

LANTAU CONSERVATION FUND AGREEMENT

between

THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION

and

XYZ

THIS AGREEMENT is made on _____ day of _____ 202__.

BETWEEN:

- (1) **THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION** (the “**Government**”) as represented by [insert officer’s name]; and
- (2) [Insert company name], a company limited by guarantee incorporated and existing under the laws of Hong Kong and having its registered office at [insert address], Hong Kong (the “**Grantee**”).

RECITALS

- (A) The Government has, through the Sustainable Lantau Office (the “SLO”) under the CEDD, introduced the Lantau Conservation Fund (the “LCF”) to provide financial support to projects that contribute to the conservation of Lantau.
- (B) The Grantee submitted an application under the LCF for financial support in respect of the Project. The Government has agreed to provide to the Grantee and the Grantee has agreed to accept the Grant for the Project.

NOW IT IS HEREBY AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement (including the Recitals), any word and expression shall, unless the context otherwise requires, have the following meaning:

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|--------------------|---|
| “Agreement Period” | means the Agreement period referred to in Clause 2. |
| “Approved Budget” | means the approved budget for the Project as set out in Schedule C which may be revised by mutual consent of the parties hereto. |
| “Audited Accounts” | means audited accounts referred to in Clause 13. |
| “Business Day” | means any day other than a Saturday and a general holiday as the term is defined under the General Holidays Ordinance (Cap. 149). |
| “CEDD” | means the Civil Engineering and Development Department. |

“Completion Report”	means the completion report referred to in Clause 13.
“Designated Bank Account”	means an interest-bearing Hong Kong Dollar account established and maintained in the sole name of the Grantee with a bank licensed under the Banking Ordinance (Cap. 155) solely and exclusively for the Grant.
“Disclosable Information”	<p>means information furnished by or on behalf of the Government for the purposes of the Project, or any records, database and materials developed, collected, created or compiled by the Grantee in carrying out, or otherwise for the purposes of, the Project, including but not limited to:</p> <ul style="list-style-type: none"> (a) this Agreement; (b) Project Materials or its information related to any activities; and (c) the Progress Reports, Completion Report and any information submitted to the Government in accordance with Clause 13.
“Government”	means the Government of the Hong Kong Special Administrative Region.
“Government Representative”	means the Head of the Sustainable Lantau Office and any officer authorised to act on his behalf for the purpose of this Agreement.
“Grant”	means the grant to be paid by the Government to the Grantee under Clause 6.
“Hong Kong”	means the Hong Kong Special Administrative Region of the People’s Republic of China.
“Insolvent”	<p>means the occurrence of any one or more of the following events in relation to an entity:</p> <ul style="list-style-type: none"> (a) that the entity is unable or admits inability to pay its debts as they fall due or suspends making payments on any of its debts other than in connection with a bona fide dispute;

- (b) any appointment of a receiver or administrator in respect of the entity by a Government agency;
- (c) any corporate action, legal proceedings or other procedure or step in respect of the winding-up of the entity or the appointment of an insolvency practitioner to manage the entity or any of its affairs; or
- (d) any corporate action, legal proceedings or other procedure or step taken in relation to:
 - (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, bankruptcy or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the entity; or
 - (ii) a composition, assignment or arrangement with any material creditor of the entity,

or any analogous procedure or step taken in any jurisdiction.

“Intellectual Property Rights” means patents, trade marks, 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.

“Interest” means all interest which accrues or shall accrue to the Designated Bank Account.

“Key Project Staff” means the key project staff including the Project Leader as set out in **Schedule A** to be deployed by the Grantee for the purpose of implementing the Project subject to any replacement of the same as provided for in this Agreement.

“PD(P)O”	means the Personal Data (Privacy) Ordinance (Cap. 486).
“person”	includes an individual, company, corporation, firm or any body of persons, corporate or unincorporated and includes any public body.
“Personal Data”	has the meaning ascribed to it in the PD(P)O.
“Progress Reports”	means the progress reports referred to in Clause 13.
“Project”	means the conservation project to be undertaken by the Grantee under this Agreement, the details of which are set out in Schedule A .
“Project Assets”	means all equipment, instrument, machinery, furniture and other matters or chattels which are procured by the Grantee using the Grant for the purpose of the Project.
“Project Expenditure”	means Project expenditure referred to in Clause 7.
“Project Income”	means Project income referred to in Clause 7.
“Project Leader”	means the Grantee’s project leader as set out in Schedule A and who is to be appointed under Clause 15
“Project Materials”	means all deliverables, reports and all items referred to in Clauses 9 and 13 hereof, works of authorship, training manuals, equipment, summaries, research findings, briefings, presentations, worksheets, questionnaires, publications, methods, processes, demonstrations, audio/video recordings, diagrams, drawings, charts, tables, graphs, pictures, photographs, plans, models, analyses, studies, technical notes, information papers, opinions, comments, records, accounts, specifications, products, expression of information, database, documents, designs, formulae, software, computer programming code (source code and object code), structures, sculptures and all other materials created,

supplied, compiled, developed or produced by or on behalf of the Grantee, its employees, agents, contractors or sub-contractors in relation to the Project or in the course of carrying out the Project or for the purpose of this Agreement, including all pre-contractual and contractual documents thereof, which are recorded or stored by whatever means in whatever form or media and the drafts and uncompleted versions of any of the above.

“Third Party Materials”

means any works or materials of which the Intellectual Property Rights subsisting therein are vested in third parties and none of such third parties is an associate, associated person, employee, officer, agent, sub-contractor or consultant of the Grantee for the Project, and which are incorporated into the Project Materials or otherwise used by the Grantee in the conduct of the Project or performance of this Agreement.

1.2 This Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

- (a) The headings and marginal notes to the clauses of this Agreement are for ease of reference only and shall not be taken into consideration in the interpretation or construction of this Agreement.
- (b) Except where the context requires otherwise, references to Clauses, paragraphs, parts and Schedules are references to clauses, paragraphs, parts and Schedules to this Agreement.
- (c) Schedules to this Agreement are an integral part of this Agreement and a reference to this Agreement includes a reference to the Schedules.
- (d) Where the context so requires words importing the singular only also include the plural and vice versa and words importing a gender include the other gender.
- (e) References to any law are construed as references to that law which is for the time being in force and shall include all subsidiary legislation made thereunder.

2 AGREEMENT PERIOD

2.1 The Agreement Period shall commence on the date of this Agreement and last until the acceptance of the Completion Report by the Government Representative unless it

is earlier terminated under Clause 18 or extended by the parties hereto by mutual consent.

