

WEST KOWLOON CULTURAL DISTRICT AUTHORITY
WKPROCURE TERMS OF USE
(With effect from 30 May 2022)

1. Nature of Terms of Use

- 1.1. These Terms of Use, Privacy Policy and any other terms and conditions issued and uploaded on the e-Tendering System (“WKProcure”) by us, the West Kowloon Cultural District Authority and/or its subsidiaries, in relation to the use of WKProcure shall be read together and form the contract (“**Contract**”) on your use of WKProcure. This Contract shall replace all other agreements (oral or written) and shall constitute the entire agreement between us on your use of WKProcure.
- 1.2. By using WKProcure, you agree to be bound by this Contract. You must not use WKProcure if you do not agree to be bound by and accept this Contract.
- 1.3. We may amend this Contract and upload the amended Contract on WKProcure from time to time in our sole discretion without notice or liability to you. You agree to be bound by the amended Contract by continuing to access and use WKProcure.
- 1.4. If any part of this Contract is found to be void, invalid or unenforceable by any court of competent jurisdiction then this Contract shall be read as if the offending part had been deleted leaving the remainder in full force and effect.
- 1.5. This Contract, or any part of it, may be translated into any language, however, in the event of any ambiguity or inconsistency the English version shall prevail.

2. Our Use of WKProcure

- 2.1. We will post or transmit notices, information, documents in relation to any intended procurement (including prequalification, if any) or supplier registration, in electronic format on WKProcure for downloading and viewing by WKProcure users, and for electronic submission and uploading of documents by them in accordance with the requirements of this Contract. They include but are not limited to: -
- (a) **Procurement Documents:** tender notice, invitation to tender, instructions to tender, expression of interest, prequalification invitation or notice, request for quotations, response to queries or prequalification queries, addendum, clarification, prequalification clarification, confidentiality undertaking, form of tender, form of quotation, form of declaration, ancillary letters, forms and documents, and all schedules and attachments thereto and including any supplements, amendments or revisions to them, issued by us in relation to an intended procurement. For the avoidance of doubt, all references to Procurement Documents in this Contract shall also include any **Supplement Issue(s)** (defined in Clause 5.1(b));
- (b) **Award Documents:** - letter of clarification, letter of acceptance, letter of intent, letter of notification, award notice etc and all schedules and attachments

thereto and including any supplements, amendments, modifications to them, issued by us in relation to a procurement; and

- (c) **General Documents:** 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 us through WKProcure.

- 2.2. For the purpose of this Contract, Procurement Documents, Award Documents and General Documents shall hereinafter collectively be referred to as “**WKContent**”.
- 2.3. We may at any time without notice or liability to you add to, amend, modify or remove any WKContent, or discontinue, suspend or terminate WKProcure.
- 2.4. For the purpose of this Contract, all references to WKProcure shall be deemed to include the website and the hosting 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 WKProcure.

3. Your use of WKProcure

- 3.1. You must be registered as a registered supplier/contractor/ vendor (“**Registered Supplier**”) in order to access and use WKProcure. You must follow and complete the application and registration procedures to be so registered in WKProcure.
- 3.2. You must open a **Registered Account** with WKProcure in order to download and view WKContent.
- 3.3. You must use your relevant password in order to submit or upload through WKProcure your tender, quotation, proposal, query, prequalification query, executed confidentiality undertaking, executed form of declaration, response to clarifications or prequalification clarifications, and other information, materials and/or documents including any supplements, amendments or revisions you made to them in response to the Procurement Documents (collectively “**Your Submissions**”).
- 3.4. We may require you to apply for a valid **Digital Certificate** issued by WKProcure. In such circumstances, you must use the Digital Certificate together with your relevant password in order to submit or upload through WKProcure your tender, quotation and proposal. You are responsible for ensuring that you obtain or reapply your Digital Certificate in time in order to encrypt, digitally sign and submit your tender, quotation and proposal through WKProcure prior to the relevant deadline or closing date and time, and we shall not be liable or responsible for any of your failure to do so.

