

GENERAL CONDITIONS OF CONTRACT FOR CONSULTANCY SERVICE

DEFINITIONS

In this Contract, unless the contrary intention appears, the following words and expressions shall have the following meanings when construing the Agreement:

- “**Appointed Consultant**” shall mean the Tenderer whose tender is accepted as hereinafter provided.
- “**Conditions**” shall mean the Special and General Conditions of the Agreement.
- “**Agreement**” shall mean this Agreement including the **Service Brief**, Conditions annexed hereto, the Tender Form (including the Appendix 1 to the Tender Form), all documents submitted as the same may be amended, modified or supplemented from time to time in accordance with the provisions contained.
- “**Service**” shall mean all the Service provided by the Appointed Consultant pursuant to this Agreement and all other obligations of the Appointed Consultant hereunder.
- “**HKSAR**” shall mean the Hong Kong Special Administrative Region of the People’s Republic of China.
- “**Employer**” shall mean the Hong Kong Sports Institute Limited.
- “**HKSI**” shall mean the Hong Kong Sports Institute.
- “**HKSIL**” shall mean the Hong Kong Sports Institute Limited.
- “**Invitation to Tender**” shall mean this Invitation to Tender for the services as specified in the **Service Brief** of HKSIL.
- “**Payment Term**” shall mean the Payment Term referred to in **Clause 2** of the Special Conditions of Contract in **Part I** of this Contract.
- “**Service Brief**” shall mean the **Service Brief** set out in **Annex I** hereto.
- “**Tender**” shall mean a Tender submitted by the Tenderer in response to this Invitation to Tender attached hereto.
- “**Tenderer**” shall mean, as the context requires, a party:
(a) to whom this Invitation to Tender is addressed, or
(b) who is submitting a Tender, or
(c) whose Tender is accepted by HKSIL (herein after referred to as Consultant).

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Assignment, Subcontracting and Change of Control

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

Termination of the Appointed Consultant

- 2.1 Notwithstanding anything to the contrary in the Contract, HKSIL may immediately terminate the Contract by notice in writing to the Appointed Consultant upon the occurrence of any of the following events:
- 2.1.1 the Appointed Consultant has engaged or is engaging in acts or activities that are likely to constitute or cause the occurrence of offences endangering national security or which would otherwise be contrary to the interest of national security;
- 2.1.2 the continued engagement of the Appointed Consultant or the continued performance of the Contract is contrary to the interest of national security; or
- 2.1.3 HKSIL reasonably believes that any of the events mentioned above is about to occur,

whereupon, without releasing the Appointed Consultant from any of his obligations or liabilities under the Contract or affecting any rights or powers conferred on HKSIL by the Contract, HKSIL may complete or may employ any other Consultant to complete all outstanding Services or services in respect of the Services and the Appointed Consultant shall be liable for all and any costs incurred.

- 2.2 Without prejudice to **Clause 2.4** of General Conditions of the Contract, if the Appointed Consultant defaults in carrying out all or any of the Services satisfactorily provided for in the Contract, fails to perform any of its obligations under the Contract or to observe any conditions under the Contract, HKSIL may terminate the Contract forthwith by notice in writing, but without prejudice to any claims by HKSIL or remedies for breach of the Contract and in particular, HKSIL shall thereafter at its absolute discretion to assign the Services which were unsatisfactorily performed by the Appointed Consultant to another consultant whereupon the Appointed Consultant shall be liable for all and any costs so incurred. HKSIL

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may make full use of all or any printing matters, information or other documents or intellectual property (e.g. drawings, maps and layout plans) produced or prepared by the Appointed Consultant pursuant to and for use under the Contract. The aforesaid balance of the unsatisfactory Services and any sums so incurred shall be identified by HKSIL as conclusive.

2.3 If HKSIL chooses, at its sole discretion, to appoint another Consultant under the circumstances described under **Clause 2.1** of General Conditions of the Contract, the Appointed Consultant shall be liable to HKSIL, but without prejudice to any claims by HKSIL, to pay for any additional expenditure, expenses, disbursements, costs and fees so incurred by HKSIL.

