

Urban Renewal Authority
Smart Tender E-Tendering Platform Terms of Use

PLEASE READ THE TERMS AND CONDITIONS SET OUT BELOW, WHICH APPLY TO YOUR USE OF THIS PLATFORM ("SMART TENDER E-TENDERING PLATFORM"). YOUR USE OF THIS SMART TENDER E-TENDERING PLATFORM SIGNIFIES YOUR ACCEPTANCE OF THESE TERMS AND CONDITIONS AND AGREEMENT TO BE BOUND BY THEM.

1. Definitions

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

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

"**Applicant**" means an Owners' Organization of the building (OO), including its representative (e.g. Consulting firm / Authorized Person (AP) / Registered Inspector (RI) being appointed by OO) that has joined the scheme namely "Smart Tender – Building Rehabilitation Facilitating Scheme (Pilot Scheme)" hosted by URA and has assigned URA as agent to appoint the service provider of "Smart Tender E-Tendering Platform" which handles the tendering procedures for procurement of Supplier / Contractor.

"**Authority**", "**we**", "**us**" or "**our**" means the **Urban Renewal Authority** having its registered office at Unit 1001, 10/F, Tower 2, Cheung Sha Wan Plaza, 833 Cheung Sha Wan Road, Kowloon, Hong Kong, acts as agent to assist the Applicant to handle the tendering procedures for procurement of Supplier / Contractor through Smart Tender E-Tendering Platform.

"**Closing Date**" means the closing date and time specified by the Authority for Supplier / Contractor to submit their Submissions to designated location assigned by the Authority.

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

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

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

"**Smart Tender E-Tendering**" has the meaning given in Clause 2 below.

"Smart Tender E-Tendering Platform Content" means any data, material, communications or information, in any format whatsoever, including, without limitation, any data files, text, computer software, images, graphics, photos, videos, sound, audio files, recordings directories, documents or any other materials used, displayed on, or transmitted or made available by the Authority through this website, including, without limitation, any Procurement Documents, Tender Notices, Letters of Acceptance, Letters of Clarification, Award Notices, Prequalification Documents, Prequalification Notices or Letters of Notification.

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

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

"Privacy Policy" means the Authority's privacy policy that can be accessed at the Smart Tender E-Tendering Platform.

"Procurement Documents" means all or any documents which are prepared by Applicant and are uploaded to the Smart Tender E-Tendering Platform for tendering, issued by the Authority in relation to an intended procurement and includes, without limitation, any Response to Tender Queries etc., and any and all schedules and attachments to such documents, including any amendments to them and the form of tender, form of proposal, form of contract or form of tender bond.

"Valid Certificate" means a Certificate of Registered General Building Contractor and Business Registration Certificate.

"Registered Account" means an account established by the Authority in connection with the Smart Tender E-Tendering Platform to enable a user to use it for purposes set out in Clause 6.1(c) of the Terms of Supplier/Contractor Registration.

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

"Response to Tender Queries" means any response, upon replied by the Applicant, issued by the Authority to a Tender Query.

"Revision" means any written document issued by the Authority for the purposes of modifying, supplementing or amending any part of Procurement Documents.

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

"System" means the electronic platform and all hardware, software, networks, technology, interfaces and any other information technology systems, that are owned, licensed, used, controlled and/or operated by us in relation to the Smart Tender E-Tendering Platform. All references to the "Smart Tender E-Tendering Platform" shall be deemed to include references to the "System".

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

"Tender Addendum" means any written document, upon notification by the Applicant, issued by the Authority for the purposes of modifying, supplementing or amending any part of the Procurement Document.

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

"Tender Query" means a query raised by Suppliers / Contractors in relation to Procurement Documents.

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

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

"Terms" means these Terms and Conditions for use of the Smart Tender E-Tendering Platform.

"Terms of Supplier/Contractor Registration" means the terms and conditions governing the use of a Registered Account and the application for registration for a Registered Account, which can be found at the Smart Tender E-Tendering Platform.

"user", "you" or "your" means the user of the Smart Tender E-Tendering Platform which includes any company, organisation, partnership or entity whose employee, officer, director, representative or agent is accessing or using the Smart Tender E-Tendering Platform on its behalf.

"Your Content" means any data, material, communications or information, in any format whatsoever, including, without limitation, any data files, text, computer software, images, graphics, photos, videos, sound, audio files, recordings directories, documents, that is made available on or transmitted through the Smart Tender E-Tendering Platform by you, your employees, directors, representatives or agents, including, without limitation, any Submissions and Tender Queries.