- 3.5. We may in our sole discretion accept or decline your application to be registered as a Registered Supplier or to open a Registered Account.
- 3.6. We may issue a notice via WKProcure to your Registered Account to confirm acceptance of the supplier registration submissions and advise that you have been added to our approved list of suppliers/contractors/vendors (hereinafter “**supplier(s)**” and “**approved suppliers’ list**” respectively). We reserve the right to invite any supplier from our approved suppliers’ list to participate into any intended procurement on WKProcure. You acknowledge and agree that:-
- (a) although you will be added to our approved suppliers’ list, we shall not be bound to issue Procurement Documents to you;
 - (b) we reserve the right to issue Procurement Documents to all or part of suppliers selected from our approved suppliers’ list as we shall in our sole discretion see fit; and
 - (c) you will only be eligible to submit Your Submissions upon receipt of our invitation to tender or request for quotation, as the case may be.
- 4. Open and Use of Registered Account**
- 4.1. In order to open a Registered Account: -
- (a) You must be a duly registered and/or established business, institution or legal entity under the applicable law and shall provide documents/evidence to substantiate the same as may be required;
 - (b) You must register with your full legal name and registered name as shown on your most up-to-date certificate of incorporation or business registration certificate, or business licence or any legally recognized equivalent document in your place of incorporation;
 - (c) You must provide us with your full registered address and/or principal office/business address(es) and contact details, including an email address; and
 - (d) You must provide us with any other information or documents that may be required by us from time to time.
- 4.2. We may require you, at any time (whether before or after the establishment of your Registered Account), to provide any other information as may be required by us, or as required by applicable law or a competent government body, and you must comply with our request promptly and fully.
- 4.3. You agree that:
- (a) you can only download any WKContent or submit Your Submissions through WKProcure when you are a Registered Supplier and when you have logged into your Registered Account;
 - (b) you shall only use your Registered Account for the purposes of Your Submissions, including for the purposes of making any of Your Submissions; downloading or viewing any WKContent; providing or updating any information, documents or details required by us; for any purpose directly related to the foregoing but not further or otherwise;
 - (c) you shall only use your Registered Account in accordance with this Contract and any other terms and conditions issued by us in relation to your Registered Account;
 - (d) any information you provide or submit to us in relation to or via your Registered Account (including any application for a Registered Account) shall be up to date, true, accurate, complete and correct;
 - (e) you shall notify us promptly upon any changes to your details and/or any other information provided by you to us in relation to your Registered Account;
 - (f) you will not allow other person, firm, company or organization to have access to or to use your Registered Account;
 - (g) you shall at all times keep your login details (including your login name, password, and token) of your Registered Account secure and confidential to prevent any unauthorized access, use or submissions;
 - (h) without prejudice to Clause 4.4 below, you shall notify us immediately in writing upon becoming aware of any unauthorized use of your login details of your Registered Account; and
 - (i) you shall procure all of your employees, officers, directors, representatives or agents to comply with this Contract.
- 4.4. You shall be solely and fully responsible for all activities that occur under your Registered Account, and we shall not be responsible or liable to you or any third party for any Loss as a result of any unauthorized access to or use of your Registered Account whether or not caused by your actions or omissions, including any actions of any person who uses your password and/or token and/or who submits any documents, or Your Submissions through the use of your password or token or Registered Account, regardless of whether or not such persons are in fact authorized to do so. Any of Your Submission or **Your Content** (defined in Clause 5.1(f)) submitted via your Registered Account shall be deemed to be submitted by you. We shall not be under any obligation to verify

whether any of Your Submission or Your Content or material has been provided via the authorised use of your Registered Account.

- 4.5. For the purpose of this Contract, “**Loss**” means losses, liabilities, actions, charges, claims, costs, damages, demands, fines, judgments, awards, penalties, sanctions, settlements, expenses and other liabilities of whatsoever nature (including without limitation attorney/legal fees for both internal and external counsel, and costs related to investigation, arbitration, litigation or settlement).

5. Your Warranties and Acknowledgements

- 5.1. You acknowledge and agree that : -

Use Appropriate Hardware and Software

- (a) You shall be solely and fully responsible for ensuring that you have the appropriate hardware, equipment and software that enable you to access to WKProcure and your Registered Account, to use, view and/or download any WKContent from WKProcure, and to upload and submit Your Submissions through WKProcure.