2.4 If the Appointed Consultant shall default in any one or more of the following respects, that is to say:

2.4.1 if it without reasonable cause wholly suspends the provision of the Services (or any part thereof) during the Contract Period, or

2.4.2 if it has abandoned the Services (or any part thereof); or

2.4.3 if it fails to diligently carry out the Services despite previous warning by HKSIL in writing, or

2.4.4 if it refuses or persistently neglects to comply with a written notice from HKSIL requiring him to improve the standard of the Services; or

2.4.5 if it has sub-let or assigned the Contract; or

2.4.6 if there shall be any breach of any of the terms and conditions of the Contract on the Appointed Consultant's part to be observed and performed;

then HKSIL may, without prejudice to any other rights or remedies of HKSIL and without prejudice to **Clause 2.2** of the General Conditions of Contract, forthwith terminate the appointment of the Appointed Consultant and this Contract, immediately with or without prior notice to the Appointed Consultant.

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

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

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- Termination of Contract by Serving Notice**
- 3.1 Notwithstanding **Clauses 2.2 and 2.4** of General Conditions of Contract, HKSIL may give the Appointed Consultant 14 calendar days written notice to terminate the Appointed Consultant and the Appointed Consultant may give HKSIL 14 calendar days' written notice to terminate the Contract.
- 3.2 Subject to **Clause 3.1** of General Conditions of Contract, in the event of the Contract being terminated whether by effluxion of time, notice, breach or otherwise, the Appointed Consultant shall immediately refund to HKSIL any excess sum which have been made to the Appointed Consultant by HKSIL before the termination of the Contract.
- 3.3 Termination shall be without prejudice to the rights and remedies of either party in respect of any antecedent breach of the other party (if any).
- Recovery of Status Due**
- 4.1 Whenever under the Contract any sum of money shall be recoverable from or payable by the Appointed Consultant, HKSIL has the discretion to deduct such sum from any fee/sum then due or which at any time thereafter may become due to the Appointed Consultant under the Contract or any other contract(s) with HKSIL.
- Bankruptcy or Insolvency of the Appointed Consultant**
- 5.1 HKSIL may at any time by notice in writing unilaterally and immediately terminate the Contract forthwith without entitling the Appointed Consultant to compensation in any of the following events:
- 5.1.1 If applicable, if the Appointed Consultant shall at any time be adjudged bankrupt, or shall have a bankruptcy order or orders for administration of its estate made against it or shall take any proceedings for liquidation or composition under any applicable laws or regulations or make any conveyance or assignment of its effects or composition or arrangement for the benefit of its creditors or purports so to do.
- 5.1.2 If the Appointed Consultant, being a limited company or corporation, shall pass a resolution for voluntary winding up or a petition for winding up shall be filed or other step has been taken by any person for the winding up or dissolution of the Appointed Consultant, or the Court shall make an order for the liquidation of its assets, or a receiver or manager shall be appointed on behalf of the creditors and/or debenture holders of the Appointed Consultant, or possession taken by or on behalf of the holders of any debentures secured by a floating charge, of any property comprised in or subject to the floating charge or circumstances shall have arisen which entitled the Court or creditors and/or debenture holders to appoint a receiver or manager.