3 GRANTEE'S OBLIGATIONS

3.1 In consideration of the Grant to be provided by the Government, the Grantee shall:

- (a) use the Grant wholly and exclusively for the purpose of the Project and in accordance with the Approved Budget;
- (b) commence the Project on the date specified in **Schedule A** or such other date as may be approved in writing by the Government Representative;
- (c) carry out the Project on prudent commercial principles in accordance with **Schedule A**, with due diligence and in a conscientious, skillful and timely manner in accordance with this Agreement;
- (d) comply with the "Governance and Internal Control in Non-Governmental Organisations" and "Strengthening Integrity and Accountability – Government Funding Schemes Grantee's Guidebook" ("ICAC Guides") issued by of the Independent Commission Against Corruption (the "ICAC") in the conduct of the Project including without limitation in the recruitment and procurement for as well as the general administration and management of the Project. Proper records shall be kept in accordance with the ICAC Guides and shall be made available for inspection by the Government Representative upon request;
- (e) maintain fairness and transparency in recruiting personnel for the Project, and shall ensure that all such personnel are well qualified, suitably deployed, and properly remunerated;
- (f) attend all meetings at such time and in such manner as may be required by the Government Representative including the giving of presentations and briefings on or relating to any aspect of the Project;
- (g) through the Government Representative keep the Government informed of all matters relating to the Project;
- (h) answer all reasonable enquiries made by the Government Representative on all matters relating to the Project;
- (i) comply with all laws and regulations applicable to the Project and procure, maintain and renew upon expiry all requisite, licence, permit, exemption, consent, authorisation, etc. required by law for or otherwise in relation to the carrying out of the Project; and

- (j) comply with all reasonable instructions and directions on all matters relating to the Project as the Government Representative may from time to time issue to the Grantee.

4 WARRANTIES

4.1 The Grantee warrants and represents to the Government that:

- (a) it is a body corporate incorporated and validly existing under the laws of Hong Kong;
- (b) it has all power, authority and capacity to enter into this Agreement and to carry out the obligations contemplated under this Agreement;
- (c) the entering into and the performance of its obligations under this Agreement does not and will not contravene any applicable laws to which the Grantee is subject; and
- (d) no litigation, arbitration, tax claim, dispute or administrative proceeding is current, pending or threatened against the Grantee which will likely affect the Grantee or its ability to perform its obligations under this Agreement.

5 POWERS OF THE GOVERNMENT REPRESENTATIVE

5.1 The Government Representative may from time to time and at any time during the Agreement Period in writing require the Grantee –

- (a) to revise the contents of any of the Schedules in such manner as the Government may, after consultation with the Grantee, specify; and
- (b) on reasonable grounds, to replace any one or more of the Key Project Staff.

5.2 The Government Representative, after notifying the Grantee, may delegate any of his powers and may cancel any delegation. A reference to an action of the Government Representative in this Agreement includes an action by his delegates.

6 PAYMENT OF GRANT

6.1 In consideration of the Grantee agreeing to carry out the Project under this Agreement, the Government will provide the Grantee with a Grant of not more than HK\$[insert the approved amount here] in accordance with the terms and conditions of this Agreement.

6.2 The actual amount of Grant to be provided to the Grantee shall equal to the actual Project Expenditure incurred by the Grantee less the actual Project Income generated

from the Project.

- 6.3 Payment of the Grant shall be made in accordance with **Schedule D** which may be revised at any time by mutual consent of the parties hereto.
- 6.4 Upon completion of the Project or earlier termination of the Agreement under Clause 18, any unspent Grant paid to the Grantee by the Government shall be refunded to the Government.

7 PROJECT EXPENDITURE AND PROJECT INCOME

- 7.1 The Project Expenditure means the expenses spent by the Grantee for the sole and exclusive purpose of the Project in accordance with the terms and conditions of this Agreement. The following expenses are not regarded as the Project Expenditure:
- (a) expenses without any proof, or expenses that are only supported by invoices/payment notices without receipts/payment transaction records (except for the accounting and auditing fees paid after the completion of the Audited Accounts);
 - (b) expenses that are not listed in **Schedule C** except with prior written approval given by the Government Representative;
 - (c) expenses exceeding the amount specified in **Schedule C** except with prior written approval given by the Government Representative; and
 - (d) expenses that are not procured in accordance with Clause 10.
- 7.2 During the implementation of the Project, the Grantee may earn, raise and obtain other income for the Project from different sources, including but not limited to course fees, sales revenue, box office and admission fees, performance fees, service fees, advertising revenue, interest, personal funding, donations, other subsidies and sponsorships. Any such income shall form part of the Project income and shall be deposited and kept in the Designated Bank Account for the use of the Project.
- 7.3 The Grantee must obtain the written approval from the Government Representative prior to
- (a) accepting any donations or free services, subsidies/sponsorships in cash or in kind to the Project; and
 - (b) granting any concession for retail, advertisement or any other commercial purposes on or at any Project venue or Project Assets.

8 DESIGNATED BANK ACCOUNT

- 8.1 The Grantee shall open and maintain the Designated Bank Account for keeping and operating all monies of the Grant, and keep separate the Grant from other monies belonging to the Grantee.
- 8.2 The Grantee shall ensure that the Grant is paid into and kept in the Designated Bank Account, and ensure that all receipts into and payments out of the Grant are properly and timely recorded.
- 8.3 The Grantee shall keep all unspent balance of the Grant at all times in the Designated Bank Account.
- 8.4 All Interest derived from the balance of the Designated Bank Account forms part of the Grant and shall be used exclusively for the purpose of carrying out the Project.
- 8.5 The Grantee shall have at least two designated representatives to authorise any withdrawal from the Designated Bank Account.

9 ACKNOWLEDGEMENT AND PUBLICITY

- 9.1 For the purpose of this Clause 9, publicity materials shall include without limitation press release, invitation card, backdrop, exhibition panel, poster, banner, programme booklet, leaflet, flyer, report, website, printed book, digital book, videos, social media posts, audio-visual CD, documentary, exhibition catalogue and advertisement (whatsoever it is an advertisement published in newspaper, magazine, television, radio or other electronic media).
- 9.2 At least TWO (2) weeks before the date of any activity / event of the Project, The Grantee shall submit all publicity materials for such activity / event for approval by the Government Representative and shall follow the directions of the Government Representative as to the content, format, presentation and other matters of such materials.
- 9.3 The Grantee shall acknowledge having received the Grant from the Government in any publicity materials for the Project by displaying conspicuously at appropriate locations the logo of the LCF, the SLO and/or the CEDD in the form as agreed with the Government Representative. Under no circumstances shall the name and logo of the LCF, the SLO or the CEDD be used for any purpose unrelated to the Project.
- 9.4 The Grantee shall not do or allow to be done anything that may bring disrepute to or otherwise adversely affect the LCF.
- 9.5 The Grantee shall notify the Government Representative before accepting any requests from media for interview in relation to the Project.

