

Hong Kong Science & Technology Parks Corporation

TENDER WEBSITE

Terms of Use

THIS DOCUMENT IS ISSUED BY THE HONG KONG SCIENCE & TECHNOLOGY PARKS CORPORATION (“**HKSTP**”) AND IT CONTAINS THE TERMS AND CONDITIONS WHICH APPLY TO YOUR USE OF THIS TENDER WEBSITE (“**TENDER WEBSITE**”). PLEASE READ THESE TERMS BEFORE USING THE TENDER WEBSITE. BY BROWSING, ACCESSING AND USING THIS TENDER WEBSITE, YOU AGREE TO BE BOUND BY THESE TERMS.

Interpretations

The terms used in these Terms of Use carries the following meanings:

“Applicant”	a Supplier/Contractor/Vendor who has submitted a Prequalification Submission to HKSTP.
“Clarification Notice”	a notice issued by HKSTP, wherein queries have been raised by HKSTP or clarifications have been sought by HKSTP from a Tenderer with regard to a Proposal or Quotation therefrom.
"Closing Date"	the closing date and time specified by HKSTP for Tenderers or Applicants to submit their Submissions to HKSTP in respect of a relevant Participation Indication, Request for Quotation, Invitation to Tender, Request for Proposal or Prequalification Invitation.
"Confidentiality Undertaking"	a written undertaking prescribed by HKSTP to be executed by a Supplier/Contractor/Vendor confirming that it will keep confidential all relevant Procurement Documents or Prequalification Documents and anything related to HKSTP as more particularly set out in the letter of undertaking.
"HKSTP", "we", "us" or "our"	the Hong Kong Science & Technology Parks Corporation whose registered office is located at 8/F, Bio-Informatics Centre, No.2 Science Park West Avenue, Hong Kong Science Park, Shatin, Hong Kong.

"Intellectual Property Rights"	all photos, images, text, graphics, logos, tradenames, button icons, design, patent, inventions, hyperlinks, audio, video, data and software, know-how, trade secrets, any legal interest or any similar rights recognized or protected as intellectual property under the laws of any jurisdictions, whether registered or not, and including all tangible representations and manifestations of such intellectual property rights.
"Invitation to Tender"	an invitation to tender, including any document attached thereto, issued by HKSTP inviting Tender Submissions to be submitted by a Supplier/Contractor/Vendor in accordance with the invitation to tender including Tender Addendum, for any goods and/or services required by HKSTP.
"Letter of Acceptance"	a letter including any documents attached thereto issued by HKSTP to a Tenderer accepting the Tenderer's Tender Submissions or Quotation or Proposal.
"Letter of Clarification"	a letter including any documents attached thereto issued by HKSTP to a Tenderer reciting the terms on which a Letter of Acceptance will be issued to the Tenderer.
"Letter of Notification"	a document issued by HKSTP to an Applicant informing it of the result of a Prequalification Invitation.
"Loss"	loss and damage whether direct or indirect including any fines or penalties imposed, and any costs and expenses such as legal expenses and Counsel's fees concerning arbitration, litigation, enforcement appeal on a full indemnity basis.
"Participation Indication"	an invitation issued by HKSTP to potential Tenderers to confirm their interest to participate in the Tender process.
"Prequalification Clarification"	a notice issued by HKSTP, wherein queries have been raised by HKSTP or clarifications have been sought by HKSTP from an Applicant with regard to a Prequalification Submission

therefrom.

"Prequalification Documents"

all or any documents issued by HKSTP in relation to a prequalification exercise including but not limited to any Prequalification Invitations, proforma Confidentiality Undertakings, Response to Prequalification Query, notes or instructions to applicants and any and all ancillary documents, including any amendments or supplements thereto.

"Prequalification Invitation"

an invitation (including any attachments thereto) issued by HKSTP inviting Submissions from an Applicant.

"Prequalification Notice"

a notice issued by HKSTP notifying Supplier/Contractors/Vendor about a Prequalification Invitation inviting Suppliers/Contractors/Vendors to obtain copies of the Prequalification Documents.

"Prequalification Query"

A query raised by an Applicant in relation to a Prequalification Query.

"Prequalification Submissions"

those documents submitted by an Applicant to HKSTP in response to a Prequalification Invitation and the applicable Prequalification Documents including but not limited to duly signed Confidentiality Undertaking, Responses to Prequalification Query and any other information and documents submitted by the Applicant (including but not limited to any amendments and supplements made thereto).

"Privacy Statement and Disclaimer"

HKSTP's Privacy Statement and Disclaimer that is available on the TENDER Website from time to time.

"Procurement Documents"

all or any documents issued by HKSTP in relation to its proposal for procurement including but not limited to any Invitation to Tender, Request for Quotation, Request for Proposal, pro-forma Confidentiality Undertakings, Response to Tender Query, Response to Query, Clarification Notice, Tender Clarifications, instructions to Tenderers and all related documents including those attached thereto.

"Proposal"	the offer (including any supplemental proposals thereto) submitted by a Tenderer in reply to and based on Request for Proposal and to the extent as applicable the Procurement Documents.
"Query"	a query raised by a Tenderer in relation to a Request for Proposal or a Request for Quotation.
"Quotation"	a quotation (including any supplemental quotations thereto) submitted by a Tenderer in reply to and based on the Request for Quotation and to the extent as applicable the Procurement Documents.
"Registered Account"	an online account under the TENDER Website established by HKSTP for use by a user.
"Registered Supplier/Contractor/Vendor"	a Supplier/Contractor/Vendor who has registered with HKSTP and who has held a Registered Account.
"Request for Proposal"	an invitation issued by HKSTP inviting a Proposal to be submitted by a Registered Supplier/Contractor/Vendor, for any goods and/or services required by HKSTP including any Revision, if necessary.
"Request for Quotation"	an invitation (including any terms and conditions and attachments thereto) issued by HKSTP inviting a Quotation to be submitted in accordance with the Request for Quotation for any goods and/or services required by HKSTP including any Revisions.
"Response to Clarification Notice"	a Tenderer's response to a Clarification Notice in respect of a Request for Quotation, Request for Proposal or Invitation to Tender.