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- 5.2 Provided always that such termination shall not prejudice or affect any right or action or remedy which shall have accrued or shall accrue thereafter to HKSIL. Provided always that the appointment of the Appointed Consultant may be continued if HKSIL and the Appointed Consultant (its trustee in bankruptcy liquidator, receiver or manager) as the case may so agree.
- Notice to the Appointed Consultant**
- 6.1 All notices (including demands or consents required or permit) to be given under the Agreement shall be given by either party to the other in writing. Any notice to be given by either party to the other shall be delivered personally or sent by pre-paid postal delivery or registered post to the addressee at the addressee's registered office (if being a limited company or corporation) or its last known address to the despatching party (in any other case) for the time being or by fax or electronic mail (e-mail) to such fax number or e-mail address last known to the despatching party. The notice shall be deemed to be received:
- 6.1.1 if delivered by hand, at the time of receipt;
- 6.1.2 if sent by post (to the addressee at the addressee's registered office), at the expiration of 48 hours after posting (having been correctly addressed) whether or not received;
- 6.1.3 if sent by fax or e-mail, 24 hours after dispatch to the correct fax number or e-mail address of the addressee.
- Authorised Representative**
- 7.1 HKSIL shall appoint an authorised representative to liaise with the Appointed Consultant and supervise the performance of the Appointed Consultant in relation to the requirements as detailed in the Contract.
- 7.2 The Appointed Consultant shall appoint an authorised representative to liaise with HKSIL's authorised representative on all necessary co-ordination/co-operation Services to ensure the smooth commencement, progress and completion of the Contract. The authorised representative of the Appointed Consultant must be able to communicate fluently in Cantonese, Putonghua and English.
- Replacement of Appointed Consultant's Employee**
- 8.1 The Appointed Consultant shall provide suitable and sufficient staff for all the purposes set out in this Contract.
- 8.2 The Appointed Consultant shall ensure so far as is possible that all persons employed by it are efficient sober and honest and will not employ for the purposes of this Contract any person to whose employment reasonable objection is taken by or on behalf of HKSIL.

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- 8.3 The Appointed Consultant shall comply with all applicable laws and regulations in carrying out and providing the Services and in performing its obligations under this Contract and shall procure its employees to comply with all applicable laws and regulations in carrying out and providing the Services.
- 8.4 HKSIL shall have the right, at its sole discretion, to require the Appointed Consultant to remove any employee, if he/she is in violation of the regulations of HKSIL or commits any illegal or dishonest act, or engages in behaviour deemed by HKSIL at its sole discretion not to be in the best interests of HKSIL.
- General Requirements of Appointed Consultant's Employee**
- 9.1 The Appointed Consultant shall make its own arrangements in relation to the provision of such labour, as required for the execution of the Services and shall make due diligence in arranging for a sufficient and suitable supply of such labour, but all such arrangements shall be in accordance with the Employment Ordinance, Cap.57 of the Laws of HKSAR and other statutory requirements and also subject to the rules and regulations of HKSIL.
- 9.2 The Appointed Consultant shall also ensure that the contents of the Service Schedule inclusive of the terms and conditions of this Agreement are brought to the attention of every employee or agent of the Appointed Consultant who shall from time to time be engaged in the work.
- Liabilities, Indemnification and Insurance Policy**
- 10.1 The Appointed Consultant shall at its own expense at all times to possess relevant insurance coverage, according to the requirements of the Laws of HKSAR, for the execution of this contract to indemnify HKSIL, the HKSAR Government and The Secretary for Home and Youth Affairs Incorporated.
- Appointed Consultant to Accept Risks**
- 11.1 The Appointed Consultant shall take upon itself the whole risk for the executing the Service in accordance with the specifications, terms and conditions of the Contract and any other documents as appropriate.
- Statutory/ General Obligations**
- 12.1 The Appointed Consultant shall at all times comply with all laws, ordinances, regulations, orders and by-laws having the force of the law applying within HKSAR and having a bearing on the performance of the Appointed Consultant's obligations and duties under the Agreement.
- 12.2 The Appointed Consultant shall comply with the regulations of the public service or statutory undertaking relating to the Agreement.
- 12.3 All information in connection with the Agreement must be considered as confidential and all such documents must be either destroyed or returned to HKSIL after use.