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

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

2. Introduction

2.1. The Smart Tender E-Tendering Platform is provided for the purposes of enabling the posting or transmission by us of any notice, information or document in relation to an intended procurement which includes, without limitation, any Tender Notices and Procurement Documents, in an electronic format for downloading and viewing by users, and for the electronic submission and uploading of any Submissions by Registered Suppliers/Contractors through the use of the Smart Tender E-Tendering Platform and System ("**Smart Tender**").

3. Acceptance of these Terms

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

4. Change of Terms

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

5. Changes to the Smart Tender E-Tendering Platform

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

6. Procurement Documents

- 6.1. You acknowledge and agree that you must be a Registered Supplier/Contractor and must log onto your own Registered Account in order to download and view the Smart Tender E-Tendering Platform Content.
- 6.2. You shall be solely and fully responsible for ensuring that you have the appropriate hardware, equipment and software that enables you to use the Smart Tender E-Tendering Platform and/or to view or download any or all of the Smart Tender E-Tendering Platform Content through the Smart Tender E-Tendering Platform.
- 6.3. You acknowledge and agree that during the transmission or downloading of any Smart Tender E-Tendering Platform Content through the Smart Tender E-Tendering Platform, the Smart Tender E-Tendering Platform may fail, be interrupted, breakdown, contain viruses, malfunction, be slow to process, contain errors or any other defects or defaults. No guarantee, representation, undertaking or warranty is provided by us to avoid, prevent or rectify such circumstances. In the event of any failure, interruption, breakdown, malfunction, slow processing, error or any other defect or default in the Smart Tender E-Tendering Platform, you agree that you shall contact the Authority who may agree (in its sole discretion) to provide you with an alternate method to receive or view the Smart Tender E-Tendering Platform Content of the relevant intended procurement or prequalification exercise, as the case may be.
- 6.4. The Authority shall in no way be responsible or liable to you for any losses, damages, costs or expenses incurred or suffered by you as a result of any delay, failure, interruption, breakdown, viruses, malfunctions, errors, defects or defaults in the transmission or downloading of any of the Smart Tender E-Tendering Platform Content.

7. Tender Addendum, Revisions and Other Amendments to the Procurement Documents

- 7.1. Upon the Tender Addendum issued by the Applicant, the Authority may at any time issue one or more Tender Addendum, Revisions or any other amendments to the relevant Procurement Documents, prior to the relevant Closing Date. The Authority shall send an email to your Registered Account on the Smart Tender E-Tendering Platform once a Tender Addendum or Revision has been issued or any other amendments to the relevant Procurement 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; as applicable ("**Amendment Date**"). The Authority shall in no way be liable in the event that you fail to receive any such email from the Authority.
- 7.2. You shall be fully responsible for checking the Smart Tender E-Tendering Platform 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 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. The Authority shall in no way be liable for any failure by you to take into account any Tender Addenda, Revisions or other amendments to the relevant Procurement Documents in your Submissions.

- 7.3. In the event that the Authority issues any relevant Tender Addendum, Revision or any other amendments to the relevant Procurement Documents in accordance with Clause 8.1 above, you acknowledge and agree that:
- (a) all of your relevant Submissions submitted to the Authority before and/or after the relevant Amendment Date shall represent the full and entire offer made by you in response to the relevant Procurement Documents, as applicable; or
 - (b) if no amendments to Submissions are submitted by you to the Authority following the Amendment Date, then the relevant Submissions which were submitted by you prior to the relevant Amendment Date shall represent the full and entire offer made by you in response to the relevant Procurement Documents, as applicable.

8. Query, Response to Query, Tender Query, Response to Tender Query

- 8.1. You acknowledge and agree that you must be a Registered Supplier/Contractor and must log onto your own Registered Account in order to submit Tender Query through the Smart Tender E-Tendering Platform.
- 8.2. You represent and warrant that your Tender Queries have been internally approved and is valid and enforceable against you.
- 8.3. The Smart Tender E-Tendering Platform shall not accept and/or the Authority shall not be obligated to consider or provide any response to any Tender Query where you are in breach of these Terms, including Clause 9.1 above. Without prejudice to the generality of the foregoing, if Tender Query submitted through the use of the Smart Tender E-Tendering Platform:
- (a) does not comply with any of the formatting requirements specified by the Authority;
 - (b) is not in accordance with the Terms;
 - (c) is contaminated with a virus or Disabling Code, or is otherwise corrupted, or not readable or printable into readable text; or
 - (d) has not successfully completed its transmission by the relevant deadline imposed by the Authority;

then such Tender Query shall not be considered by the Authority and the Authority shall not

be liable for any failure to consider or provide any response to Tender Query in such circumstances.