“Response to Prequalification Clarification”	an Applicant’s response to a Prequalification Clarification.
“Response to Prequalification Query”	any response issued by HKSTP to a Prequalification Query.
"Response to Query"	any response issued by HKSTP to a Query.
"Response to Tender Query"	any response issued by HKSTP to a Tender Query.
“Revision”	any written document issued by HKSTP to modify, supplement or amend the Request for Quotation, Request for Proposal or Prequalification Invitation.
“Submissions”	all or any of the Tender Submissions, Quotations, Proposals and Prequalification Submissions.
"Supplier/Contractor/ Vendor"	a person, firm, company, organization, carrying on business of providing goods and/or services which HKSTP may require from time to time.
"Supplemental Tenders "	any document issued by a Tenderer that amends, alters or supplements any Tender already submitted by it to HKSTP.
"System"	the information system including software, hardware, data, interfaces, electronic platform and network which is used by HKSTP to operate the TENDER Website. All references to the "TENDER Website" shall be deemed to include references to the "System".
"Tender"	the offer submitted by a Tenderer in reply to and based on the relevant Invitation to Tender, including if applicable, the Supplemental Tenders.
"Tender Addendum"	any written document issued by HKSTP for the purposes of modifying, supplementing or amending any part of the Invitation

to Tender.

"Tender Clarification"	a notice/document issued by HKSTP to the Tenderer, asking for certain clarification on queries raised by HKSTP concerning the Tender Submissions.
"Tender Notice"	a notice issued by HKSTP announcing that an Invitation to Tender has been issued and inviting Suppliers/Contractors/Vendors to obtain copies of the relevant Procurement Documents.
"Tender Query"	a query raised by a Tenderer in relation to an Invitation to Tender.
"Tender Submissions"	documents submitted by a Tenderer in reply to and based on the Invitation to Tender and the Procurement Documents including but not limited to executed Confidentiality Undertaking, Responses to Clarification Notice and any other documents submitted by the Tenderer (including but not limited to any supplement thereto).
"TENDER Website"	the website " https://tender.hkstp.org/en/index.aspx " and where applicable include any references to the "System".
"TENDER Website Content"	any information, material, correspondence in any format including but not limited to data files, text, computer software, logo trademarks, button icon, hyperlinks, images, graphics, photos, videos, sound, audio files, recordings directories or documents (including but not limited to any Procurement Documents, Tender Notices, Letters of Acceptance, Letter of Clarification, Prequalification Documents, Prequalification Notices or Letters of Notification) used, issued, published or made available by HKSTP through the TENDER Website.
"Tenderer"	a Registered Supplier/Contractor/Vendor that has submitted a Tender Submission or Quotation.
"Terms"	these Terms of Use of the TENDER Website.

"user", "you" or "your" the user of the TENDERWebsite which includes employee, officer, director, representative or agent of any person, firm, company, organization, who access to or make use of the TENDER Website.

"User Content" any information, material, correspondence in any format including but not limited to data files, text, computer software, logo trademarks, button icon, hyperlinks, images, graphics, photos, videos, sound, audio files, recordings directories or documents (including but not limited to any Submissions, Response to Clarification Notice, Response to Prequalification Query, Tender Query) made available on or transmitted through the TENDER Website by you, your employees, directors or agents.

"Virus" any computer virus or any other software, disabling code, worms, time bombs, computer program or malicious code intended or designed to:

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

1. Introduction

This TENDER Website is set up for HKSTP to post or transmit any notice, information or document in relation to any proposed procurement or prequalification exercise which includes but not limited to, any Tender Notices, Procurement Documents, Letters of Clarification, Letters of Acceptance, Prequalification Notices, Prequalification Documents, or Letters of Notification, etc. in electronic format for viewing and downloading by users as well as for the electronic submission and uploading of any Submissions by Registered Suppliers/Contractors/Vendors through the use of the TENDER Website and System.

2. Acceptance of these Terms

2.1 By browsing, accessing and using the TENDER Website, you shall be deemed to have accepted and agreed to be bound by these Terms and the Privacy Statement & Disclaimer. If you do not agree to accept all of these Terms and the Privacy Statement and Disclaimer, please refrain from using the TENDER Website

2.2 Headings, sub-headings and the paragraphs of these Terms are for ease of reference only and are not intended to be part of or to affect the meaning, interpretation, construction or enforceability of any of the terms and conditions contained in these Terms, and are not intended and shall not affect the application of any of the provisions to the entirety of these Terms.

3. Update of these Terms

HKSTP may update and amend these Terms and the Privacy Statement and Disclaimer from time to time without notice. Any amended version of these Terms and the Privacy Statement and Disclaimer shall be made available on the TENDER Website. It is your responsibility to review these Terms and the Privacy Statement and Disclaimer on a regular basis. By continuing to access and use the TENDER Website you shall be deemed to have agreed to be bound by the latest version of these Terms and the Privacy Statement and Disclaimer.

4. Contents of the TENDER Website

HKSTP may from time to time without notice or any liability to you, update or amend any TENDER Website Content, or modify, discontinue, suspend or terminate the TENDER Website (or any part thereof).

5. The Application of Registered Account

5.1 You are required to follow and complete the application and registration procedures as stated in the TENDER Website in order to apply for a Registered Account.

