

## SERVICES CONTRACT

**THIS SERVICES CONTRACT** (this “Contract”) is entered into on this [ ] by and between:

- (1) **HONG KONG SCIENCE AND TECHNOLOGY PARKS CORPORATION** (“HKSTP”), a corporation duly incorporated under the laws of Hong Kong, having its principal offices at 5/F, Building 5E, 5 Science Park East Avenue, Hong Kong Science Park, Hong Kong; and
- (2) **[Name of the Supplier]** the (“Supplier”), a corporation duly incorporated under the laws of [ ] and having its principal office at [address].

### WHEREAS :

HKSTP intends to retain the Supplier to provide certain services to HKSTP and the Supplier is willing to provide such services subject to the terms and conditions of this Contract.

### IT IS HEREBY AGREED AS FOLLOWS:

#### 1. DEFINITIONS

As used in this Contract:

“Contract” means this Contract and the Appendices attached hereto;

“Effective Date” means [ ]

“Force Majeure means:

- (a) any supervening outbreak of war affecting Hong Kong (whether war be declared or not), hostilities, invasion, acts of foreign enemies, rebellion, terrorism, revolution, military or usurped power, overthrow (whether by external or internal means) of the Government, civil war, riot, civil disturbances, fire, civil commotion and acts of God; or
- (b) any supervening catastrophic event which is similar to the foregoing,

and which (1) is not caused or contributed to by the Supplier, or any employee or agent or ex-employee or ex-agent thereof and (2) prevents the performance of the Supplier’s duties and obligations under this Contract.

“HK\$” means Hong Kong dollars, the lawful currency of Hong Kong;

“HKSTP SHE Handbook” means the Safety Health and Environment Handbook of HKSTP

“IPRs” means patents, trademarks, service marks, trade names, design rights, copyright, domain names, database rights, rights in know-how, new inventions, designs or processes and other intellectual property rights, whether now known or created in future (of whatever nature and wherever arising) and in each case whether registered or unregistered and including applications for the grant of any such rights.

“Party” means either the Supplier or HKSTP; and the expression “Parties” shall mean both of them;

“Payment Schedule” means the schedule of payment of the Service Fee as set out in Appendix 1;

“Service Fee” means the service fee payable by HKSTP in respect of the Services as set out in Appendix 1;

“Services” means the services, advice, analysis, researches, tasks, objectives and duties to be performed or achieved by the Supplier as more specifically set out in Appendix 1;

“Term” shall have the meaning ascribed to such term in Clause 3;

“Third Party Property Rights” shall mean all such third party rights, not being the rights of the Supplier or HKSTP including, but not limited to IPRs

## **2. APPOINTMENT**

HKSTP hereby appoints the Supplier to perform the Services and the Supplier hereby accepts such appointment, upon the terms and conditions set out in this Contract.

## **3. TERM**

This Contract shall become effective on the Effective Date and shall remain effective until [\_\_\_\_\_] (the “Term”), unless earlier terminated in accordance with Clause 14.

## **4. SERVICES**

4.1 In consideration of the payment of the Service Fee, the Supplier agrees to perform the Services as set out in Appendix 1, subject to the terms of this Contract and in accordance with all legislation, regulations and by-laws affecting or in any way relating to the Services.

4.2 The Supplier shall complete the Services in accordance with the provisions and time line as may be specified under Appendix 1. Time is of the essence in this regard.

4.3 The Supplier shall not be regarded as having completed the Services until all the tasks set out in Appendix 1 have been completed to the reasonable satisfaction of HKSTP based on the specifications and requirements under Appendix 1.

4.4 The deployment of any of the Supplier's key personnel and any substitute or replacement thereof shall be subject to the prior written approval of HKSTP. HKSTP may request the removal or replacement of any key personnel by giving at least four weeks' prior notice to the Supplier specifying the reason for such removal or replacement. The Supplier shall nominate another person acceptable to HKSTP to replace that person within a reasonable period of time and without affecting the performance of the Services.

## **5. SERVICE FEE AND PAYMENT**

5.1 Subject to the Supplier performing the Services to the reasonable satisfaction of HKSTP, HKSTP shall pay to the Supplier the Service Fee in accordance with the terms of this Contract.

5.2 Unless otherwise agreed by the Parties in writing, the Service Fee is denominated in HK\$ and is inclusive of all fees, costs, charges, expenses and disbursements incurred by the Supplier in its performance of the Services and is also inclusive of any and all taxes, levies, duties or other charges or withholdings of a similar nature in any jurisdiction arising from the fees or other sums paid to the Supplier in relation to the Services.