Frequent Check of Supplement Issue(s)

- (b) Without prejudice to Clause 2.3, we may at any time issue tender addenda and/or responses to queries, etc prior to the closing date and time, and/or clarifications or letter of clarifications, etc prior to the issuance of letter of acceptance or letter of notification, etc in relation to issued Procurement Documents (“**Supplement Issue(s)**”). We shall send an email to your Registered Account on WKProcure once any Supplement Issue is issued, and the time and date of sending such email will be final and conclusive evidence of our issue of the Supplement Issue. We shall in no way be liable in the event that you fail to receive any such email from us.
- (c) You shall be fully responsible for checking WKProcure on a regular basis to ensure that you are kept up-to-date and aware of any Supplement Issue(s), and shall be responsible for ensuring that Your Submissions fully comply with and take into account the Supplement Issue(s). You agree that all Your Submissions made before and/or after the date of the issue of the Supplement Issue(s) shall represent the full and entire submission and offer by you in response to the Procurement Documents. We shall in no way be liable for any failure by you to take into account any Supplement Issue(s) in Your Submissions.

Compliance with Requirements and Formatting

- (a) It is your sole responsibility to ensure that Your Submissions are fully compliant with our terms and

conditions contained in the Procurement Documents and that Your Submissions complete their transmissions through WKProcure and are received by us by the relevant deadline or closing date and time. We shall in no way be liable for your failure to submit any of Your Submissions by the relevant deadline or closing date and time.

- (b) You shall ensure Your Content and Your Submissions which are uploaded, transmitted or submitted through the WKProcure must be in a standardized electronic format that allows WKProcure to capture, record, store, transmit and/or process them and any other formatting requirements specified by us on WKProcure or the Procurement Documents.

Transmission before Deadline or Closing Date and Time

- (c) Any of Your Submissions that are not fully and successfully transmitted to and received by us by the relevant deadline or closing date and time shall be invalid. We have no obligation to and shall not take into consideration any of Your Submissions that are not fully and successfully transmitted to and received by us by the relevant deadline or closing date and time.
- (d) All notices or messages that appear on WKProcure that display any date, time, time zone, or time remaining for any submissions or document to be filed are for reference only. Any upload end time generated automatically by WKProcure, which specifies exactly when the transmission of Your Submissions through WKProcure was completed, shall be final and binding and shall be relied on by us to determine whether or not Your Submissions were submitted by the relevant deadline or closing date and time. Such upload end time will be shown in an acknowledgement notice displayed on the screen. Once you have successfully completed the uploading and transmission of Your Submissions through WKProcure by the relevant deadline or closing date and time, you will receive an email confirming the same from us sent to your Registered Account.

- (e) During transmission, uploading and submitting any of Your Submissions through WKProcure, WKProcure may fail, be interrupted, breakdown, contain virus, 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 such failure, interruption, breakdown, malfunction, slow processing, error or any other defect or default in WKProcure, you agree that you shall contact us who may agree to provide you with an alternate method to receive or view the WKContent or to submit Your Submissions to us by the relevant deadline or closing date and time.

Encryption and Decryption

- (f) All content in Your Submissions (including 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 WKProcure by you, your employees, directors, representatives or agents) ("**Your Content**") shall be encrypted for security reasons when uploaded or submitted by you and transmitted through WKProcure. You agree that any of Your Content that is so encrypted shall be complete and accurate after decryption and in any event, you accept any error, misstatement or omission that may occur upon decryption or encryption.
- (g) The result of Your Content, Your Submissions or any information, material or data that has been encrypted and decrypted shall be used and relied on by us as received by us and you are to be bound by such result as decrypted and received by us.
- (h) Your Submissions that are successfully uploaded and transmitted through WKProcure shall be encrypted and electronically stored in a secure location, which shall be accessed by us for processing and consideration.

No liability, etc

- (i) We will not accept nor shall we be obligated to consider or provide any feedback to you where you are in breach of this Contract. If Your Submissions
 - (i) do not comply with any of the formatting requirements we specified;
 - (ii) are not in accordance with this Contract;
 - (iii) are contaminated with a virus or Disabling Code, or is otherwise corrupted, or not readable or printable into readable text; or
 - (iv) have not successfully completed their transmission by the relevant deadline or closing date and time,
 then they shall not be considered by us and we shall not be liable for any failure to consider Your Submissions in such circumstances. For the purpose of this Contract, "**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:
 - (i) permit access to or use of our computer systems or the computer systems of any third party (including other users); or
 - (ii) 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), WKProcure or any associated data or information.

- (j) We shall in no way be responsible or liable to you for any Loss incurred or suffered by you as a result of any delay, failure, interruption, breakdown, viruses, malfunctions, errors, defects or defaults in the transmission or downloading of any WKContent, or in the transmission or uploading of any of Your Submissions or Your Content.