5.2 HKSTP may from time to time without notice or any liability to you, update, amend or disable the application and registration process for a Registered Account on the TENDER Website.

5.3 HKSTP may, in its sole discretion, accept or decline any application to open a Registered Account and HKSTP's decision shall be final.

- 5.4 The requirements for applying for a Registered Account are set out below:
- (i) You must be a duly registered and/or established business, institution or legal entity under the applicable law and shall provide documents/evidence to substantiate the same as may be required;
 - (ii) You must register with your full legal name and registered name as shown on your most up-to-date certificate of incorporation or business registration certificate, or business licence or any legally recognized equivalent document in your place of incorporation;
 - (iii) You must provide us with your full principal office/business address and contact details, including an email address; and
 - (iv) You must provide us with any other information or documents that may be required by us from time to time.
- 5.5 We may require you, at any time (whether before or after the establishment of your Registered Account), to provide any other information as may be required by us, or as required by applicable law or a competent government body, and you must comply with our request promptly and fully.

6. The Use of Registered Account

- 6.1 You agree that:
- (i) you can only download any TENDER Website Content or submit any Submissions through the TENDER Website when you are a Registered Supplier/Contractor/Vendor and when you have logged into your Registered Account;
 - (ii) you shall only use your Registered Account for Tender purposes, including for the submission of any Submissions; to download or view any TENDER Website Content; to provide or update any information, documents or details required by us; for any purpose directed related to the foregoing but not further or otherwise;
 - (iii) you shall only use your Registered Account in accordance with these Terms, the Privacy Statement and Disclaimer and any other terms and conditions issued by HKSTP in relation to the Registered Account;
 - (iv) any information you provide or submit to HKSTP in relation to or via your Registered Account (including any application for a Registered Account) shall be up to date, true, accurate, complete and correct;
 - (v) you shall notify us promptly upon any changes to your details and/or any other information provided by you to us in relation to the Registered Account;

- (vi) you will not allow other person, firm, company or organization to have access to or to use your Registered Account and you shall immediately report to us if there is any such unauthorized use;
- (vii) you shall at all times keep your login details (including your login name, password, and token) of your Registered Account secure and confidential to prevent any unauthorized access, use or submissions;
- (viii) without prejudice to Clause 6.2 below, you shall notify us immediately in writing upon becoming aware of any unauthorized use of your login details of your Registered Account; and
- (ix) you shall procure all of your employees, officers, directors, representatives or agents to comply with this clause.

6.2 you shall be solely and fully responsible for all activities that occur under your Registered Account, and HKSTP shall not be responsible or liable to you or any third party for any Loss as a result of any unauthorized access to your Registered Account caused by your actions or omissions, including any actions of any person who uses your password and/or token and/or who submits any documents, or Submissions through the use of your password or token or Registered Account, regardless of whether or not such persons are in fact authorized to do so

7. Termination or Suspension of Your Registered Account

7.1 HKSTP may at its sole discretion, with or without notice, suspend, terminate or impose any limitations on your Registered Account.

7.2 Upon termination or suspension of the Registered Account in accordance with Clause 7.1 above, you shall immediately cease using or accessing your Registered Account or any related services (as required by HKSTP). Any termination, suspension or limitation to your right to use or access to (in whole or in part during such period or periods) your Registered Account or any related services, shall be without prejudice to any other rights or remedies available to HKSTP against you for breach of these Terms.

8. TENDER Website Content

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

8.2 You shall be solely and fully responsible for ensuring that you have the

appropriate hardware, equipment and software that enables you to use the TENDER Website and/or to view or download any or all of the TENDER Website Content through the TENDER Website.

8.3 During the transmission or downloading of any TENDER Website Content through the TENDER Website, the TENDER Website may fail to work, be interrupted, breakdown, contain Virus, malfunction, fail to respond, be slow to process, create errors or any other defects or defaults. HKSTP does not provide any guarantee, representation, undertaking or warranty to avoid, prevent or rectify such circumstances. In the event of any failure, interruption, breakdown, malfunction, fail to respond, slow processing, or existence of error or any other defect or default in the TENDER Website, you shall contact HKSTP who may agree in its sole discretion to provide you with an alternative method or solution to obtain or view the TENDER Website Content for the relevant intended procurement or prequalification exercise, as the case may be. HKSTP shall have the final decision in case of a dispute.

8.4 HKSTP shall in no way be responsible or liable to you for any Loss incurred or suffered by you as a result of any delay, failure, interruption, breakdown, Virus, malfunction, failure to respond, errors, defects or defaults in the transmission or downloading of any of the TENDER Website Content otherwise pertaining to your use of the TENDER Website.

9. Submissions

9.1 The requirements for making Submissions through the TENDER Website are set out below:

- (i) you must be a Registered Supplier/Contractor/Vendor and must log onto your own Registered Account in order to submit or upload any Submissions;
- (ii) your password is required to make any Submissions through the TENDER Website; and
- (iii) unless HKSTP otherwise agrees in writing, Submissions other than through the TENDER Website are not acceptable.

9.2 You represent and warrant that:

- (i) you hold the full rights and title to all Submissions submitted, transmitted or uploaded by you through the TENDER Website, free of all encumbrances, liens and charges;

- (ii) your Submissions are accurate and complete and shall not infringe upon the rights (including Intellectual Property Rights) of any third party; and
- (iii) your Submissions have been internally approved and any digital signature used by you on the Submissions is valid and enforceable against you.