9.6 Notwithstanding anything herein to the contrary or any prior approval, the Government shall be entitled to require the Grantee to withdraw or cease using any publicity materials which the Government at its absolute discretion considers to be inappropriate or undesirable.

9.7 Unless otherwise advised by the Government, the following disclaimer shall be included in any publicity materials related to the Project –

“Any opinions, findings, conclusions or recommendations expressed in this publication/event do not necessarily reflect the views of the Government of the Hong Kong Special Administrative Region or the Lantau Conservation Fund Advisory Committee.”

“在本刊物／活動內表達的任何意見、研究成果、結論或建議，並不一定反映香港特別行政區政府或大嶼山保育基金諮詢委員會的觀點。”

9.8 Apart from the names and logos of the LCF, the SLO, the CEDD, the Grantee and any supporting organisations approved by the Government, prior approval should be obtained from the Government Representative for any additional names, logos and photos of other person to be published in any publicity materials relating to the Project.

9.9 No publicity materials shall be used for purposes of personal, political, commercial or religious publicity of any person. Nor should any of such publicity materials be presented in a way as to induce public perception of any personal, political, commercial or religious publicity of any kind, or misrepresent any association of any person with the LCF.

9.10 Upon request of the Government, the Grantee shall:

- (a) arrange representatives of the Government to attend the relevant publicity activities; and
- (b) provide the necessary information, photos, images, excerpts or video clips for the Government to promote and introduce the activities to the public.

9.11 The Grantee shall upon request of the Government Representative at any time during the Agreement Period and within twelve months thereafter, assist the Government in its publicity and promotional work for conservation of Lantau by:

- (a) attending briefings, presentations and other promotional programmes and events organised by the Government; and
- (b) providing information on events, programmes and other activities of the Project in the form of texts, photos, images, illustrations, audio-visual records, documentaries, publicity materials for the purpose of programme productions

for television, radio and online channels owned by or supported by the Government.

10 PROCUREMENT OF GOODS AND SERVICES

- 10.1 The Grantee must ensure fair, open, competitive and value-for-money in the procurement of goods and services in relation to the Project by complying with the following procedures:
- (a) Where the total procurement cost does not exceed HK\$5,000, the Grantee should invite in writing at least ONE (1) supplier / contractor to provide written quotation, or ONE (1) price schedule must be downloaded from a public webpage;
 - (b) Where the total procurement cost is over HK\$5,000 but not more than HK\$50,000, the Grantee should invite in writing at least TWO (2) suppliers / contractors to provide written quotations, or at least TWO (2) price schedules must be downloaded from public webpages;
 - (c) Where the total procurement cost is over HK\$50,000 but not more than HK\$280,000, the Grantee should invite in writing at least THREE (3) suppliers / contractors to provide written quotations;
 - (d) Where the total procurement cost is over HK\$280,000 but not more than HK\$1,400,000, the Grantee should invite in writing at least FIVE (5) suppliers / contractors to provide written quotations; and
 - (e) Where the total procurement cost is over HK\$1,400,000, the Grantee must issue an open tender.
- 10.2 If any suppliers / contractors invited under Clauses 10.1 fail to provide a quotation within the specified period, records of such failure shall be kept.
- 10.3 The supplier that has submitted the lowest conforming bid, or obtained the highest mark amongst the conforming bids submitted in case a marking scheme is adopted, should be selected. Otherwise, full justifications must be given and prior agreement must be obtained from the Government Representative.
- 10.4 The amount of payout in cash for each transaction must not exceed HK\$30,000.
- 10.5 To forestall collusion among bidders, the Grantee must not invite quotation from bidders who are referred to the Grantee by any prospective bidder.
- 10.6 The Grantee must not disclose the approved budget for any intending procurement to any prospective suppliers / contractors before the conclusion of the procurement.

11 AVOIDANCE OF CONFLICTS OF ROLES AND INTERESTS

- 11.1 The Grantee shall ensure that it (including the Project Leader, Key Project Staff, each of its directors, employees, agents and contractors and their respective associates) shall not undertake any service, task or job or do anything whatsoever for or on behalf of the Grantee or any third party (other than in the performance of this Agreement) which conflicts, or which may be seen to conflict, with the Grantee's duties to the Government under this Agreement unless and to the extent the Government permits otherwise and before giving such permission, the Government has been fully informed by the Grantee in a timely fashion of all the circumstances in which the permission is sought.
- 11.2 If conflicts of roles and interests arise during the implementation of the Project, the Grantee shall handle and report the conflicts to the Government in writing.

12 MONITORING AND EVALUATION

- 12.1 At least one (1) month before an activity / event of the Project takes place, the Grantee shall provide the Government Representative with all relevant information including but not limited to the name, content, personnel involved (for example instructors, speakers, demonstrators/performers), dates, time and venues of such activity / event.
- 12.2 The Government Representative may attend any activities / events of the Project and the Grantee shall give access and provide all such assistance and facility to the Government for such purpose.
- 12.3 The Government Representative may directly collect opinions or responses from the participants/users/readers/beneficiaries of the Project for a comprehensive assessment of the effectiveness of the use of the Grant.
- 12.4 The Government Representative may carry out on-site inspections or surprise checks to examine the progress and achievements of the Project at any time.
- 12.5 The Grantee shall acknowledge any complaints received about the Project within SEVEN (7) calendar days from the date of their receipt. The Grantee shall respond to the complaints within THIRTY (30) calendar days from the date of their receipt. All related correspondence shall be copied to the Government Representative.

13 SUBMISSION TO GOVERNMENT

- 13.1 Within TWO (2) months from the date of completion of each milestone event as set out in **Schedule D**, the Grantee shall submit to the Government Representative the following documents:
- (a) A Progress Report in the form as shown in **Schedule E**; and

- (b) A project progress summary showing the progress and achievement of the Project in form of text, photos or videos as agreed with the Government Representative.
- 13.2 Within TWO (2) months from the anniversary date of the commencement of the Project, the Grantee shall submit an annual Audited Accounts.
- 13.3 Within FOUR (4) months from the completion of the Project, the Grantee shall submit to the Government Representative the following documents:
- (a) A Completion Report in the form as shown in **Schedule E**;
 - (b) A final Audited Accounts; and
 - (c) A project summary showing the findings, outcome and achievement of the Project in the form of text, photos or videos as agreed with the Government Representative.
- 13.4 The Grantee shall appoint an independent auditor, who shall be a certified public accountant (practising) within the meaning of section 2 of the Professional Accountants Ordinance (Cap. 50), to conduct independent audits of the Project and to prepare all Audited Accounts in accordance with **Schedule F**.
- 13.5 The forms in **Schedule E** may from time to time be revised by the Government.
- 13.6 If the Government is not satisfied with the Progress Reports, the Completion Report or the Audited Accounts submitted by the Grantee, the Government shall give reasons therefor and may specify any remedial action and the period within which it is to be performed by the Grantee. The Grantee shall perform all such remedial action within that period.
- 13.7 Upon request of the Government, the Grantee shall provide clarification and additional information on the contents of any Progress Reports, Completion Report or Audited Accounts, and shall make available for inspection, verification or copying by the Government Representative all documents and records (including but not limited to original or certified copy of receipts or invoices for expenses, accounting books or related records) relating to Progress Reports, Completion Report, Audited Accounts or the Project. Such documents and records shall be kept by the Grantee for at least SEVEN (7) years from the end of the Agreement Period.