5.3 The Supplier shall invoice HKSTP for payment of the Service Fee according to the Payment Schedule. Each invoice shall only be issued after acceptance of the Deliverables by HKSTP. Payment will be made within 30 days upon receipt of the invoice by HKSTP provided that HKSTP is entitled to withhold the payment of any portion of the Service Fee which is disputed by HKSTP on reasonable grounds.

## **6. WARRANTIES**

The Supplier hereby warrants throughout the Term that:

- a) it has obtained all the necessary authorisations and approvals in order to lawfully enter into and exercise its rights and perform its obligations under this Contract;
- b) it shall not, during the Term, enter into any contract or accept any obligations that are inconsistent or incompatible with its obligations under this Contract nor take up any appointment, represent or act for or advise any third party against the interest of HKSTP;

- c) it shall perform and carry out the Services in a timely, diligent, competent and professional manner, with all reasonable skill and care and within any time period specified in this Contract and ensure that all its employees, officers, agents and contractors involved in the delivering of the Services have all the necessary qualifications, ability, experience, skills, expertise and capacity to carry out the Services;
- d) all information supplied, and statements and representations made by or on behalf of the Supplier in relation to the Services are true, accurate and complete in all respects and are not misleading, whether by omission or otherwise;
- e) no actions or steps have been taken or legal proceedings have been started or threatened against the Supplier for its winding up, dissolution, insolvency, administration, reorganization or reconstruction (whether by voluntary arrangement, scheme of arrangement or otherwise) or for the appointment of a receiver, administrator, administrative receiver, conservator, custodian, trustee or similar officer of the Supplier or of any or all of the Supplier's assets or revenues; and
- f) the provision of the Deliverables or any of the Services, the use, operation or possession of the Deliverables by HKSTP or its authorized users, assigns and successors-in-title for any purposes contemplated under this Contract does not and will not infringe any Third Party Rights.

## **7. CONFIDENTIALITY AND PRIVACY**

7.1 All information furnished to the Supplier by HKSTP will be treated as confidential for a period of two (2) years after completion of the Services and will be used by the Supplier solely in connection with the performance of the Services save and except that such prohibition will not apply to any document or information which:

- (i) is publicly available or has become generally available to the public other than as a result of a disclosure by the Supplier, its directors, Suppliers employees, subcontractors or agents;
- (ii) was available to the Supplier on a non-confidential basis prior to its being so furnished;
- (iii) has become available to the Supplier on a non-confidential basis from a source other than HKSTP unless to the knowledge of Supplier such source owes a duty of confidentiality to HKSTP;
- (iv) has been independently developed, by or for the Supplier without reference to the information;

- (v) is required to be disclosed by any applicable law, rules or regulations, or any government department, regulatory body or court proceedings provided that to the extent legally allowed and practical the Supplier will advise HKSTP forthwith so that HKSTP may seek a protective order or other appropriate remedy and, consult with the Supplier prior to such disclosure.

7.2 The Supplier shall comply with the Personal Data (Privacy) Ordinance with respect to the handling of all personal data (as the term is defined in the Ordinance) collected, used or processed in the course of its performance of the Services.

## **8 LIABILITY AND INSURANCE**

8.1 Nothing in this Contract shall exclude or restrict the Supplier's liability for:-

- (a) fraud;
- (b) death or personal injury caused by its negligence;
- (c) breach of any applicable laws relating to the Services;
- (d) any liability to the extent the same may not be excluded as a matter of law.

8.2 The Supplier shall maintain appropriate and sufficient insurance with a reputable insurance company approved by HKSTP against any loss, damage, claim or action arising out of the performance of its obligations under this Contract from personal injury or death, public liability, and/or any other liability for which it is required by law to insure and shall make available a copy of such insurance to HKSTP on request. The provisions in this Clause shall survive the termination or expiry of this Contract.

## **9 INDEMNITY**

The Supplier hereby undertakes to indemnify HKSTP from and against all and any losses or damages it suffers and all and any interests, costs and expenses it incurs including any claim from any third parties as a result of (a) any breach of any term in this Contract by the Supplier (b) any breach of warranties of the Supplier hereunder; (c) any infringement or alleged infringement of Third Party Property Rights by the Supplier pertaining to the Services furnished to HKSTP under this Contract.

## **10 HEALTH & SAFETY**

10.1 In carrying out its Services under this Contract, the Supplier shall always observe and comply with all applicable legislations, Code of Practices, rules, and regulations of the Hong Kong Special Administrative Region. The Supplier shall, in addition, be obliged to acknowledge, comply with and respect all the requirements and guidelines contained in the latest version of HKSTP SHE Handbook.