- 8.4. It is your sole responsibility to ensure that your Tender Queries are fully compliant with our terms and conditions contained in the relevant Procurement Documents, as applicable, and that your Tender Queries should be raised through the Smart Tender E-Tendering Platform and are received by the Authority by the relevant deadline specified by the Authority.
- 8.5. You acknowledge and agree that any Tender Queries that are not fully and successfully received by the Authority by the relevant deadline specified by the Authority shall be invalid. The Authority has no obligation to and shall not take into consideration any Tender Queries that are not fully and successfully transmitted to and received by the Authority by the relevant deadline specified by the Authority.
- 8.6. If applicable, the Authority will issue a Response to Tender Queries to the relevant Procurement Documents prior to the relevant Closing Date. The Authority shall send an email to your Registered Account on the Smart Tender E-Tendering Platform once a Response to Tender Queries has been issued, and the time and date of sending such email will be final and conclusive evidence of the Authority's issue of the relevant Response to Tender Queries. The Authority shall in no way be liable in the event that you fail to receive any such email from the Authority.
- 8.7. You shall be fully responsible for checking the Smart Tender E-Tendering Platform on a regular basis to ensure that you are kept up-to-date and aware of any Response to Tender Queries, and shall be responsible for ensuring that your Submissions fully comply with and take into account Response to Tender Queries, as the case may be. The Authority shall in no way be liable for any failure by you to take into account any Response to Tender Queries in your Submissions.
- 8.8. In the event that the Authority issues any Response to Tender Queries in accordance with Clause 9.6 above, you acknowledge and agree that:
 - (a) all of your relevant Submissions submitted to the Authority before and/or after the date of the Response to Tender Queries, as the case may be, shall represent the full and entire offer made by you in response to the relevant Procurement Document, as applicable; or
 - (b) if no amendments to your Submissions are submitted by you to the Authority following the date of the Response to Tender then the relevant Submissions which were submitted by you prior to the date of the Response to Tender Queries shall represent the full and entire offer made by you in response to the relevant Procurement Documents as applicable.

9. Hardcopy Submissions

- 9.1. The Authority require you to submit your Submissions in hard copy

- (c) you shall duly sign all hard copy versions of any Submissions submitted by you to the location as specified by Authority in hard copy.

GENERAL PROVISIONS

10. Your General Obligations

10.1. You agree to use the Smart Tender E-Tendering Platform or any Smart Tender E-Tendering Platform Content only for purposes that are permitted by:

- (a) these Terms;
- (b) Terms of Supplier/Contractor Registration;
- (c) the Privacy Policy; and
- (d) any applicable law, regulation or generally accepted practices or guidelines in the relevant jurisdiction.

10.2. You agree not to use the Smart Tender E-Tendering Platform or any Smart Tender E-Tendering Platform Content in any way that:

- (a) is unlawful and/or breaches any applicable laws, regulations, codes, guidelines or orders; or
- (b) contravenes or infringes upon any of our rights or any third parties' rights (including Intellectual Property Rights).

10.3. You agree that:

- (a) you will not engage in any activity that interferes with or disrupts the Smart Tender E-Tendering Platform or the System;
- (b) you will not copy, reproduce, download, re-publish, sell, exploit or distribute any part of the Smart Tender E-Tendering Platform or Smart Tender E-Tendering Platform Content (subject to Clause 15.3(c) below);
- (c) you shall only use the Smart Tender E-Tendering Platform, your Registered Account or Smart Tender E-Tendering Platform Content, and may only download and copy the Smart Tender E-Tendering Platform Content, solely and exclusively as needed for the Smart Tender E-Tendering purposes;
- (d) you will not use the Smart Tender E-Tendering Platform, your Registered Account or any Smart Tender E-Tendering Platform Content for any purpose not expressly permitted in the Terms;

- (e) you, and your employees, sub-contractors, agents, representatives or affiliates, shall not install, import or transmit (and shall take reasonable measures to prevent against the installation, importation or transmission of) any Disabling Codes or similar malicious instructions, codes, techniques or devices capable of disrupting, disabling, damaging or shutting down the Smart Tender E-Tendering Platform or System (or any part thereof) or any other telecommunications or computer systems, networks or devices, or otherwise attempt to gain unauthorised access to the Smart Tender E-Tendering Platform, System or any

other telecommunications, computer systems, networks or devices connected to the Smart Tender E-Tendering Platform;

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

11. Your Content

- 11.1. You agree that you are solely and fully responsible and liable for all of Your Content.
- 11.2. You represent and warrant that Your Content is accurate, current and complete and shall not

infringe the rights of any third party (including Intellectual Property Rights).