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- 12.4 The Appointed Consultant shall not at any time during or after the term of the Agreement divulge or allow to be divulged to any person any Confidential Information relating to the business or affairs of HKSIL.
- 12.5 A waiver by HKSIL of any breach of any term of the Agreement by the Appointed Consultant shall not prevent the subsequent enforcement of that term and shall not be deemed a waiver of any subsequent breach.
- 12.6 HKSIL has the right to request the Appointed Consultant to remove any materials or equipment during or after the contract period that are not in accordance with the specifications or any terms or conditions provided in the Agreement.
- 12.7 The Appointed Consultant shall not use the premises of HKSIL Premises for any purpose other than performing the Services.
- 12.8 No advertising is allowed at HKSIL Premises unless otherwise specified.
- 12.9 No premium, fee, key money or other sum of money of a similar nature shall be paid by the Appointed Consultant to HKSIL or other person or persons authorised by him for the granting of the Agreement.
- 12.10 This Agreement shall constitute the whole of the terms agreed between the parties hereto in respect of the subject matter of this Agreement and that none of the parties has not relied upon any oral or written representation made to it by the other or its employees or agents and has made its own independent investigations into all matters relevant to it provided that nothing in this **Clause 12.10** shall limit a party's liability for fraudulent misrepresentation.
- 12.11 This Agreement shall be capable of being varied only by a written instrument signed by a duly authorised officer or other representative of each of the parties.
- 12.12 This Agreement is severable in that if any provision is terminated to be void, voidable, illegal or otherwise unenforceable by any court of competent jurisdiction or other competent authority such provision shall be deemed to have been deleted without affecting the remaining provisions of this Agreement which shall remain in full force and effect unless HKSIL in its absolute discretion decides that the effect of such termination is to defeat the original intention of the parties in which event HKSIL shall be entitled to terminate this Agreement by giving 14 calendar days' written notice to the Appointed Consultant and the provisions of **Clause 3** of General Conditions of Agreement shall apply accordingly.

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- 12.13 Nothing in this Agreement shall constitute or be deemed to constitute a partnership, agency or joint venture between the parties hereto or constitute or be deemed to constitute either party the agent of the other for any purpose whatsoever and neither party shall have any authority or power to bind the other or to contract in the name of or create a liability against the other.
- 12.14 This Agreement supersedes any prior agreement between the parties whether written or oral and any such prior agreements are cancelled as at the commencement date of this Agreement.
- 12.15 All representations and warranties made or given by the Appointed Consultant and all content of the Tender which confer rights onto HKSIL or which are necessary for the enforcement of this Agreement including but not limited to **Clauses 2, 3, 12, 14** of General Conditions of Agreement shall survive the expiration or earlier termination of the Agreement.
- 12.16 The Conditions of Agreement shall apply to the extent that they are not inconsistent with the Special Conditions of Agreement. For the avoidance of doubt, in case of any conflict between these General Conditions of Agreement and the Special Conditions of Agreement, the Special Conditions of Agreement shall prevail.
- 12.17 HKSIL may apply any money due to the Appointed Consultant whatsoever arising to set off against all or any liabilities of the Appointed Consultant to HKSIL, whether the relevant liabilities be present or future, actual or contingent, primary or collateral, and several or joint.
- 12.18 The Appointed Consultant undertakes to indemnify and keep HKSIL fully indemnified against any loss or damages suffered by HKSIL as a result of or relating to or as a consequence of the Appointed Consultant's failure to comply with any of the terms or conditions of the Agreement.

Corruption

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

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any money, gifts or advantages (as defined in the Prevention of Bribery Ordinance, Cap 201 of the Laws of HKSAR) or excessive entertainment to or from any HKSIL employees or their family members or any person in relation to the Services.

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

Governing Law

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

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

14.3 Any notice or proceedings or other notices in connection with or which would give effect to any such proceedings may without prejudice to any other method of services be served on any party in accordance with this **Clause 13.3**.

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

Change of Address

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

Conflict of Interest

16.1 The Tenderer shall declare any actual or perceived interest (financial or otherwise) it has with HKSIL or any of its members in Part A of the Tender Form.

Registration of Supplier

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

Alteration of Tender

18.1 The scope of services and terms and conditions as stated in the Contract issued with this Tender must not be altered by the Tenderer.

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- Validity** 19.1 Tenders shall remain open for acceptance by HKSIL for ninety (90) calendar days after the tender closing date.
- Acceptance of Tender** 20.1 This Tender relates to the execution of the Services and all of the services in accordance with the Contract and is subject to the Notice of Acceptance to be issued by HKSIL.
- 20.2 All Tenderers will be notified in writing of HKSIL's acceptance or non-acceptance of the Tender.
- 20.3 HKSIL is not bound to accept the lowest price or any Tender and reserves the right to accept all or any part of any Tender.
- 20.4 HKSIL may disclose the tender price of the successful Tender to such persons and for such purpose as HKSIL may in its absolute discretion deem fit.

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