10.2 The Supplier shall, without limitation,

- (1) prepare safety plans, hazard risk control measures and emergency response plans where required by HKSTP setting out the necessary safety measures for the works/operations under this Contract;
- (2) exercise all necessary precautions for the safety of its employees and subcontractors appropriate to the nature of the Services and the conditions under which the Services are to be performed and to maintain its services so as to avoid injury or damage to any person or property;
- (3) liaise with and submit to all relevant authorities and to obtain all necessary certificates and approvals;
- (4) provide adequate safety tools, protective equipment and facilities for the proper inspection and maintenance of all safety measures on the relevant premises on which the Supplier's services or operations are performed;
- (5) strictly follow safety precautions and instructions as may be given by HKSTP so as to avoid causing danger or harm to the public and the environment;
- (6) be fully responsible for all costs of clean up and/or removal of spilled substances arising from the Supplier's services or operations performed under this Contract.

10.3 For the avoidance of doubt, the Supplier shall indemnify and hold harmless HKSTP from any and all claims, damages, fines, judgments, penalties, costs, expenses or liabilities (including, without limitation, any and all sums paid for settlement of claims, legal fees, consultant and expert fees) arising from (a) damages to properties and injuries arising from the Supplier's services or operations performed under this Contract, or (b) the Supplier's breach or non-observance of the above Clauses 10.1 and 10.2.

## **11 INTELLECTUAL PROPERTY**

The Supplier agrees that HKSTP owns the IPRs in all the Deliverables under this Contract and it shall take all actions and sign all necessary documents to effect the vesting of such IPRs in HKSTP under law.

The Supplier agrees to waive all moral rights (whether past, present or future) in the Deliverables. Such waiver shall operate in favour of HKSTP, its authorized users, assigns, and successors-in-title and shall take effect upon the vesting of the IPRs of the Deliverables with HKSTP.

The Supplier acknowledges and agrees that it does not by way of this Contract or otherwise acquire any rights to or interest in any IPRs owned by HKSTP ("HKSTP IP Rights").

The Supplier shall not at any time do or permit to be done any act or thing which will in any way impair or affect the rights and title of HKSTP in respect of the HKSTP IP Rights.

If any infringement or suspected infringement, illegal / unauthorized use or suspected illegal / unauthorized use of the HKSTP IP Rights by any third party shall come to the

attention of the Supplier, the Supplier shall promptly give notice in writing to HKSTP and shall do all such things as may be reasonably required to assist HKSTP in taking all necessary actions to protect its HKSTP IP Rights.

## **12 TERMINATION**

12.1 Without prejudice to any other rights and remedies which HKSTP may have, HKSTP may at any time during the Term, terminate this Contract in the event that the Supplier:-

- (a) fails to comply with any terms, conditions or undertakings in this Contract and (in the case of a breach capable of being remedied) the Supplier fails to remedy the breach to the satisfaction of HKSTP within seven days after receipt of a notice in writing from HKSTP requiring it to do so or within such other period as HKSTP may in its sole discretion allow in writing;
- (b) the Supplier persistently or flagrantly fails to comply fully and punctually with its obligations and duties under this Contract;
- (c) the Supplier has failed to commence the Services on the Effective Date or proceed with the Services with due diligence after the Commencement Date;
- (d) the Supplier has, without the prior written approval of HKSTP, assigned, transferred, sub-contracted or otherwise disposed of any or all of its interests, rights, benefits or obligations under this Contract to any other third party or purported to do so;
- (e) the Supplier fails to submit any reports, financial accounts or other documents in accordance with this Contract, or any of the data, facts or information represented to or provided by the Supplier to HKSTP about the Services or this Contract is incomplete, incorrect, untrue, inaccurate or misleading;
- (g) the Supplier or any of its directors, employees, agents, Suppliers, contractors and other personnel who are in any way involved in the Services commits any offence under the PBO pursuant to Clause 14.1, or commits any other criminal offence which in the opinion of HKSTP has affected the Supplier's abilities to perform this Contract;
- (h) the Supplier engages in any conduct which is reasonably considered by HKSTP to be prejudicial to the Services;
- (j) the Supplier stops or suspends payment to its creditors generally, or is unable or admits its inability to pay debts generally as they fall due or is declared or becomes bankrupt or insolvent;

- (k) the passing of any resolutions, the initiation of any proceedings, or the making of any order which may result in the winding up, or dissolution, insolvency, administration, reorganisation or reconstruction of the Supplier, or the appointment of a receiver, provisional liquidator, liquidator, administrator, administrative receiver, conservator, custodian, trustee or similar officer of the Supplier or of any or all of the Supplier's assets or revenues, or if the Supplier makes an assignment for the benefit of or composition with its creditors generally or threatens to do any of the above, or any event occurs under the laws of any jurisdiction that has a similar or analogous effect;
- (l) the Supplier fails to secure or renew any license, registration or permit required by law for its business operations or if any license, registration or permit is revoked or suspended; or
- (m) the Supplier's use of any IPRs for the purpose of or otherwise in connection with the performance of this Contract is held by a court or is alleged to constitute an infringement of any third party's IPRs.