14 PROJECT ASSETS

- 14.1 The Grantee shall use the Project Assets solely and exclusively for the purpose of carrying out the Project or for complying with its duties and obligations under this Agreement.

- 14.2 The Grantee shall hold, operate and use the Project Assets in a proper way and keep and maintain the same at all times in good repair and condition (fair wear and tear excepted).
- 14.3 The Grantee shall keep an inventory of all Project Assets and carry out stock-taking of the same annually. The Grantee shall, upon request, provide the inventory of the Project Assets to the Government Representative.
- 14.4 All Project Assets shall be and shall remain the property of the Government. After the completion of the Project or earlier termination of the Agreement under Clause 18, the Grantee shall dispose of the Project Assets as agent for the Government in such manner as the Government Representative may require.
- 14.5 In the event that any consent or licence from, or any payment to, any person (including a person in whom the Intellectual Property Rights in such Project Assets are vested) is required for enabling the Grantee or the Government to use such Project Assets (including but not limited to effecting any maintenance, repair and replacement of works in respect of the Project Assets), the Grantee shall be solely responsible for obtaining such consent and licence, and making payment to such person. This Clause 14.5 of this Agreement shall survive the completion, expiry or termination of this Agreement (howsoever occasioned), and shall continue in full force and effect notwithstanding such completion, expiry or termination.

15 KEY PROJECT STAFF

- 15.1 The Grantee shall throughout the Project deploy the Key Project Staff in accordance with **Schedule A** in carrying out the Project.
- 15.2 To prevent double benefits, the Grant must not be used in any way whatsoever to remunerate any Key Project Staff if they are receiving any forms of salary/ remuneration/ honorarium/ allowance on a full-time basis by public funds other than the Grant.
- 15.3 The Grantee shall appoint a Project Leader to oversee the overall implementation of the Project and to be the Grantee's main point of contact with the Government for the purpose of this Agreement. The Project Leader shall have the following responsibilities:
- (a) to ensure that all the provisions set out under this Agreement are complied with and that all the requirements relating to the Project as may from time to time be prescribed or made by the Government Representative in writing are met;
 - (b) to monitor the proper use of the Grant to ensure that the Grant is expended in accordance with the Approved Budget of the Project set out in **Schedule C**;
 - (c) to ensure the accuracy and completeness of the information provided in the

Progress Reports, the Completion Report, Audited Accounts and other reports submitted to the Government Representative pursuant to this Agreement; and

(d) to attend meetings on the Project as may be requested by the Government Representative from time to time.

15.4 Should one or more of the Key Project Staff become unavailable for whatever reason or should the Government Representative exercise his power to require the replacement of any of the Key Project Staff under Clause 5, the Grantee shall, subject to the Government Representative's prior approval in writing, replace such Key Project Staff as soon as practicable with candidates of no less favourable qualification / experience.

16 INSURANCE

16.1 The Grantee shall, throughout the Project, effect and maintain, or cause to be effected and maintained a public liability insurance policy exclusively for the Project in the joint names of the Government and the Grantee (with appropriate cross-indemnity clause as if a separate policy has been issued to each of them) subject to an indemnity amount in the sum of not less than HK\$10,000,000 for each claim or a series of claims arising from one event, but otherwise unlimited in the aggregate indemnity amount for all claims arising during the entire period of insurance with a reputable insurance company authorised under the Insurance Ordinance (Cap. 41) and on such terms and conditions as shall be approved by the Government against liability to pay damages and compensation for injury or death of any person and loss or damage to any property whatsoever where such injury, death, loss or damage as the case may be, is caused or arises out of any act, omission or default of the Grantee and/or its employees or agents and/or any person otherwise in connection with the Project (hereinafter referred as "public liability insurance policy").

16.2 The Grantee shall submit to the Government no later than FOURTEEN (14) calendar days after the signing of this Agreement, and each time upon renewal of such policy, a copy of the current insurance policy together with the receipt for payment of the premium payable thereunder.

16.3 The Grantee shall ensure that all contractors and sub-contractors employed or engaged by the Grantee will effect and maintain with a reputable insurer all risks insurance (which shall include, without limitation, contract works and property damage, third party liability insurance, and such other insurances as may be required by law from time to time). All risks insurance, third party liability insurance and such other insurances effected and maintained by the Grantee in accordance with this Clause 16.3 shall in each case be for the benefit and in the joint names of the Grantee and all such relevant contractors.

16.4 The Grantee shall use all reasonable endeavours to ensure that no actions shall be taken or omitted nor shall it suffer anything to be done or omitted by it or its contractors, sub-contractors or agents as a result of which any insurance policy or

part thereof effected in accordance with this Clause may be avoided, forfeited, revoked or withdrawn.

17 DATA STORAGE AND RECORD ARCHIVAL

- 17.1 The Grantee shall authorise the Government to replicate any material received for the purpose of the Project.
- 17.2 In line with the retention requirement of the Government, records of the Project (such as the supporting documents of the income and expenditure, financial and accounting records, procurement records, lease records, and the Project Materials, etc.) maintained by the Grantees should be retained for at least SEVEN (7) years after the completion date as set out in **Schedule A**.