5.2. You represent, warrant and agree that: -

Your Submissions

- (a) you hold the full rights and title to Your Submissions free of all encumbrances, liens and charges.
- (b) Your Submissions are accurate and complete and shall not infringe upon rights including Intellectual Property Rights of any third party. For the purpose of this Contract, "**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, company 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.
- (c) Your Submissions have been internally approved and any digital signature on Your Submissions is valid and enforceable against you.

Your Content

- (d) You are solely and fully responsible and liable for all of Your Content.
- (e) Your Content is accurate, current and complete and shall not infringe the rights of any third party (including Intellectual Property Rights).
- (f) 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.

Your Digital Signature or Password

- (g) You hereby waive any and all rights you may have to challenge the validity of or accuracy of any information contained in a Digital Certificate (if any), or of any of Your Submissions, or any contract that arises from Your Submissions and/or our acceptance of such, on the basis that the document was not physically signed by you or that your Digital Certificate (if any) or password, as applicable, was used without your authorisation.

6. Result of the Intended Procurement

- 6.1. We will notify you the result of the intended procurement via WKProcure.
- 6.2. We may issue any letter of acceptance, purchase order or letter of notification or other Award Documents to you, as the case may be, via WKProcure to your Registered Account.
- 6.3. Any letter of acceptance or purchase order issued by us to you, shall be subject to any relevant letter of clarification (if any) we issued and/or any relevant response to clarification submitted by you (if applicable) in accordance with this Contract.
- 6.4. In the event that we issue any letter of acceptance or purchase order to you in accordance with this Clause 6, you acknowledge and agree that you are legally bound by the letter of acceptance in accordance with its terms and are liable to perform your obligations as set out in the letter of acceptance, letter of clarification, the Procurement Documents and Your Submissions.
- 6.5. In the event that we issue any letter of notification to you in accordance with this Clause 6, you acknowledge and agree that you are legally bound by the result of the prequalification invitation in accordance with its terms.

7. Hard Copy Submissions

- 7.1. We may, in our sole discretion, allow or require you to submit Your Submissions (in whole or in part) in hard copy as well as through WKProcure, either by stating such in the Procurement Documents or otherwise issuing a notice to you on WKProcure. In the event that any of Your Submissions (in whole or in part) are submitted by you to us in hard copy, as well as electronically through WKProcure:
- (a) you represent, warrant and undertake that the hard copy version of Your Submissions submitted by you shall be fully identical to the electronic version submitted by you through the WKProcure;
 - (b) you acknowledge and agree that the electronic version submitted by you through WKProcure shall prevail in the event of any discrepancies between the electronic version and hard copy version of Your Submissions;
 - (a) you shall indemnify us against any Loss suffered by us as a result of any discrepancies between the hard copy version and electronic version of Your Submissions; and
 - (b) you shall duly sign all hard copy versions of any of Your Submissions submitted by you to us.

8. Your General Undertakings

- 8.1. You agree to use WKProcure or any of WKContent only for purposes that are permitted by:
- (a) this Contract; and
 - (b) any applicable law, regulation or generally accepted practices or guidelines in the relevant jurisdiction.
- 8.2. You agree not to use WKProcure or WKContent 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).
- 8.3. You agree that:
- (a) you will not engage in any activity that interferes with or disrupts WKProcure;
 - (b) you will not copy, reproduce, download, re-publish, sell, exploit or distribute any part of WKProcure or WKContent (subject to Clause 8.3(c) below);
 - (c) you shall only use WKProcure, your Registered Account and WKContent and may only download and copy WKContent, solely and exclusively as needed for the intended procurement purposes;
 - (d) you will not use WKProcure, your Registered Account and WKContent for any purpose not expressly permitted in this Contract;
 - (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 WKProcure (or any part thereof) or any other telecommunications or computer systems, networks or devices, or otherwise attempt to gain unauthorised access to WKProcure or any other telecommunications, computer systems, networks or devices connected to WKProcure;
 - (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 WKProcure or any of our computer systems or networks;
 - (g) you are solely responsible for, and we have no responsibility to you or to any third party for any breach of your obligations under this Contract, and for the consequences of any such breach;

- (h) you shall not use WKProcure, your Registered Account and WKContent 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 WKProcure, your Registered Account and WKContent to post, communicate or transmit any advertisements or other unsolicited commercial communications, or engage in spamming;
- (j) you shall not interfere with another person's use and enjoyment of WKProcure and WKContent;
- (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 WKProcure, your Registered Account and WKContent.

