in violation of the regulations of the HKSIL or commits any illegal or dishonest act, or engages in behaviour deemed by the HKSIL at its sole discretion not to be in the best interests of the HKSIL.

Liabilities, Indemnification and Insurance Policy

8.1 The Appointed Consultant shall at its own expense at all times to possess relevant insurance coverage, according to the requirements of the Laws of HKSAR, for the execution of this Agreement to indemnify the HKSIL, the HKSAR Government and The Secretary for Home Affairs Incorporated.

**Appointed
Consultant
to Accept
Risks**

9.1 The Appointed Consultant shall take upon itself the whole risk for the executing the Service in accordance with the specifications, terms and conditions of the Agreement and any other documents as appropriate.

**Statutory/
General
Obligations**

10.1 The Appointed Consultant shall at all times comply with all laws, ordinances, regulations, orders and by-laws having the force of the law applying within HKSAR and having a bearing on the performance of the Appointed Consultant's obligations and duties under the Agreement.

10.2 The Appointed Consultant shall comply with the regulations of the public service or statutory undertaking relating to the Agreement.

10.3 All information in connection with the Agreement must be considered as confidential and all such documents must be either destroyed or returned to the HKSIL after use.

10.4 The Appointed Consultant shall not at any time during or after the term of the Agreement divulge or allow to be divulged to any person any confidential information relating to the business or affairs of HKSIL including HKSIL personal data (privacy) and cyber security policies.

10.5 A waiver by the HKSIL of any breach of any term of the Agreement by the Appointed Consultant shall not prevent the subsequent enforcement of that term and shall not be deemed a waiver of any subsequent breach.

10.6 No premium, fee, key money or other sum of money of a similar nature shall be paid by the Appointed Consultant to the HKSIL or other person or persons authorised by him for the granting of the Agreement.

10.7 This Agreement shall constitute the whole of the terms agreed between the parties hereto in respect of the subject matter of this Agreement and that none of the parties has not relied upon any oral or written representation made to it by the other or its employees or agents and has made its own independent investigations into all matters relevant to it provided that nothing in this Clause 10.7 shall limit a party's liability for fraudulent misrepresentation.

10.8 This Agreement shall be capable of being varied only by a written instrument signed by a duly authorised officer or other representative of each of the parties.

10.9 This Agreement is severable in that if any provision is

terminated to be void, voidable, illegal or otherwise unenforceable by any court of competent jurisdiction or other competent authority such provision shall be deemed to have been deleted without affecting the remaining provisions of this Agreement which shall remain in full force and effect unless HKSIL in its absolute discretion decides that the effect of such termination is to defeat the original intention of the parties in which event HKSIL shall be entitled to terminate this Agreement by giving 7 days' notice to the Appointed Consultant and the provisions of Clause 3 of General Conditions of Agreement shall apply accordingly.

- 10.10 Nothing in this Agreement shall constitute or be deemed to constitute a partnership, agency or joint venture between the parties hereto or constitute or be deemed to constitute either party the agent of the other for any purpose whatsoever and neither party shall have any authority or power to bind the other or to Agreement in the name of or create a liability against the other.
- 10.11 The Services provided by the Appointed Consultant shall not infringe the patent, design or copyright or intellectual property rights of any third party. In case of any claim or action brought against the HKSIL alleging infringement of any patent, design, copyright or intellectual property rights in respect of the Services supplied, the Appointed Consultant shall indemnify and keep the HKSIL indemnified against all loss and damage, costs and expenses and to defend or settle such claim or action at the expense of the Appointed Consultant.

Corruption

- 11.1 The Appointed Consultant, its sub-consultants, employees and agents shall not offer, give, solicit any money, gifts or advantages (as defined in the Prevention of Bribery Ordinance, Cap 201 of the Laws of HKSAR) or excessive entertainment to or from any HKSIL employees or their family members or any person in relation to the Services.
- 11.2 The Appointed Consultant shall procure the good behaviour of its sub-consultants, employees and agents in the performance of the Services. It shall not permit its sub-consultants, employees and agents to solicit or accept any money, gifts or advantages (as defined in the Prevention of Bribery Ordinance, Cap 201 of the Laws of HKSAR) or excessive entertainment to or from any HKSIL employees or their family members or any person in relation to the Services. The Appointed Consultant shall advise its sub-consultants, employees and agents that they are not allowed to solicit or accept any money, gifts or advantages (as defined in the Prevention of Bribery Ordinance, Cap 201 of the Laws of HKSAR) or excessive entertainment to or from any HKSIL

employees or their family members or any person in relation to the Services.

11.3 If the Appointed Consultant and/or its sub-consultants, employees or agents are found to have committed an offence under the Prevention of Bribery Ordinance, Cap 201 of the Laws of HKSAR or any subsidiary legislation made thereunder or under any law of a similar nature in relation to the Agreement or any other Government Agreement, the HKSIL may, summarily terminate the Agreement without entitling the Appointed Consultant to any compensation therefor. The Appointed Consultant shall be liable for all costs necessarily incurred by the HKSIL as the result of the termination of the Agreement.

Governing Law

12.1 The Agreement shall be governed by the laws of HKSAR and the parties hereto hereby irrevocably submit to the non-exclusive jurisdiction of the Court of HKSAR.

12.2 The submission by the parties to such jurisdiction shall not limit the right of HKSIL to commence any proceedings arising out of this Agreement in any other jurisdiction it may consider appropriate.

12.3 Any notice or proceedings or other notices in connection with or which would give effect to any such proceedings may without prejudice to any other method of services be served on any party in accordance with this Clause 12.3.

12.4 In the event that the Appointed Consultant is resident outside Hong Kong its address for service in Hong Kong shall be the address for such services and any time limits in any proceedings shall not be extended by virtue only of the foreign residence of the Appointed Consultant.

Change of Address

13.1 Each of the parties shall give notice to the other of the change or acquisition of any address, e-mail address or telephone fax or similar number at the earliest possible opportunity but in any event within 48 hours of such change or acquisition.

Conflict of Interest

14.1 The Tenderer should state if any member of the HKSIL has any financial or other interest in the Tenderer's company either directly or indirectly through members of its family. This MUST be declared clearly in the tender proposal.

Registration of Tenderer

15.1 The HKSIL will not consider the tender unless the Tenderer, at the time of submitting the tender, is a limited company registered under the Companies Ordinance, Chapter 32 or 622 (if after 3 March 2014) of the Laws of HKSAR or a business registered under the Business Registration Ordinance, Chapter 310 of the Laws of HKSAR.

- | | | |
|-----------------------------|------|---|
| Alteration of Tender | 16.1 | The scope of services and terms and conditions as stated in the Agreement issued with this Tender must not be altered by the Tenderer. |
| Validity | 17.1 | Tenders shall remain open for acceptance by the HKSIL for a period of not less than ninety (90) calendar days after the tender closing date. |
| Acceptance of Tender | 18.1 | This Tender relates to the execution of the Services and all of the services in accordance with the Agreement and is subject to the Notice of Acceptance to be issued by the HKSIL. |
| | 18.2 | All Tenderers will be notified in writing of the HKSIL's acceptance or non-acceptance of the Tender. |
| | 18.3 | The HKSIL is not bound to accept the lowest or any Tender and reserves the right to accept all or any part of any Tender. |
| | 18.4 | The HKSIL may disclose the tender price of the successful Tender to such persons and for such purpose as the HKSIL may in its absolute discretion deem fit. |

----- O ----- O -----