18 TERMINATION

- 18.1 At any time after the occurrence of any of the following events, the Government may suspend the Project including payment of the Grant or any part thereof or terminate the Agreement immediately on notice to the Grantee:
- (a) the Grantee ceases to:-
 - i. possess tax exemption status accorded by section 88 of the Inland Revenue Ordinance, Cap.112;
 - ii. be a non-profit making company incorporated under the Companies Ordinance, Cap. 622 or the former Companies Ordinance Cap. 32; or
 - iii. be a post-secondary education institution;
 - (b) the Grantee fails, without reasonable excuse, to commence the Project within ONE (1) month from the commencement date as stated in **Schedule A**;
 - (c) the Grantee fails duly and punctually to perform or comply with any provisions in this Agreement and in respect of a failure which in the sole opinion of the Government is capable of remedy and which is not a failure to pay money, the Grantee does not remedy such failure to the Government's satisfaction within ONE (1) month (or such longer period as the Government may allow) after receipt of written notice from the Government requiring it to do so;
 - (d) any representation or warranty made or deemed to be made by the Grantee in its application for the Grant or in the Agreement or in any of the reports, financial statements or Audited Accounts submitted by the Grantee or otherwise from time to time in the course of the Project proves to have been incorrect or misleading;

- (e) the Government forms the opinion that the Project ought to be terminated for the sake of public interest;
- (f) the Grantee engages in any conduct prejudicial to the Project;
- (g) any material change occurs in the management or control of the Grantee and in particular any material change of the Key Project Staff in **Schedule A** which in the sole opinion of the Government prejudices the Grantee's ability to conduct the Project;
- (h) the Grantee acts in a way inconsistent with or contrary to public safety or interests or its conduct is deemed by the Government to be detrimental to the Government (whether or not related to the Project), including but not limited to the Grantee's acts or omissions which directly or indirectly cause damage or adverse effects on the Government's assets, policies, image or reputation;
- (i) the Grantee having committed a default which is not capable of being remedied; or
- (j) the Grantee becomes Insolvent.

18.2 Upon issuing of the suspension notice under Clause 18.1, the Grantee shall suspend the implementation of the Project from a date specified by the Government Representative until such time and subject to such conditions as the Government Representative may in writing direct the Grantee to resume implementation of the Project. The Government may revise the contents of **Schedule D** to take effect from the resumption of the Project under Clause 18.2.

18.3 Upon issuing of the termination notice under Clause 18.1, no further Grant shall be paid by the Government. The Grantee shall:

- (a) submit to the Government an Audited Accounts up to the date of termination;
- (b) return to the Government any unspent Grant in accordance with Clause 6.4; and
- (c) dispose of the Project Assets in accordance with Clause 14.4.

18.4 Termination of this Agreement shall be without prejudice to any antecedent rights or obligations of either party hereto.

18.5 The Grantee shall be liable for all expenses necessarily incurred by the Government as a result of suspension or termination of this Agreement.

19 CONFIDENTIALITY

- 19.1 The Grantee undertakes not to disclose to any person any information, records, databases, reports, documents, contracts, Project Materials and all other data (including any personal particulars, records and personal data (as defined in the Personal Data (Privacy) Ordinance (Cap. 486)) and materials of any nature (in or on whatever media) accessible by the Grantee under this Agreement or which the Government has for the purposes of the Project or in the course of performing this Agreement disclosed, supplied, made available, furnished or communicated to the Grantee (collectively referred to as “Confidential Information”), provided that the restrictions on disclosure contained herein shall not apply to the disclosure of any Confidential Information:
- (a) to the Key Project Staff and any other persons engaged by the Grantee in the performance of the Grantee’s duties and obligations under this Agreement (collectively “Relevant Persons”) in circumstances where such disclosure is necessary in the reasonable opinion of the Grantee for the performance of the Grantee’s duties and obligations under this Agreement provided that the Grantee has imposed on each Relevant Person an absolute and legally binding obligation to the Grantee to refrain from disclosing the Confidential Information;
 - (b) already lawfully known to the recipient other than as a result of disclosure by the Grantee or any Relevant Persons;
 - (c) already in the lawful possession of the Grantee or any Relevant Persons, prior to its disclosure by the Government;
 - (d) which is or becomes public knowledge other than as a result of disclosure by the Grantee or any Relevant Persons;
 - (e) in circumstances where such disclosure is required pursuant to any laws of Hong Kong or order of a court of Hong Kong; or
 - (f) with the prior consent in writing of the Government.
- 19.2 Any disclosure permitted under Clause 19.1 above shall be in strict confidence and shall extend only so far as may be necessary for the purposes specified in Clause 19.1 above and the Grantee shall ensure the confidentiality of any such disclosure by taking appropriate action to restrain or restrict any further disclosure.
- 19.3 The Grantee shall not, and shall procure and ensure that any Relevant Persons shall not, in the absence of prior written consent of the Government, make use of or reproduce any Confidential Information other than for carrying out the Project or in the performance of the Grantee’s obligations under the Agreement.
- 19.4 The Grantee shall inform every person to whom any Confidential Information is

disclosed pursuant to Clause 19.1 above of the restrictions on reproduction and disclosure attaching to such information and the Grantee shall forthwith upon request of the Government obtain from that person (including each Key Project Staff) a legally binding and enforceable undertaking in terms similar to those in this Clause 19 (and in any event in the form and substance acceptable to the Government).

- 19.5 The Grantee shall ensure that each Relevant Person is aware of and complies with the provisions of this Clause 19.
- 19.6 The Grantee shall promptly notify the Government of any breach of confidence by any Relevant Persons and give the Government all reasonable assistance in connection with any proceedings which the Government may institute against any such persons pursuant to any of the provisions in this Clause 19.
- 19.7 The Grantee undertakes to take all such security measures for the protection of the Confidential Information as it takes for the protection of its own confidential or proprietary information, documentation and materials.
- 19.8 The Grantee shall ensure that each Relevant Person is aware of and complies with the provisions of this Clause 19 and the Official Secrets Ordinance (Cap. 521), and the Grantee shall indemnify and keep the Government, its authorised users, assigns and successors-in-title fully and effectively indemnified against all actions, costs (including without limitation the fees and disbursements of lawyers, agents and experts witnesses), claims, demands, expenses, loss, damage and liabilities whatsoever which the Government, its authorised users, assigns and successors-in-title may suffer, incur or sustain as a result of any breach of confidence (whether under this Agreement or general law) by any such persons.
- 19.9 The Grantee further agrees that it will not at any time whether by itself or through any subsidiary or agent use, sell, license, sub-license, create, develop or otherwise deal in any Confidential Information otherwise than in accordance with the Agreement.
- 19.10 The Government reserves the right to disclose to any third party the Disclosable Information as it deems appropriate.
- 19.11 Clause 19 of this Agreement shall survive the completion, expiry or termination of this Agreement (howsoever occasioned), and shall continue in full force and effect notwithstanding such completion, expiry or termination.

20 PERSONAL DATA

- 20.1 The Personal Data of any individual provided by the Grantee whether in the application for the Grant or from time to time for the purpose of the Project may be used by the Government, for the purposes of administering the Grant, monitoring the Project, exercising its rights and powers under the Agreement and all other purposes

arising from or incidental to the aforementioned purposes.