9.3 HKSTP may not consider your Submissions if you are found to have breached these Terms. If you are in breach of these Terms (in particular clause 9.2 above), HKSTP is not obligated to consider any Submissions from you. Without prejudice to the generality of the foregoing, Submissions shall not be considered by HKSTP and HKSTP shall not be liable for any failure to consider your Submission in the following situations:-

- (i) your Submissions do not comply with any of the formatting requirements specified by HKSTP;
- (ii) your Submissions are not made in compliance with the Terms;
- (iii) your Submissions are contaminated with a Virus, or are otherwise corrupted, or not readable or printable into readable text but under no circumstance shall HKSTP inform you of such happening or grant you our extension of time to make the Submissions; or
- (iv) your Submissions have not been completely transmitted through the TENDER Website and received by HKSTP by the relevant Closing Date.

9.4 You should ensure that your Submissions are fully compliant with our terms and conditions contained in the relevant Procurement Documents or Prequalification Documents and that your Submissions complete their transmission through the TENDER Website and are received by HKSTP by the relevant Closing Date specified by HKSTP.

9.5 Any Submissions that are not fully and successfully transmitted to and received by HKSTP by the relevant Closing Date for whatever reason shall be invalid. HKSTP has no obligation to and shall not take into consideration any Submissions that are not received by HKSTP by the relevant specified Closing Date.

9.6 All notices or messages that appear on the TENDER Website that display any date, time, time zone, or time remaining for any Submissions to be filed, are for reference purposes only. Notwithstanding the foregoing, the transmission completion time of your Submissions generated by the TENDER Website / HKSTP's System, shall be final and binding and shall be relied on by HKSTP to

determine whether or not your Submissions was submitted by the relevant Closing Date. Such transmission time will be shown in an acknowledgement notice displayed on the screen after the transmission. HKSTP will issue an acknowledgement to the Tenderer or Applicant who has successfully completed the transmission of its Submissions through the TENDER Website by the relevant Closing Date.

- 9.7 You shall be solely and fully responsible for ensuring that you have the appropriate hardware, equipment and software that enables you to access the TENDER Website, your Registered Account and the System, and to upload and submit your Submissions through the TENDER Website.
- 9.8 During the transmission, uploading and/or submission of any Submissions (or any other User Content) through the TENDER Website, the TENDER Website may fail, be interrupted, breakdown, contain Virus, malfunction, be slow to process, contain errors or any other defects or defaults. HKSTP does not provide any guarantee, representation, undertaking or warranty to avoid, prevent or rectify such circumstances. In the event of any such failure, interruption, breakdown, malfunction, slow processing, error or any other defect or default in the TENDER Website, you shall contact HKSTP and it may agree (in its sole discretion) to provide you with an alternative method to submit your Submissions to HKSTP by the relevant Closing Date.
- 9.9 HKSTP shall in no way be responsible or liable to you for any Loss incurred or suffered by you as a result of any delay, failure, interruption, breakdown, virus, malfunction, error, defect or default in the transmission or uploading of any Submissions or any other User Content.
- 9.10 All User Content, including any information, material and data in your Submissions shall be encrypted for security reasons when uploaded, submitted or transmitted through the TENDER Website and the System. You agree that any User Content or information, material and data that is so encrypted, shall be complete and accurate after decryption and, in any event, you accept any error, misstatement or omission that may occur upon decryption or encryption.
- 9.11 Submissions that are successfully uploaded and transmitted through the TENDER Website shall be encrypted and electronically stored in a secure location, which shall be accessed by HKSTP for processing and consideration.

User Content, Submissions or any information, material or data that has been encrypted and decrypted, shall be used and relied on by HKSTP as received by HKSTP, and you agree to be bound by such contents of User Content, Submissions, or any information, material or data.

9.12 You shall ensure that User Content, including your Submissions, which are uploaded, transmitted or submitted through the TENDER Website must be in a standardized electronic format that allows the TENDER Website to capture, record, store, transmit and/or process it and any other formatting requirements specified by HKSTP on the TENDER Website or the Procurement Documents or the Prequalification Documents.

9.13 You hereby waive any and all rights you may have to challenge or take issue with the validity of or accuracy of any information contained in any Submissions submitted by you through the TENDER Website, or any contract that arises from such Submissions and/or our acceptance of such, on the basis that the document was not physically signed by you or that the password or login names, as applicable, was used without your authorization.

10. Tender Addendum, Revisions and Other Amendments to the Procurement Documents or Prequalification Documents

10.1 HKSTP may at any time issue one or more Tender Addendum, Revisions or any other amendments to the relevant Procurement Documents or Prequalification Documents, prior to the relevant Closing Date. HKSTP shall send an email to your Registered Account on the TENDER Website once a Tender Addendum or Revision has been issued or any other amendments to the relevant Procurement Documents or Prequalification Documents have been made, and the date of sending such email will be deemed to be the effective date of such Tender Addendum, Revision or any amendment to the relevant Procurement Documents or Prequalification Documents, as applicable ("**Amendment Date**"). HKSTP shall in no way be liable if you fail to receive any such email or if you are unaware of such email.

10.2 You shall be fully responsible for checking the TENDER Website on a regular basis to ensure that you are kept up-to-date and aware of any Tender Addendum, Revisions or other amendments to the relevant Procurement Documents or Prequalification Documents, and shall be responsible for ensuring that your Submissions fully comply with and take into account the Tender Addendum,

Revisions or any other amendments to the relevant Procurement Documents or Prequalification Documents. HKSTP shall in no way be liable for any failure by you to take into account any Tender Addendum, Revisions or other amendments to the relevant Procurement Documents or Prequalification Documents, in your Submissions.