9. Disclaimers

- 9.1. All content on WKProcure and WKContent is provided for reference only. It does not 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 such content. You must ensure that your use of such content complies with your requirements and all applicable legal requirements.
- 9.2. Your use of WKProcure, your Registered Account and WKContent and your participating in any process through WKProcure are at your own risk and they are provided to you "AS IS" and "AS AVAILABLE".
- 9.3. To the fullest extent permitted by applicable law, we expressly disclaim 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 particular purpose, non-infringement, compatibility, completeness and accuracy.
- 9.4. We make no representation or warranties: -
 - (a) as to the accuracy, quality, completeness, correctness, adequacy, reliability or validity of any information or material provided on or through WKProcure or your Registered Account and/or during your registration and application process for

a Registered Account, including, without limitation, WKContent;

- (b) that WKProcure, your Registered Account, and WKContent 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 WKProcure, your Registered Account, and WKContent will be uninterrupted, timely, secure or error-free; or
- (d) that defects in the operation or functionality of WKProcure, your Registered Account, and WKContent will be corrected.

9.5. Any materials or content downloaded or otherwise obtained through the use of WKProcure, your Registered Account, and WKContent 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 or content.

10. Limitation of Liability

- 10.1. Nothing in this Contract, shall exclude or restrict any warranty or liability 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 our liability will be limited to the maximum extent permitted by the applicable laws and regulations.
- 10.2. We 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 this Contract, these Terms of Use, WKProcure, your Registered Account or WKContent whether or not we were advised in advance of the possibility of such Loss.
- 10.3. We 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 WKProcure, your Registered Account, or WKContent;

- (b) any changes made by us to WKProcure, your Registered Account, and WKContent, or for any permanent or temporary cessation (in whole or in part) in the provision of WKProcure, your Registered Account, or WKContent;
 - (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 WKProcure, or your 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, WKContent or WKProcure, confidential and secure;
 - (e) any third party materials accessed, viewed, downloaded, used, relied on or otherwise obtained by you in relation to or via WKProcure, your Registered Account or during the application and registration process for a Registered Account, or WKContent;
 - (f) any statements made by, or the conduct of, any third party on or through WKProcure; or
 - (g) violation of your Intellectual Property Rights by any third party.
- 10.4. This Clause 10 shall apply irrespective of whether or not we have been advised or should have been aware of the possibility of any such Losses arising.
- 10.5. This Clause 10 shall survive the termination or expiration of this Contract.
- 11. Force Majeure**
- 11.1. Under no circumstances shall we be liable for any delay or failure or disruption in relation to WKProcure, your Registered Account, and WKContent or any related services, 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.
- 12. Indemnity**
- 12.1. You shall indemnify, defend and hold harmless us, our employees, contractors, partners, officers, directors, agents, affiliates, and licensors 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 this Contract or any other applicable policies and terms and conditions;
 - (b) your use of WKProcure, your Registered Account or WKContent;
 - (c) Your Submissions, including:
 - (i) any use by us or other third parties of Your Submissions;
 - (ii) any claim that Your Submissions or Your Content violate 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 our or any third party's Intellectual Property Rights, or the unauthorised use or misappropriation of any trade secret or confidential information of us or any third party, caused by you, or your employees, officers, members, owners, agents or affiliates; or
 - (e) any breach by you of the Personal Data (Privacy) Ordinance (Cap. 486) and/or any other applicable data protection laws.
- 12.2. You shall cooperate fully with us in the defence of any claim made by any third parties. We reserve our right to assume the exclusive defence and control of any matter or claim that is subject to indemnification by you in accordance with Clause 12.1. You hereby acknowledge that damages for improper use of WKProcure, your Registered Account or any WKContent may be irreparable, and we are entitled to seek equitable relief, including injunctions and preliminary injunctions, in addition to all other remedies.
- 13. Personal Data**
- 13.1. Any personal data that we may collect shall be governed by the Privacy Policy and this Clause 13.
- 13.2. In the event of any inconsistencies between this Clause 13 and the terms of the Privacy Policy, this Clause 13 shall take precedence over any conflicting provision in the Privacy Policy.
- 13.3. You shall:
- (a) fully comply with the 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 WKProcure;
- (iv) processing, assessing, evaluating or communicating with you with regard to Your Submissions;
- (v) any site visits or briefings organised by us 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 WKProcure and any related services;
- (viii) the procurement process contemplated under WKProcure; and
- (ix) any purpose directly related to any of the above.