- 20.2 The Grantee acknowledges and consents and has ensured that the relevant individual to whom the Personal Data belongs has acknowledged and consented that the Personal Data provided may be disclosed to other government departments or bureaux of other public bodies or the public or such other person as the Government considers appropriate having due regard of the purposes mentioned in Clause 20.1 above.
- 20.3 The Grantee shall (and shall procure that any of the Grantee's personnel or contractors involved in the operation of the Project):
- (a) comply with its obligations under the PD(P)O;
 - (b) only use the Personal Data as reasonably required in connection with the operation of the Project;
 - (c) comply with the procedures or processes notified to the Grantee by the Government with respect to Personal Data from time to time;
 - (d) implement and maintain all reasonable technical and organisational measures to maintain security, prevent unauthorized or unlawful access to or processing of Personal Data and accidental loss or destruction of, or damage to, Personal Data; and
 - (e) give the Government notice as soon as the Grantee becomes aware of any breach of its data protection obligations under this Agreement, any enforcement proceeding against it under the PD(P)O or any unauthorised access to, or accidental disclosure of, any Personal Data.
- 20.4 Unless the Government requires in writing otherwise, the Grantee shall not disclose the Personal Data to any third parties other than:
- (a) to employees and subcontractors to whom the disclosure is necessary for the operation of the Project, provided it is made subject to obligations of confidentiality no less onerous than those imposed upon the Grantee and is consistent with any procedures specified by the Government from time to time; or
 - (b) to the extent required by any government departments provided the Grantee gives notice to the Government of any such disclosure promptly after it becomes aware of that requirement.
- 20.5 At the time of collection of Personal Data from a data subject by the Grantee or its subcontractors, the Grantee shall obtain or procure to be obtained the express consent of the data subject and take or procure to be taken such other actions as necessary to

comply with the PD(P)O to enable the information provided by the Grantee to the Government and any other public authorities under this Agreement to be used by the Government and such other public authorities to conduct cross checking and/or a “matching procedure” (as defined in the PD(P)O) against their relevant records.

21 NOTICES

21.1 All notices under this Agreement shall be in writing and all certificates, notices or written instructions to be given under the terms of this Agreement shall be served by sending the same by registered post, facsimile or by hand, leaving the same at:

If to the Government:

Address:

Facsimile No:

Attention:

If to the Grantee:

Address: [address] Hong Kong.

Facsimile No:

Attention:

21.2 Either party may change its nominated address or facsimile number or recipient by prior notice to the other party.

21.3 Notice given by post shall be effective upon the earlier of:

(a) actual receipt; and

(b) FIVE (5) Business Days after mailing.

21.4 Notices delivered by hand shall be effective upon delivery.

21.5 Notices given by facsimile shall be deemed to have been received where there is confirmation of uninterrupted transmission by a transmission report and where there has been no telephonic communication by the recipient to the senders (to be

confirmed in writing) that the facsimile has not been received in legible form:

- (a) within TWO (2) hours after sending, if sent on a Business Day between the hours of 9:00 am and 4:00 pm; or
- (b) by 11:00 am on the next following Business Day, if sent after 4:00 pm, on a Business Day but before 9:00 am on that next following Business Day.

22 ASSIGNMENT

- 22.1 The Grantee shall not assign, novate or otherwise dispose of any of its interest, rights, benefit or obligations under this Agreement without the prior written consent of the Government.

23 INTELLECTUAL PROPERTY RIGHTS

- 23.1 **[All / Subject to Clause 23.12 below, all]*** Intellectual Property Rights subsisting in the Project Materials (other than the Third Party Materials), including those created, developed, made, supplied or constructed by its employees, agents, contractors or sub-contractors or other persons involved in the Project, shall be and remain solely and absolutely vested in the Grantee immediately upon creation.

*** Delete as appropriate, depending whether clause is 23.12 required.**

- 23.2 The Grantee hereby unconditionally grants or in case it is not empowered to do so, shall at its own cost and expense procure the grant of, for the benefits of the Government, its authorised users, its assigns and successors-in-title a perpetual, irrevocable, non-exclusive, freely transferrable, worldwide, royalty-free and sub-licensable licence, to use (including but not limited to doing any of the acts restricted by copyright as set out in sections 22 to 29 of the Copyright Ordinance (Cap. 528)) the Project Materials and Third Party Materials by any means or in any manner for any purposes provided for or contemplated by the Agreement (including but not limited to research, development, assessment, evaluation, auditing, education, record keeping, publicity and promotion). The licence shall take effect upon the delivery of the Project Materials or Third Party Materials to the Government.
- 23.3 The Grantee shall keep the Government informed in writing of any Third Party Materials of which the Grantee is not empowered to grant licence(s) or cannot procure the grant of licence(s) pursuant to Clause 23.2 above and any restrictions whatsoever affecting the use thereof.
- 23.4 The Grantee hereby undertakes to produce for inspection by the Government within SEVEN (7) days upon request all proper licences, clearances and releases in writing obtained or procured pursuant to Clause 23.2
- 23.5 The Grantee hereby irrevocably waives and undertakes to procure at its own costs and expenses all relevant authors and/or film directors of the Project Materials or any

part thereof (including any Third Party Materials) to irrevocably waive all the moral rights (whether past, present or future) in the respective items. Such waiver shall operate in favour of the Government, its authorised users, assigns and successors-in-title and shall take effect upon creation of such items or upon delivery of such items to the Government or upon the grant of licence to the Government, its authorised users, assigns and successors-in-title (as the case may be).

- 23.6 The Grantee shall, at its own costs and expenses and before the fixation and/or recording of any performances in relation to the Project Materials, obtain all the consent and clearance from the performers as may be necessary for such fixation and/or recording of the performances and for any use and exploitation of such fixation or recording, or copies thereof. For the purpose of this Clause, the terms “performance”, “performer” and “fixation” shall have the same meanings as those assigned to them in section 200 of the Copyright Ordinance (Cap. 528).
- 23.7 The Grantee shall procure at its own costs and expenses the performers referred to in Clause 23.6 above to irrevocably waive their moral rights over their performances in relation to the Project Materials. Such waiver shall operate in favour of the Government, its authorised users, assigns and successors-in-title and have effect immediately upon each of the relevant performance is given.
- 23.8 The Grantee undertakes and warrants to the Government that:
- (a) the Grantee has the full capacity, power and authority to enter into this Agreement and to perform its obligations under the Agreement including without limitation the vesting of the Intellectual Property Rights in the Grantee according to Clause 23.1 [and in the Government according to Clause 23.12]*, and the grant of the rights and licences in respect of the Intellectual Property Rights to the Government, its authorised users, assigns and successors-in-title referred to in Clauses 23.2 and 23.11 of this Agreement;
* Include as appropriate, depending whether clause is 23.12 required.
 - (b) the Project Materials and other things and materials created, developed, made, supplied or constructed by or on behalf of the Grantee under this Agreement (except the Third Party Materials) shall be or shall consist of original works provided by or on behalf of the Grantee for the Government during the course of or in connection with this Agreement;
 - (c) the Intellectual Property Rights or any other rights of any person are not and will not be infringed due to the following:
 - i. the provision of the Project Materials, the performance of the Agreement or the conduct of the Project by the Grantee, its employees, agents, contractors or sub-contractors;
 - ii. the use, operation, custody or possession by the Government, its agents, assigns, successors-in-title and authorised users (including but not limited

to the Government's employees or contractors, members of the Lantau Conservation Fund Advisory Committee and its sub-committees, and any other persons authorised by the Government to undertake the tasks of monitoring the Project and evaluating the effectiveness of the funding support) of the Project Materials (including Third Party Materials) or any part thereof for any of the purposes provided for or contemplated by the Agreement; or

iii. the exercise by the Government, its authorised users, assigns and successors-in-title of any of the rights granted under this Agreement; and