- 10.3 In the event that HKSTP issues any relevant Tender Addendum, Revision or any other amendments to the relevant Procurement Documents or Prequalification Documents as mentioned in Clause 10.1 above, you acknowledge and agree that:
- (i) all of your relevant Submissions submitted to HKSTP before and/or after the relevant Amendment Date shall represent the full and entire offer made by you in response to the relevant Procurement Documents or Prequalification Documents, as applicable; or
 - (ii) if no amendments to Submissions are submitted by you to HKSTP following the Amendment Date, then the relevant Submissions which were submitted by you prior to the relevant Amendment Date shall represent the full and entire offer made by you in response to the relevant Procurement Documents or Prequalification Documents, as the case may be.

11. Query, Response to Query, Tender Query, Response to Tender Query, Prequalification Query and Response to Prequalification Query

- 11.1 HKSTP will only accept Query, Tender Query or Prequalification Query from a Registered Supplier/Contractor/Vendor made through its own Registered Account on the TENDER Website.
- 11.2 You represent and warrant that your Query, Tender Query or Prequalification Query have been internally approved and is valid and enforceable against you (the Tenderer or the Applicant, as the case may be).
- 11.3 HKSTP shall not accept, consider or provide any response to any Query, Tender Query or Prequalification Query where you are in breach of these Terms, including Clause 11.1 above and shall not be liable for such in the following circumstances when any Query, Tender Query or Prequalification Query submitted through the TENDER Website:
- (i) does not comply with any of the formatting requirements specified by HKSTP;
 - (ii) is not in accordance with these Terms;
 - (iii) is contaminated by Virus, or is otherwise corrupted, or not readable or

printable into readable text; or

- (iv) has not successfully completed its transmission and received by HKSTP by the relevant deadline imposed by HKSTP.

11.4 It is your sole responsibility to ensure that your Query, Tender Query or Prequalification Query are fully compliant with these Terms and HKSTP's terms and conditions contained in the relevant Procurement Documents or Prequalification Documents, as applicable, and that your Query, Tender Query or Prequalification Query complete their transmission through the TENDER Website and are received by HKSTP by the relevant deadline specified by HKSTP.

11.5 If applicable, HKSTP will issue a Response to Query or Response to Tender Query to the relevant Procurement Documents or a Response to Prequalification Query Documents prior to the relevant Closing Date. HKSTP shall send an email to your Registered Account on the TENDER Website once a Response to Query, Response to Tender Query or a Response to Prequalification Query has been issued, and the time and date of sending such email will be final and conclusive evidence of HKSTP's issue of the relevant Response to Query, Response to Tender Query or Response to Prequalification Query. HKSTP shall in no way be responsible in the event that you fail to receive any such email from HKSTP for whatever reason.

11.6 It is your responsibility to check the TENDER Website on a regular basis to ensure that you are kept up-to-date and aware of any Response to Query, Response to Tender Query or a Response to Prequalification Query, and shall be responsible for ensuring that your Submissions fully comply with and take into account the Response to Query, Response to Tender Query or a Response to Prequalification Query, as the case may be. HKSTP shall in no way be liable for any failure by you to take into account any Response to Query, Response to Tender Query or a Response to Prequalification Query in your Submissions.

11.7 In the event that HKSTP issues any Response to Query, Response to Tender Query or Response to Prequalification Query in accordance with Clause 11.5 above, you acknowledge and agree that:

- (i) all of your relevant Submissions submitted to HKSTP before and/or after the date of the Response to Query, Response to Tender Query or the Response to Prequalification Query, as the case may be, shall represent the

full and entire offer made by you in response to the relevant Procurement Document, or the full and entire Prequalification Submissions made by you in response to the relevant Prequalification Document, as applicable; or

- (ii) if no amendments to your Submissions are submitted by you to HKSTP following the date of the Response to Query, Response to Tender Query or Response to Prequalification Query, then the relevant Submissions which were submitted by you prior to the date of the Response to Query, Response to Tender Query or Response to Prequalification Query shall represent the full and entire offer made by you in response to the relevant Procurement Documents or Prequalification Documents, as the case may be.

12. Clarification Notice, Tender Clarification, Response to Clarification, Prequalification Clarification

12.1 HKSTP may, at any time prior to the issuance of the relevant Letter of Acceptance or Letter of Notification, issue one or more Clarification Notice, Tender Clarification or Prequalification Clarification to your Registered Account. HKSTP shall not assume any liability for your failure to receive any of the documents mentioned in this clause. HKSTP shall not assume any liability for your failure to consider any Clarification Notice, Tender Clarification or Prequalification Clarification sent by it to you.

12.2 It is your responsibility to submit your Response to Clarification Notice or Response to Prequalification Clarification through the TENDER Website by the deadline imposed by HKSTP as stated in the Clarification Notice, Tender Clarification or Prequalification Clarification, as the case may be. HKSTP shall not assume any liability for your failure to submit a Response to Clarification Notice or Response to Prequalification Clarification.

13. Letter of Clarification

13.1 HKSTP may, at any time prior to the issuance of the relevant Letter of Acceptance, issue one or more Letter of Clarifications to your Registered Account. HKSTP shall not assume any liability for your failure to receive any Letter of Clarification sent by HKSTP to you in accordance with the foregoing and your failure to consider the Letter of Clarification in your Submissions.

13.2 It is your responsibility to submit your response to any Letter of Clarification

through the TENDER Website by the deadline imposed by HKSTP and HKSTP shall not assume any liability for your failure to submit such response.

14. Result of the Intended Procurement or Prequalification Exercise

14.1 HKSTP will inform you about the result of the intended procurement or prequalification exercise via the TENDER Website.

14.2 HKSTP may issue any Letter of Acceptance or Letter of Notification to you, as the case may be, via the TENDER Website to your Registered Account.