14. Hyperlinks

14.1. WKProcure may include hyperlinks to other websites, content or resources, which are hosted, offered or provided by third parties unrelated to us. You understand and agree that:

- (a) we have no control over and do not monitor such third party websites, content, or resources;
- (b) we make no guarantee or warranty, and are 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) we do not endorse any websites linked to WKProcure, or any advertising, products, goods, services or other materials on or available through such websites or resources.

14.2. You understand and agree that you access such external websites, content or resources at your own risk, and we 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.

15. Prevention of Bribery

15.1. You shall not and shall ensure that your employees, subcontractors or agents shall not:

- (a) in any way breach the *Prevention of Bribery Ordinance (Cap. 201)*;
- (b) collude with any person during the procurement process; or
- (c) be in real or potential conflict of interest which may adversely affect your participating in the procurement process.

16. Termination

16.1. We may suspend or terminate your use of and access to any part of or all of WKProcure 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) our maintenance or support of WKProcure;
- (b) your breach of this Contract;
- (c) we being unable to verify or authenticate any information provided by you; or
- (d) our belief that your actions or omissions may give rise to any liability, or are otherwise objectionable, inappropriate or illegal.

16.2. Without prejudice and in addition to the foregoing, we shall also be entitled to terminate, without any cause, your use of and access to any part of or all of WKProcure or any related services at any time, with immediate effect and without notice to you.

16.3. If you provide any information that is untrue, inaccurate, not current or incomplete, we have the right to suspend or terminate your registration and/or refuse any and all current or future use of the service (or any portion of it). If you have registered with us on behalf of a company or other entity, then you represent and warrant that you have the authority to bind such company or other entity to this Contract.

16.4. Upon termination in accordance with this Clause 16, you agree to immediately cease using or accessing WKProcure or any related services (as we may require), and shall immediately destroy all material obtained from WKProcure and any copies thereof. Termination of your right to use or access in whole or in part WKProcure or any related services, shall be without prejudice to any other rights or remedies available to us against you.

16.5. Following termination, we will only retain and use Your Content in accordance with this Contract and, to the extent Your Content includes personal data, the Privacy Policy. Subject to the Privacy Policy, Clause 13 and applicable laws and regulations, where we suspend or terminate all or part of WKProcure, or where your access to WKProcure is terminated, we do not guarantee that we will be able to return any of Your Content back to you and we may permanently delete Your Content without

notice to you at any time after termination. Please ensure that you back up Your Content.

17. Assignment and sub-contracting

17.1. You shall not assign, transfer, charge, novate or sub-contract any part of this Contract without our prior written consent. We may, at our sole discretion, transfer our rights and/or obligations under this Contract to any person or entity without any prior notice.

18. Intellectual Property Rights

18.1. You acknowledge and agree that we and/or our licensors or contractors own all legal rights, title and interest, including any Intellectual Property Rights, in and to WKProcure and WKContent.

18.2. You shall not modify, copy, rent, lease, loan, sell, distribute or create derivative works based on WKProcure or WKContent (either in whole or in part) unless expressly authorised under this Contract or by us beforehand in writing.

18.3. Nothing in this Contract shall give you a right to use any of our trade names, trade marks, service marks, logos or domain names for any purpose whatsoever.

18.4. 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 WKProcure or WKContent.

19. Notices

19.1. 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 WKProcure, 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 WKProcure that is publicly accessible, without a charge. You shall be deemed to have received any such notice, if and when:

- (a) we are able to demonstrate that the notice has been sent to you; or
- (b) immediately upon our posting such notice on an area of WKProcure that is publicly accessible without charge, whichever date is earlier.

20. Waiver

20.1. No failure or delay by us in exercising any right, power or privilege under this Contract shall operate as a waiver of them. Our waiver, if any, must be in writing and is limited to the particular right, power or privilege stated therein.

21. Relationship

21.1. This Contract shall not constitute any partnership, joint venture, agency, fiduciary or other relationship between you and us. You shall have no authority to make or enter into any commitments on our behalf.

22. Third Parties

22.1. A person who is not a party to this Contract shall not have any rights under the *Contracts (Rights of Third Parties) Ordinance (Cap. 623)* to enforce any term of this Contract.

23. Law and Jurisdiction

23.1. This Contract is governed by the laws of the Hong Kong SAR and the parties agree to submit to the non-exclusive jurisdiction of the courts of Hong Kong SAR.