(d) prior to the use and incorporation of the Third Party Materials in performing the Agreement or conducting the Project, the Grantee shall have obtained from such third party Intellectual Property Rights owners the grant of all necessary licences for itself and the Government and its authorised users, assigns and successors-in-title to use such Third Party Materials in the manner and for any of the purposes contemplated by this Agreement. The costs of the above licences shall be borne by the Grantee.

23.9 The Grantee shall at its own costs and expense do and execute any further things, instruments and document(s) (or procure that the same be done or executed) as may be required by the Government to give full effect to this Agreement and shall provide all such things, instruments, documents and materials to the Government within FOURTEEN (14) calendar days of the date of the Government's written request or such longer period as may be agreed by the Government in writing.

23.10 The Grantee shall allow or procure for the Government access to all Project Materials, and to take copies thereof and access to the premises of the Grantee or any third parties on which any activities relating to the Project may take place or the Project Materials may be kept.

23.11 If any name, logo, trade mark or service mark of the Grantee is included, shown or displayed on the Project Materials or it will be included, shown or displayed during the performance, playing or showing of the Project Materials, the Grantee shall grant to the Government, its authorised users, assigns and successors-in-title an irrevocable, non-exclusive, perpetual, transferable, worldwide and sub-licensable licence to use such name, logo, trade mark or service mark of the Grantee for all purposes contemplated under this Agreement, including but not limited to showing or displaying the name, logo, trade mark or service mark, whether on its own or in conjunction with other names, logos, trade marks or service marks, in connection with the Project. The licence shall take effect upon the creation of the Project Materials.

23.12 [All Intellectual Property Rights subsisting in the [name of work/ deliverable/ material/ asset etc. (with description and location thereof as appropriate to be specific) [(other than any Third Party Materials incorporated therein)]# shall be and remain solely and absolutely vested in the Government immediately upon creation.]*

* Include if it is considered necessary to vest the IP rights in certain Project Materials in the Government. The Project Materials concerned must be described here in details as far as possible.

Include if the work/ deliverable/ material/ asset etc. contains such Third Party Materials.

23.13 Clause 23 of this Agreement shall survive the completion, expiry or termination of this Agreement (howsoever occasioned), and shall continue in full force and effect notwithstanding such completion, expiry or termination.

24 RELEASES AND WAIVERS

24.1 The rights, powers and remedies conferred on either party by this Agreement and remedies available to either party are cumulative and are additional to any right, power or remedy which it may have under general law or otherwise.

24.2 Either party may, in whole or in part, release, compound, compromise, waive or postpone, at its absolute discretion, any liability owed to it or right granted to it under this Agreement by the other party without it in any way prejudicing or affecting its rights in respect of that or any other liability or right not so released, compounded, compromised, waived or postponed.

24.3 Any relaxation, forbearance, indulgence or delay (together "indulgence") of either party in exercising any right shall not be construed as a waiver of the right and shall not affect the ability of that party subsequently to exercise that right or to pursue any remedy, nor shall any indulgence constitute a waiver of any other right (whether against that party or any other person).

25 ENTIRE AGREEMENT

25.1 This Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Agreement.

26 INDEMNITY

26.1 The Grantee shall fully indemnify and keep indemnified the Government, its authorised users, assigns and successors-in-title from and against:

(a) all and any claims, actions, investigations, demands, proceedings, threatened, brought or instituted against the Government, its authorised users, assigns and successors-in-title; and

(b) all liabilities (including liability to pay compensation and damages), damage, losses, costs, charges and expenses which the Government, its authorised users, assigns and successors-in-title may sustain or incur (including all legal and other

costs, charges, and expenses, on a full indemnity basis, which the Government, its authorised users, assigns and successors-in-title may pay or incur in initiating, defending, counter-claiming, settling or compromising any claims, actions, investigations, demands, proceedings, threatened, brought or instituted by or against the Government, its authorised users, assigns and successors-in-title),

which in any case arise directly or indirectly from, or as a result of, or in connection with, or which relate in any way to:

- (i) any accidental damage to property or personal injury or death suffered by any person in the connection with or in the course of or as a result of any activity (indoor or outdoor) organised or carried out by the Grantee in the performance of the Project;
- (ii) the breach by the Grantee of any provision hereof;
- (iii) a breach of the duty of confidence (whether under this Agreement or general law) by the Grantee or any Key Project Staff;
- (iv) the negligence, recklessness, or willful misconduct of the Grantee or any Key Project Staff in the conduct of the Project;
- (v) any allegation of or claim for infringement of the Intellectual Property Rights or any other rights of any person due to the provision of the Project Materials, the performance of the Agreement or any part thereof or the conduct of the Project by the Grantee, its employees, agents, contractors or sub-contractor(s), the use, possession, custody, or operation of the Project Materials or any part thereof, or the exercise by the Government, its authorised users, assigns and successors-in-title of any rights granted under this Agreement; or
- (vi) the use by the Grantee or any Relevant Person of any Personal Data in contravention of PD(P)O.

26.2 Clause 26 of this Agreement shall survive after the completion, expiry or termination of this Agreement (howsoever arising), and shall continue to be effective despite the completion, expiry or termination of this Agreement.

27 SEVERABILITY

27.1 If any provision of this Agreement shall be declared invalid, unenforceable or illegal by the courts of any competent jurisdiction to which it is subject or the Hong Kong International Arbitration Centre, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Agreement in that jurisdiction or in Hong Kong (as the case may be), but it shall not affect the validity, enforceability or

legality of that provision in another jurisdiction.