14.3 Any Letter of Acceptance issued by HKSTP to you, shall be subject to any relevant Letter of Clarification (if any) issued by HKSTP and/or any relevant Response to Clarification Notice submitted by you (if applicable) in accordance with these Terms. In the event that HKSTP issues any Letter of Acceptance to you in accordance with this clause, you acknowledge and agree that you are legally bound by the Letter of Acceptance in accordance with its terms and are liable to perform your obligations as set out in the Letter of Acceptance, Letter of Clarification, the Procurement Documents and your Submissions.

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

15. Other Requirements

15.1 For all Submissions and any responses sent by you to HKSTP in relation to any Procurement Document or Prequalification Document submitted through the TENDER Website, you are required to encrypt and digitally sign the Submissions with a valid password.

15.2 You are responsible for ensuring that you use your password or login name, as applicable, in time to submit any Submissions (except for Proposals and Quotations) through the TENDER Website prior to the relevant Closing Date, and HKSTP shall not be liable or responsible for any failure of you to do so.

16. Submissions of Hard Copy Documents

In certain circumstances, HKSTP may, in its sole discretion, allow or require you to submit your Submissions (in whole or in part) in hard copy as well as electronically through the TENDER Website, either by stating such in the Procurement Documents or

Prequalification Documents or otherwise issuing a notice to your Registered Account or on the TENDER Website. In the event that any of your Submissions (in whole or in part) are submitted by you to HKSTP in hard copy, as well as electronically through the TENDER Website:

- (i) you represent, warrant and undertake that the hard copy version of your Submissions shall be identical to the electronic version submitted by you through the TENDER Website;
- (ii) In the event of any discrepancies between the electronic version and hard copy version of the Submissions, you agree that the electronic version submitted through the TENDER Website shall prevail;
- (iii) If HKSTP has suffered Loss, as a result of any discrepancies between the hard copy version and electronic version of the Submissions, you agree to indemnify HKSTP for such Loss; and
- (iv) All hard copy Submissions should be duly signed by an authorized person of the Tenderer / Applicant to certify that its content is true and correct.

17. General Obligations of Users

17.1 You agree that your use of the TENDER Website, your Registered Account and any TENDER Website Content is in compliance with (i) these Terms, (ii) the Privacy Statement & Disclaimer, and (iii) any applicable law, regulations, codes, orders or generally accepted practices or guidelines in the relevant jurisdiction.

17.2 You agree that your use of the TENDER Website and Tender Website Content will not contravene or infringe upon any of our rights or any third parties' rights (including Intellectual Property Rights).

17.3 HKSTP has the right at any time, and without notice, to monitor and record your access to and use of the TENDER Website, your Registered Account and TENDER Website Content.

17.4 You agree:

- (i) not to engage in any activity that interferes with or disrupts the TENDER Website or the System and not to take any action or allow any third party to take any action that would enable you, or any third party, to gain unauthorized access to, or to tamper with or use the System or any of our computer systems or networks;
- (ii) not to copy, reproduce, download, re-publish, sell, exploit or distribute any part of the TENDER Website or TENDER Website Content (subject to

Clause 17.3(iii) below) unless you have obtain written consent from HKSTP;

- (iii) to only use the TENDER Website, your Registered Account or TENDER Website Content, and may only download and copy the TENDER Website Content, solely and exclusively as needed for the TENDER purposes;
- (v) that you, and your employees, sub-contractors, agents, representatives or affiliates, shall not install, import or transmit (and shall take reasonable measures to prevent against the installation, importation or transmission of) any virus or similar malicious instructions, codes, techniques or devices capable of disrupting, disabling, damaging or shutting down the TENDER Website or System (or any part thereof) or any other telecommunications or computer systems, networks or devices, or otherwise attempt to gain unauthorized access to the TENDER Website, System or any other telecommunications, computer systems, networks or devices connected to the TENDER Website;
- (vi) that you are solely responsible for, and HKSTP has no responsibility to you or to any third party for any breach of your obligations under these Terms, and for the consequences of any such breach;
- (vii) not to use the TENDER Website, your Registered Account or any TENDER Website Content to post, send, communicate, transmit, knowingly receive, upload or download any material that is (or engage in any behaviour that is or encourages any) harassing, disruptive, offensive, abusive, threatening, indecent, defamatory, obscene, unlawful, fraudulent, misleading, causes annoyance, or are intended to deceive, or are otherwise objectionable or unreasonable;
- (viii) not to use the TENDER Website, your Registered Account or any TENDER Website Content to post, communicate or transmit any advertisements or other unsolicited commercial communications, or engage in spamming;
- (ix) not to interfere with another persons' use and enjoyment of the TENDER Website or TENDER Website Content;
- (x) not to commit fraud or otherwise impersonate any person or falsely state or misrepresent yourself as being or being affiliated with another person; and
- (xi) that HKSTP shall have the right at any time, without notice, to monitor and record your access to and use of the TENDER Website, your Registered Account and TENDER Website Content.

18. User Content

18.1 You agree that you are solely and fully responsible and liable for all User Content.

18.2 You represent and warrant that your User Content is accurate, current and complete and shall not infringe the rights of any third party (including Intellectual Property Rights).

19. Intellectual Property Rights

19.1 All TENDER Website Contents are the property of HKSTP or their content suppliers and are protected by intellectual property laws of Hong Kong as is the case for the compilation of TENDER Website Contents on the TENDER Website which is HKSTP's exclusive property. You agrees not to copy, reproduce, alter, modify, rent, lease, loan, sell, distribute or create derivative works, or to publicly display any TENDER Website Content without the express written consent from HKSTP.

19.2 If you have violated this clause and/or the intellectual property laws of Hong Kong, HKSTP reserves the right to revoke the permission for you to use the TENDER Website and to make Submissions through the TENDER Website in addition to exercising any rights available or reserved under the Hong Kong intellectual property laws. Further, you must also destroy the copies you have made out of the contents of the TENDER Website immediately or deal with the same in accordance with HKSTP's directions or instructions.