- 11.3. You agree that we have the exclusive, worldwide, irrevocable, royalty-free and transferrable right to use, modify, copy, or create derivative works from Your Content unless express contrary provisions are clearly stated in the Procurement Documents

12. Intellectual Property Rights

- 12.1. You acknowledge and agree that the Authority and/or its licensors or contractors own all legal rights, title and interest, including any Intellectual Property Rights, in and to the Smart Tender E-Tendering Platform, the System, the Smart Tender E-Tendering Platform Content and all Procurement Documents.
- 12.2. You shall not modify, copy, rent, lease, loan, sell, distribute or create derivative works based on the Smart Tender E-Tendering Platform Content or Procurement Documents unless expressly authorised under these Terms or by the Authority beforehand in writing.
- 12.3. Nothing in these Terms shall give you a right to use any of the Authority's trade names, trade marks, service marks, logos or domain names for any purpose whatsoever.
- 12.4. You agree that you shall not remove, obscure, or alter any proprietary rights notices (including copyright and trade mark notices) which may be affixed to or contained within the Smart Tender E-Tendering Platform, Smart Tender E-Tendering Platform Content or Procurement Documents.

13. Hyperlinks

- 13.1. The Smart Tender E-Tendering Platform may include hyperlinks to other websites, content or resources, which are hosted, offered or provided by third parties unrelated to the Authority. You understand and agree that:
 - (a) the Authority has no control over and does not monitor such third party websites, content, or resources;
 - (b) the Authority makes no guarantee or warranty, and is not responsible for any such external sites, content or resources (or any products, goods or services promoted, referred to or offered on such external sites or resources); and
 - (c) the Authority does not endorse any websites linked to the Smart Tender E-Tendering Platform, or any advertising, products, goods, services or other materials on or available through such websites or resources.
- 13.2. You understand and agree that you access such external websites, content or resources at your own risk, and the authority shall not be responsible or liable for any loss or damage, whatsoever (whether indirect, direct or consequential), in relation to third party websites, content or resources, or goods, services or material posted, viewed, accessed, advertised, provided,

referred to or made available via such external websites or resources.

14. Warranties and Disclaimers

- 14.1. The Smart Tender E-Tendering Platform Content is provided for your general reference only, and is not intended to amount to any advice on which you should rely. You must obtain professional or specialist advice before taking or refraining from taking any action based on the Smart Tender E-Tendering Platform Content. You are responsible to ensure that your use of the Smart Tender E-Tendering Platform Content and/or Smart Tender E-Tendering Platform complies with your requirements and all applicable legal requirements.
- 14.2. You expressly understand and agree that your use of the Smart Tender E-Tendering Platform, Smart Tender E-Tendering Platform 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”.
- 14.3. To the fullest extent permitted by applicable law, the authority expressly disclaims all warranties and conditions of any kind,

Whether express or implied, including, but not limited to the implied warranties and conditions of merchantability, satisfactory quality, fitness for a particular purpose, non-infringement, compatibility, security, completeness and accuracy.

- 14.4. Without prejudice to the generality of clause 19.3 above, the authority makes no representations or warranties:
- (A) As to the accuracy, quality, completeness, currentness, adequacy, reliability or validity of any information or material provided on or through the Smart Tender E-Tendering Platform, your registered account and/or during your registration and application process for a registered account, including, without limitation, the Smart Tender E-Tendering Platform content;
 - (B) That the Smart Tender E-Tendering Platform, Smart Tender E-Tendering Platform content or registered account will meet your requirements, or are free of defect, error, omission, virus or anything which may change, erase, add to or damage your software, data or equipment;
 - (C) That your use of the Smart Tender E-Tendering Platform, Smart Tender E-Tendering Platform content or registered account, or the application and registration process for a registered account, will be uninterrupted, timely, secure or error-free; or
 - (D) That defects in the operation or functionality of the Smart Tender E-Tendering Platform, Smart Tender E-Tendering Platform content, your registered account or the application and registration process for a registered account, will be corrected.
- 14.5. Any materials, including Smart Tender E-Tendering Platform content, downloaded or otherwise obtained through the use of the Smart Tender E-Tendering Platform 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.

15. Limitation of Liability

- 15.1. Nothing in this Clause 20.1, or Clause 19 above, shall exclude or restrict any warranty or liability:
- (a) for death or personal injury caused by the Authority's negligence;
 - (b) for fraud or fraudulent misrepresentation; or
 - (c) that may not be lawfully excluded or limited by applicable law.