28 PREVENTION OF BRIBERY

- 28.1 The Grantee shall prohibit its directors, employees, agents and sub-contractors who are involved in this Agreement from offering, soliciting or accepting any advantage as defined in the Prevention of Bribery Ordinance (Cap. 201). The Grantee shall also caution its directors, employees, agents and sub-contractors against soliciting or accepting any excessive hospitality, entertainment or inducements which would impair their impartiality in relation to this Agreement.
- 28.2 If the Grantee or any of its directors, employees, agents or sub-contractors is found to have committed an offence under the Prevention of Bribery Ordinance (Cap. 201) or under any law of a similar nature in relation to this Agreement or any other Government contracts, the Government may immediately terminate this Agreement and shall hold the Grantee liable for any loss or damages the Government may thereby sustain..
- 28.3 The Grantee shall issue a code of conduct to every person employed or engaged by the Grantee in the conduct of the Project with reference to the sample code of conduct set out in the Best Practice Checklist – Strengthening Integrity and Accountability – Government Funding Schemes Grantee’s Guidebook compiled by the ICAC. The Guidebook is downloadable from the following webpage of the ICAC website -

http://www.icac.org.hk/filemanager/en/content_218/GranteeBPC.pdf

29 GOVERNING LAW

- 29.1 This Agreement shall be governed by and construed in accordance with the laws of Hong Kong.

30 SETTLEMENT OF DISPUTES

- 30.1 Any dispute or difference between the parties arising out of or in connection with this Agreement which is not resolved within TWENTY EIGHT (28) days may first be referred to mediation in accordance with the then current Hong Kong International Arbitration Centre Mediation Rules.
- 30.2 If the matter cannot be resolved by mediation or any party to this Agreement does not wish the matter to be referred to mediation, any party may within NINETY (90) days from the failure of the mediation or the refusal to mediate (as the case may be) require that the matter be referred to arbitration in accordance with and subject to the provisions of the Arbitration Ordinance (Cap. 609). Any such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Ordinance.

30.3 Subject to Clauses 30.4 and 30.5, the then current Hong Kong International Arbitration Centre Domestic Arbitration Rules (the “Arbitration Rules”) shall apply to any arbitration instituted in accordance with this Clause.

30.4 Notwithstanding any provision of the Arbitration Rules, the place of meetings and hearings in the arbitration shall be Hong Kong unless the parties otherwise agree.

30.5 Article 20.1 of the Arbitration Rules shall be deleted and replaced by:

“20.1 The arbitration proceedings are private and confidential between the parties and the arbitrator. No information relating to the arbitration shall be disclosed by any person without the written consent of each and every party to the arbitration. Notwithstanding the above, disclosures are permissible where disclosures –

- (a) are necessary for enforcement of the arbitral award or any settlement agreement between the parties;
- (b) are required by the parties’ auditors or for some other legitimate business reason;
- (c) are required by law or an order of the courts of Hong Kong; or
- (d) are necessary for the making of claims against any third party or to defend a claim brought by any third party.”

30.6 All provisions in Schedule 2 to the Arbitration Ordinance shall apply to any arbitration instituted in accordance with this Clause.

31 FURTHER ASSURANCE

31.1 Each party shall do all things and execute all further documents necessary to give full effect to this Agreement.

32 CONTRACTS (RIGHTS OF THIRD PARTIES) ORDINANCE

32.1 The parties hereby declare that nothing in this Agreement confers or purports to confer on any third party any benefit or any right to enforce any term of this Agreement pursuant to the Contracts (Rights of Third Parties) Ordinance (Cap. 623).

33 INDEPENDENT CONTRACTOR

33.1 Unless otherwise specified, the Grantee enters into the Agreement with the Government as an independent contractor only and shall not represent itself, and shall ensure none of its employees, agents, and sub-contractors shall represent himself, as

an employee, servant, agent or partner of the Government.

- 33.2 Without prejudice to Clause 33.1 above, nothing in this Agreement and no action taken by the parties pursuant to this Agreement shall be construed in any way to constitute or deem to constitute a partnership, association, tenancy agreement, joint venture or co-operative entity between the Government and the Grantee. Save as provided in this Agreement, neither party shall commit the other to any obligation whatsoever without the written consent of the other.

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AS WITNESS whereof the parties have executed this Agreement the day, month and year first above written:

SIGNED by [(Name)],)
for and on behalf of THE GOVERNMENT OF) [Signature]
THE HONG KONG SPECIAL)
ADMINISTRATIVE REGION)

in the presence of:

.....

Name:

Occupation: XXXX

Address:

SIGNED by ABC, director, and BCD, director, for)
and on behalf of XYZ) [Signature]

in the presence of:

.....

Name:

Occupation: Company Secretary

Address:

List of Schedules

Schedule A – Details of the Project

Schedule B – Funding Condition

Schedule C – Approved Budget

Schedule D – Disbursement Schedule

Schedule E – Progress Report and Completion Report Templates

Schedule F – Notes for Auditors and Sample Auditors' Report

DRAFT

Schedule A – Details of the Project

1. Project Title

2. Project Period

Commencement Date:

Completion Date:

3. Places/Buildings Involved

4. Information of Activities

5. Concepts, Form(s) of Implementation (if applicable)

6. Collaborators (if applicable)

7. Key Project Staff

8. Implementation Schedule

Date / Period	Work Phases / Activities / Expected Outcome

9. Performance Indicators

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(Note: A copy of the Project application is attached)

Schedule B – Funding Condition

[To specify any other conditions imposed by the Government in this Schedule]

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Schedule C – Approved Budget

(Note: A copy of the approved budget is attached)

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A. Reallocation within and across Categories of Project Expenditure

1. The Grantee should ensure that the amounts of the approved cap of each categories of Project Expenditure are used efficiently, effectively and economically for which they were specifically intended for the approved Project. However, the Grantee may reallocate the amount of spending for the approved cap of different items within the same category of Project Expenditure provided that the approved cap of the category of Project Expenditure is not exceeded.

2. The actual expenditure under any category of Project Expenditure should be contained within the approved cap of that category of Project Expenditure. However, the Grantee may reallocate certain amount of the approved cap across different categories of Project Expenditure provided that –
 - (a) under **no** circumstance that the Grant shall be exceeded.
 - (b) the revised approved cap of the category of Project Expenditure must not exceed the original approved cap by more than 15% of the latter unless prior approval from the Government Representative has been obtained;
 - (c) the reallocation of categories of Project Expenditure shall not adversely affect the delivery of the approved Project; and
 - (d) reallocation of staff costs and/ or audit fees under the approved cap of category of Project Expenditure to other items of another category of Project Expenditure is not allowed unless prior approval from the Government Representative has been obtained.

B. List of Project Assets

[To list the items in the approved budget that are considered as Project Assets]

C. Other Restrictions on the Use of Grant

[To specify any other conditions imposed by the Government in this Schedule]

Schedule D – Disbursement Schedule

Instalment	Expected Date	Milestone Event	Portion of the Grant
1			
2			
3			
Final instalment			

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