20. Third Party Websites

20.1 Hyperlinks to third party websites may be found on the TENDER Website, but it does not imply that HKSTP acknowledges, approves or endorses these third party websites. HKSTP does not manage/maintain and has no control over these third party websites. HKSTP makes no guarantee or warranty, and will not verify, filter, approve, endorse or monitor the contents of any such external sites (or any products, goods or services promoted, referred to or offered on such external sites) and the accuracy of information provided by these third party websites. HKSTP.

20.2 HKSTP does not endorse any links to third party websites on the TENDER Website, or any advertising, products, goods, services or other materials on or available through such third party websites.

20.3 These hyperlinks are provided for your convenience. It is entirely at your own risk if you shall access these third party websites. HKSTP (including any of its officers, employees or agents) will not be responsible or liable to any loss or damage (whether direct, indirect or consequential) as a result of you visiting these third party websites or the failure to manage and/or maintain these third party websites.

21. Warranties and Disclaimers

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

21.2 Your use of the TENDER Website, TENDER Website Content and your Registered Account, and your participation in the application and registration process for a Registered Account, are at your sole risk and that such is provided “as is” and “as available”.

21.3 To the fullest extent permitted by the applicable laws, HKSTP expressly disclaims all warranties and conditions of any kind, whether express or implied, including, but not limited to the implied warranties and conditions of merchantability, satisfactory quality, fitness for a particular purpose, non-infringement, compatibility, security, completeness and accuracy.

21.4 Without prejudice to the generality of clause 21.3 above, HKSTP makes no representations or warranties:

- (i) as to the accuracy, quality, completeness, contemporaneity, adequacy, reliability or validity of any information or material provided on or through the TENDER Website, your registered account and/or during your registration and application process for a registered account, including, without limitation, the TENDER Website Content;
- (ii) that the TENDER Website, TENDER Website Content or Registered Account will meet your requirements, or are free of defect, error, omission, Virus or anything which may change, erase, add to or damage your software, data or equipment;

- (iii) that your use of the TENDER Website, TENDER Website Content or Registered Account, or the application and registration process for a Registered Account, will be uninterrupted, timely, secure or error-free; or
- (iv) that defects in the operation or functionality of the TENDER Website, TENDER Website Content, your Registered Account or the application and registration process for a registered account, will be corrected.

21.5 any materials, including TENDER Website Content, downloaded or otherwise obtained through the use of the TENDER Website or your Registered Account is done at your own discretion and risk and you shall be solely responsible for any damage to your computer system or other devices or loss of data that results from the downloading of any such material.

22. Exclusion of Liability

22.1 HKSTP shall not be liable to you in contract, tort (including negligence), breach of statutory duty or otherwise for any Loss whatsoever, including loss of profit; loss of revenue; loss of time; loss of anticipated savings; loss of opportunity; loss or corruption of data; loss of use; loss of business; wasted expenditure; loss of or damage to physical property; business interruption; loss of or damage to goodwill; or cost of procuring substitute services, which may arise in relation to these terms, the TENDER Website Content, the TENDER Website, User Content or your Registered Account whether or not HKSTP were advised in advance of the possibility of such loss.

22.2 Without prejudice to Clause 21, HKSTP shall not be liable to you under any circumstances for any delay or failure or disruption in relation to the use of the TENDER Website, your Registered Account or any related services, including the application and registration process for a Registered Account, or the TENDER Website Content or User Content resulting directly or indirectly from anything beyond our reasonable control, including but not limited to Internet failures, computer, telecommunications or any other equipment failures, electrical power failures, labour disputes, war, riots, civil disturbances, shortages of labour or materials, fires, flood, typhoons, earthquakes, explosions, acts of God, actions or orders issued by governmental or regulatory authorities or any courts or tribunal with applicable jurisdiction, or non-performance of third parties.

22.3 Without prejudice to Clause 21, HKSTP shall not be liable to you for any Loss,

whether in contract, tort (including negligence), equity or otherwise resulting from or in relation to:

- (i) your use, access or inability to use or access the TENDER Website, TENDER Website Content, User Content, your Registered Account or the application and registration process for a Registered Account;
- (ii) any changes made by HKSTP to the TENDER Website, TENDER Website Content, your Registered Account or the application and registration process for a Registered Account, or for any permanent or temporary cessation (in whole or in part) in the provision of the TENDER Website, the TENDER Website Content, your Registered Account or the application and registration process for a Registered Account;
- (iii) any deletion of, corruption of or failure to store any of User Content and other communications data maintained or transmitted by you through the use of the TENDER Website or Registered Account or during the application and registration process for a Registered Account;
- (iv) your failure (or any of your employees, officers, members, owners, representatives or agents' failure) to keep any password, token or account details required to access your Registered Account or the TENDER Website, confidential and secure;
- (v) any third party materials accessed, viewed, downloaded, used, relied on or otherwise obtained by you in relation to or via the TENDER Website, your Registered Account or during the application and registration process for a Registered Account, or the TENDER Website Content;
- (vi) any statements made by, or the conduct of, any third party on or through the TENDER Website; or (g) violation of your Intellectual Property Rights by any third party.

22.4 Clauses 22.1, 22.2 and 22.3 shall apply irrespective of whether or not HKSTP has been advised or should have been aware of the possibility of any such losses arising.

22.5 Except as required by the laws of Hong Kong, this clause shall take effect to the fullest extent. HKSTP reserves the rights that are not expressly covered in these terms. Nothing in this clause, or Clause 21 above, shall exclude or restrict any warranty or liability: (a) for death or personal injury; (b) for fraud or fraudulent misrepresentation; or (c) that may not be lawfully excluded or limited by applicable law.