12.2 Notwithstanding anything provided herein to the contrary, HKSTP may at any time at its option terminate this Contract by giving the Supplier not less than 30 days' prior written notice. In such event, the Supplier shall be entitled to receive payment for such part of the Services carried out up to the date of termination. Any amount paid in respect of such part of the Services which has not been performed at the date of termination shall be refunded to HKSTP.

12.3 For the avoidance of doubt, termination of this Contract shall be without prejudice to any rights or remedies, available to or any obligations or liabilities accrued to either Party at the effective date of termination under this Contract or otherwise in law.

### **13 BOOKS AND RECORDS**

The Supplier shall maintain, during the continuance of this Contract and for a minimum period of seven years after the expiry or termination of this Contract, full and proper books of accounts and records (including receipts, counterfoils, vouchers, quotations and tendering documents and other supporting documents) in connection with the Services.

The Supplier shall allow HKSTP and/or its authorized representatives access to all or any of the aforesaid books and records for conducting audit, inspection, verification and copying from time to time upon reasonable notice during the continuance of this Contract and the seven-year period mentioned above.

### **14 PROBITY**

- 14.1 The Supplier shall observe the Prevention of Bribery Ordinance (Cap. 201) (“PBO”). The Supplier shall not, and shall procure that its directors, employees, agents, Suppliers, contractors and other personnel who are in any way involved in the Services shall not, offer to or solicit or accept from any person any money, gifts or advantages (as defined in the PBO) in relation to the Services.
- 14.2 If the Supplier and/or any of its directors, employees, agents, Suppliers, contractors and other personnel who are in any way involved in the Services commit any offence under the PBO in relation to this Services, HKSTP shall be entitled to terminate this Contract and shall hold the Supplier liable for any loss or damages HKSTP may thereby sustain.

## **15 GOVERNING LAWS AND DISPUTE RESOLUTION**

This Contract shall be governed by the laws of Hong Kong. If any dispute arises between the Parties in respect of this Contract, the Parties shall conduct friendly discussions with the view to resolving such dispute. If the dispute is not resolved within a maximum of 60 days following such discussions are first conducted, the Parties agree that such dispute may be submitted to the exclusive jurisdiction of the courts of Hong Kong, Special Administrative Region.

[The Supplier hereby appoints [name of a HK entity] at [address] as the process agent to receive on its behalf service of process of any legal action or proceedings arising out of this Contract in Hong Kong. Service upon the process agent shall be good service upon the Supplier. ] (this clause is required when the Supplier is a non-HK registered company).

## **16 FORCE MAJEURE**

- 16.1 Neither Party shall be liable for any delays arising from the occurrence of a Force Majeure event. A Party prevented by an event of Force Majeure may be excused from performance of the obligations under this Contract for so long as such event shall continue. The Party so prevented shall as soon as possible give notice in writing to the other Party of the occurrence of the event of Force Majeure.
- 16.2 Should the performance by the Supplier of its obligations under this Contract be prevented by Force Majeure for 14 days (either consecutive or in the aggregate) or longer, HKSTP shall be entitled, at the expiration of such period, to terminate this Contract by not less than five days’ notice in writing to the Supplier.
- 16.3 Subject to Clause 16.2, in the event that performance of obligations under this Contract is delayed by Force Majeure, the Parties shall diligently endeavour to achieve expeditiously the normal pursuit of this Contract and to make up for the time lost.

## **17 GENERAL**

**17.1 No prejudice to rights / waiver:** No failure to exercise, or delay in exercising, any right or remedy under this Contract will operate as a release or waiver of such right or remedy or any other right or remedy, nor will any single or partial exercise of any right or remedy under this Contract or provided by law preclude any other or further exercise of it or the exercise of any other right or remedy. A waiver of any breach of this Contract or any right of remedy under this Contract shall not be effective, or implied, unless that waiver is in writing and is signed by the Party against whom that waiver is claimed.