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

- 15.2. The authority shall not be liable to you in contract, tort (including negligence), breach of statutory duty or otherwise for any loss whatsoever (including whether general, special, indirect, direct, nominal, punitive, incidental or consequential), including loss of profit; loss of revenue; loss of time; loss of anticipated savings; loss of opportunity; loss or corruption of data; loss of use; loss of business; wasted expenditure; loss of or damage to physical property;

business interruption; loss of or damage to goodwill; or cost of procuring substitute services, which may arise in relation to these terms, the terms of supplier/contractor registration, the Smart Tender E-Tendering Platform content, the Smart Tender E-Tendering Platform, your content or your registered account whether or not the authority were advised in advance of the possibility of such loss.

15.3. Without prejudice to clause 19 or the generality of clause 20.2, the authority shall not be liable to you for any loss (whether special, indirect, direct, punitive, incidental or consequential), whether in contract, tort (including negligence), equity or otherwise, or any other loss resulting from or in relation to:

- (A) Your use, access or inability to use or access the Smart Tender E-Tendering Platform, Smart Tender E-Tendering Platform content, your content, your registered account or the application and registration process for a registered account;
- (B) Any changes made by the authority to the Smart Tender E-Tendering Platform, Smart Tender E-Tendering Platform 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 Smart Tender E-Tendering Platform, the Smart Tender E-Tendering Platform content, your registered account or the application and registration process for a registered account;
- (C) Any deletion of, corruption of or failure to store any of your content and other communications data maintained or transmitted by you through the use of the Smart Tender E-Tendering Platform or registered account or during the application and registration process for a registered account;
- (D) Your failure (or any of your employees, officers, members, owners, representatives or agents' failure) to keep any password, token or account details required to access your registered account or the Smart Tender E-Tendering Platform, confidential and secure;
- (E) Any third party materials accessed, viewed, downloaded, used, relied on or otherwise obtained by you in relation to or via the Smart Tender E-Tendering Platform, your registered account or during

The application and registration process for a registered account, or the Smart Tender E-Tendering Platform content;
- (F) Any statements made by, or the conduct of, any third party on or through the Smart Tender E-Tendering Platform; or
- (G) Violation of your intellectual property rights by any third party.

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

16. Indemnity

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

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

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

17. Personal Data Privacy

17.1. Any personal data that may be collected by the Authority shall be governed by the Privacy Policy and this Clause 22. In the event of any inconsistencies between this Clause 22 and the terms of the Privacy Policy, this Clause 22 shall take precedence over any conflicting provision in the Privacy Policy.

17.2. You shall:

- (a) fully comply with the Hong Kong Personal Data (Privacy) Ordinance (Cap. 486) and/or any other applicable data protection laws in respect of any personal data

provided by you to us;

- (b) ensure (and you hereby represent and warrant) that we have the right and the required consent to use any personal data provided by you to us for the purposes of:
- (i) processing your application for a Registered Account;
 - (ii) managing or administering your Registered Account;
 - (iii) providing you with any services related to your Registered Account or the Smart Tender E-Tendering Platform;
 - (iv) processing, assessing, evaluating or communicating with you with regard to any Submissions submitted by you or any Procurement Documents;-
 - (v) any site visits or briefings organised by the Authority which your employees, officer, owners, members, representatives or agents may attend and, if necessary, application for permits for the above purposes;
 - (vi) to communicate with you in respect of any Procurement Documents,
 - (vii) to communicate with you in respect of your Registered Account or the Smart Tender E-Tendering Platform and any related services;
 - (viii) the procurement process contemplated under the Smart Tender E-Tendering; and
 - (ix) any purpose directly related to any of the above.

18. Termination

18.1. We may terminate your use of and access to any part of or all of the Smart Tender E-Tendering Platform or any related services at any time, with immediate effect and without notice to you, for any reason whatsoever, including without limitation, due to:

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

18.2. Upon termination in accordance with Clause 23,1above, you agree to immediately cease using or accessing the Smart Tender E-Tendering Platform or any related services (as required by the Authority), and shall immediately destroy all material obtained from the Smart Tender E-Tendering Platform and any copies thereof. Termination of your right to use or access (in whole or in part) the Smart Tender E-

Tendering Platform or any related services, shall be without prejudice to any other rights or remedies available to the Authority against you.

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

19. Governing Law and Jurisdiction

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

20. Language

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

21. Notices

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

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

whichever date is earlier.

22. Force Majeure

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

23. Severability

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

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

24. Entire Agreement

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

25. Waiver

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

26. Assignment

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

27. No Partnership or Agency

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