23. Indemnity

23.1 You shall indemnify and hold HKSTP harmless from and against all Losses, claims, actions, proceedings, damages, costs and expenses which may arise, whether directly or indirectly, out of or in connection with:

- (i) any breach or non-compliance by you of any of these Terms, or applicable policies and terms and conditions;
- (ii) your use of the TENDER Website, TENDER Website Content or your Registered Account;
- (iii) the uses of your User Content by HKSTP or other third parties and any claim that User Content is in breach of any laws of infringed the rights of any third party (including Intellectual Property Rights);
- (iv) the infringement or alleged infringement of any patents, designs, trademarks, tradenames, copyrights or other industrial or intellectual property rights of HKSTP or any persons, corporations or organizations
- (v) the unauthorized use or misappropriation of any trade secret or confidential information of HKSTP or any third party, by you, your employees, officers, members, owners, agents or affiliates or associated companies; or
- (vi) any breach of the Personal Data (Privacy) Ordinance (Cap. 486) of the laws of Hong Kong and/or any other applicable data protection laws by you.

22.2 You shall cooperate fully with HKSTP in the defence of any claim made by any third parties. HKSTP reserves the right to assume the exclusive defence and control of any matter or claim that is subject to indemnification by you in accordance with Clause 22.1 above. You hereby acknowledge that damages for improper use of the TENDER Website or any TENDER Website Content may be irreparable, and HKSTP is entitled to seek equitable relief, including injunctions and preliminary injunctions, in addition to all other remedies.

24. Personal Data Privacy

24.1 HKSTP commits to protect the privacy of your personal data collected through the TENDER Website. Our policy in relation to the collection of personal data is stated under the Privacy Statement & Disclaimer and this Clause. If there is any inconsistencies between the terms of the Privacy Statement & Disclaimer and this Clause, this Clause shall prevail.

24.2 We will fully comply with the Personal Data (Privacy) Ordinance (Cap. 486) of

the laws of Hong Kong and/or any other applicable data protection laws in respect of any personal data provided by you to us;

24.3 We may use your personal data collected through the TENDER Website for the purposes set out below:

- (i) processing your application for a Registered Account;
- (ii) managing or administering your Registered Account;
- (iii) providing you with any services related to your Registered Account or the TENDER Website;
- (iv) processing, assessing, evaluating or communicating with you with regard to any Submissions submitted by you or any Procurement Documents or Prequalification Documents;
- (v) any site visits or briefings organized by HKSTP which your employees, officer, owners, members, representatives or agents may attend and, if necessary, application for permits for the above purposes;
- (vi) to communicate with you in respect of any Procurement Documents, Letter of Clarification, Letter of Acceptance, Prequalification Documents, Prequalification Clarification and Letter of Notification;
- (vii) to communicate with you in respect of your Registered Account or the TENDER Website and any related services;
- (viii) the procurement process contemplated under the TENDER; and
- (ix) any purpose directly related to any of the above.

24.4 You have no obligations to provide us with your personal data. However, if you refuse to provide us with certain personal data, we may not be able to process your registration for the Registered Account, Submissions and provide you with our services or respond to you in relation to matters concerning the TENDER Website. We will not use or transfer your personal data for direct marketing purposes unless we have obtained your consent for doing so.

25. Termination or Suspension of Access

25.1 HKSTP may terminate your use of and access to any part of or all of the TENDER Website, your Registered Account or any related services at any time, with immediate effect and without notice to you, for any reason whatsoever, including but not limited to:

- (i) you have breached these Terms;
- (ii) HKSTP being unable to verify or authenticate any information provided by you;

- (iii) if HKSTP believes that your actions or omissions may give rise to any liability, or are otherwise objectionable, inappropriate or illegal.

25.2 Upon termination in accordance with Clause 25.1 above, you agree to immediately destroy all material obtained from the TENDER Website and any copies thereof. Termination of your right to use or access (in whole or in part) the TENDER Website or any related services, shall be without prejudice to any other rights or remedies available to HKSTP against you.

26. Service of Notices

Any notice required to be served hereunder shall be deemed to be sufficiently served:

- (i) for notice to be served on you, if addressed to you and (a) sent to you through the TENDER Website or (b) to your Registered Account or (c) sent by prepaid registered post to or delivered at the said premises or your last known place of business or residence in Hong Kong; or
- (ii) for notice to be served on HKSTP, if addressed to HKSTP and (a) sent to HKSTP through the TENDER Website or (b) sent by prepaid registered post to or delivered at HKSTP's last known place of business in Hong Kong.

27. Severability

If any of these Terms are found by any court or tribunal of competent jurisdiction to be void or unenforceable, those terms shall be deleted from these Terms and the rest of these Terms shall continue to be valid in full force and effect. Each clause and sub-clause herein shall be treated as a separate and independent provision, and the unenforceability of any one clause shall not impair the enforceability of any of the other sub-clauses herein.

28. Entire Agreement

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

29. Waiver

HKSTP's failure or delay to exercise any right or act upon any breach under these Terms shall not be a waiver of that right or breach. If HKSTP intends to waive any of its rights or of a breach of these Terms, such waiver must be in writing and is limited to the particular right or breach stated therein. No waiver of any of these Terms by HKSTP shall be deemed a further or continuing waiver of such term of any other term or condition.

30. Assignment

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

31. No Partnership or Agency

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

32. Governing Law

These Terms are governed by the laws of Hong Kong. Any disputes arising out of and in relation to these Terms are subject to the non-exclusive jurisdiction of the courts of Hong Kong.

33. Translation

These Terms are written in English. If there are other language versions of these Terms and there are discrepancies between the versions, the English version shall prevail.