**17.2 Entire Contract:** This Contract constitutes the entire agreement between the Parties with respect to its subject matter and supercedes all other oral or written representations, undertakings or agreements relating to the subject matter hereof.

**17.3 Variations in writing:** Any variation to this Contract shall be binding only if it is in writing and signed by or on behalf of each Party.

**17.4 Severability:** If any term in or provision of this Contract shall be held to be illegal or unenforceable, in whole or in part, under any enactment or rule of law, the term or provision shall to that extent be deemed not to form part of this Contract and the enforceability of the remainder of this Contract shall not be affected and shall be enforced to the full extent permitted by law.

**17.5 Rights cumulative:** The rights and remedies provided in this Contract are cumulative and not exclusive of any rights or remedies provided by law.

**17.6 Survival:** Termination shall not affect any rights and/or obligations accrued before the date of termination or any rights and/or obligations or provisions of this Contract expressed or intended to survive any termination of this Contract.

**17.7 Assignment:** The Supplier may not assign or transfer, pledge or mortgage or purport to assign or transfer, pledge or mortgage any of its rights or obligations under this Contract without the prior written consent of HKSTP.

**17.8 Use of Logos:** The Supplier shall not use any of the marks of HKSTP (which include trademark, service mark, name, logo or any other identifying materials of HKSTP) without the prior written consent of HKSTP.

**17.9 Successors and Assigns:** The terms and conditions of this Contract shall be binding upon and shall inure to the benefit of the successors in interest and the assigns of the Parties, except that no assignment, transfer, pledge or mortgage by or through either party in violation of the provisions of this Contract shall vest any rights in the assignee, transferee, pledgee, mortgagee or in any occupant.

## 17.10 Notices

**Addresses:** Any notice or other communication under or in connection with this Contract shall be in writing and shall be left at or sent by pre-paid registered post, or facsimile or email transmission to the Party due to receive the notice or communication at its respective address (including email) or facsimile number set out below or to such other address and / or number as may have been last specified by such Party by written notice to the other Party.

### **To HKSTP:**

Address: 5/F, Building 5E,  
5 Science Park East Avenue,  
Hong Kong Science Park,  
Hong Kong

Attention:

Facsimile:

Email:

### **To the Supplier:**

Address:

Attention:

Facsimile:

Email:

**Delivery:** In the absence of evidence of earlier receipt, a notice or other communication is deemed given:

- (a) if delivered personally, when left at the address referred to in Clause [17.10];
- (b) if sent by registered post, two (2) days after posting; and
- (c) if sent by facsimile or email, on completion of its transmission.

In proving the giving of a notice by mail, it shall be sufficient to prove that the envelope containing such notice was properly addressed and posted.

In proving service by facsimile, it shall be sufficient to produce an activity or other report from the sender's facsimile machine in respect of the notice or other written communication showing the recipient's facsimile number and the number of pages transmitted.

In proving service by email, it shall be sufficient to produce an activity or other report from the sender's email account in respect of the notice or other written communication showing the email was sent to the recipient.

17.11 **Counterparts:** This Contract may be executed in any number of counterparts each of which when executed and delivered is an original, but all the counterparts together constitute the same document.

17.12 **Further assurances:** Each Party shall execute such further documents and perform and procure such acts and things as may be necessary to give full effect to each Party's obligations under this Contract.

## **18 EXCLUSION OF THIRD PARTY RIGHTS**

Notwithstanding any other provisions of this Contract and save for expressly provided for in this Contract, any person who is not a party thereto shall not have any right under the Contracts (Rights of Third Parties) Ordinance (Cap.623) to enforce any provisions of this Contract. For the avoidable of doubt, this provision does not affect any right or remedy of third party which exists or is available apart from the said Ordinance.

**IN WITNESS WHEREOF** the Parties have caused this Contract to be executed by their duly authorized officers.

For and on behalf of:  
**HONG KONG SCIENCE AND  
TECHNOLOGY PARKS CORPORATION**

For and on behalf of:  
**Name of Supplier**

\_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Name:  
Title:

**APPENDIX 1**

**DESCRIPTION OF SERVICES**

**[INSERT THE SCOPE OF SERVICES, THE TASKS, AND RESPONSIBILITIES,  
THE SERVICE TIMELINE, ANY DELIVERABLES, ETC ]**

**APPENDIX 2**  
**SERVICES FEE**

A Service Fee of HKD [            ] is payable by HKSTP in accordance with the following payment schedule:

Note: The Service Fee set out above is inclusive of all costs, expenses and other amounts payable in respect of the Services as described in Annex 1 above.