

Hong Kong Productivity Council **TVP ePROQ System Terms of Use**

PLEASE READ THE TERMS AND CONDITIONS ("TERMS") SET OUT BELOW, WHICH APPLY TO YOUR USE OF THIS SYSTEM AND THE ELECTRONIC PROCUREMENT PLATFORM ("TVP EPROQ System") DEDICATED FOR THE TECHNOLOGY VOUCHER PROGRAMME ("TVP"). YOUR USE OF THIS SYSTEM AND THE TVP EPROQ SYSTEM SIGNIFIES YOUR ACCEPTANCE OF THESE TERMS AND AGREEMENT TO BE BOUND BY THEM.

1. Definitions

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

"**Amendment Date**" has the meaning given in **Clause 7.1** below.

"**Applicant**" means an entity fulfilling the requirements for applicant set out in the TVP Guidance Notes, who has created an application record on the TVP System.

"**Associate**" means a company one or more of whose directors is in common with one or more of the directors of a person. A person for the purpose of these Terms can be a body of persons, whether incorporated or unincorporated.

"**Associated Person**" of a person (a body of persons whether incorporated or unincorporated) means:

- (a) any person who has control, directly or indirectly, over that person;
- (b) any person who is controlled, directly or indirectly, by that person; or
- (c) any person who is controlled by, or has control over, the first-mentioned person in (a) and (b).

"**Closing Date**" means the closing date and time specified by the Secretariat / Applicant for Supplier to submit their Tender Submissions through the **TVP ePROQ System**.

"**Control**" of a person over another person means the power of that person to secure:

- (a) by means of the holding of shares or interests or the possession of voting power in or in relation to the second-mentioned person or any other person; or
- (b) by virtue of powers conferred by any constitution, memorandum or articles of association, partnership, agreement or arrangement (whether legally enforceable or not) affecting that second-mentioned person or any other person; or
- (c) by virtue of holding office as director in that second-mentioned person or any other person, that the affairs of that second-mentioned person are conducted in accordance with the wishes of the first-mentioned person.

"**Director**" means any person occupying the position of a director by whatever name called and includes without limitation a de facto or shadow director. In the context of HKPC, it means a member of HKPC appointed under Section 9 of the Hong Kong Productivity Council Ordinance (Cap. 1116).

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

code intended or designed to:

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

"TVP ePROQ System" has the meaning given in **Clause 2** below.

"TVP ePROQ System Content" means any data, material, communications or information, in any format whatsoever, including, without limitation, any data files, text, computer software, images, graphics, photos, videos, sound, audio files, recordings directories, documents or any other materials used, displayed on, or transmitted or made available by the Secretariat through this website, including, without limitation, any Procurement Documents, Tender Notices, procurement specifications, purchase order terms and award notices, where applicable.

"Government" means the Government of the Hong Kong Special Administrative Region.

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

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

"Privacy Policy" means the Secretariat's privacy policy that can be accessed at the **TVP ePROQ System**.

"Probity and Non-Collusive Quotation/Tendering Certificate" means the certificate of probity and non-collusive quotation/tendering to be executed by a Registered Supplier confirming that it will comply with all relevant requirements and to be submitted together with the Tender Submissions by the Registered Supplier. For clarification purposes, template of the document can be found at https://www.itf.gov.hk/filemanager/en/content_38/tvp-Probity-e_2020_06.pdf.

"Procurement Documents" means all or any documents which are prepared by the Applicant and are uploaded to the **TVP ePROQ System** for tendering, issued by the Secretariat / Applicant in relation to an intended procurement and includes, without limitation, Tender Notice, any Response to Tender Queries etc., and any and all schedules and attachments to such documents, including any amendments to them and the form of tender, form of proposal, form of contract or form of tender bond.

"Registered Account" means an account established by the Supplier on the **TVP ePROQ System** to enable a user to use it for purposes of reviewing the Procurement Documents, submitting a Tender Query and/or making the Tender Submissions.

"Registered Supplier" means a Supplier who holds a Registered Account in **TVP ePROQ System**.

"Response to Tender Queries" means any response, upon replied by the Applicant, issued to a Tender Query. Such Response to Tender Queries, once issued, will be disclosed and made

available to all other Registered Suppliers on the TVP ePROQ System (together with the Tender Query) for fairness' sake in the open tender process.

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

"**Secretariat**", "**HKPC**", "**we**", "**us**" or "**our**" means the **Hong Kong Productivity Council** having its office at the HKPC Building, 78 Tat Chee Avenue, Kowloon, Hong Kong, that acts as Secretariat for the TVP and provides a platform for the Applicant to handle the tendering procedures for procurement of goods, services, materials or works from a Supplier through the **TVP ePROQ System**.

"**Supplier**" means a person that carries out the business of providing goods, services, materials or works, which may be required by the Applicant from time to time.

"**System**" means the electronic platform and all hardware, software, networks, technology, interfaces and any other information technology systems, that are owned, licensed, used, controlled and/or operated by us in relation to the **TVP ePROQ System**.

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

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

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

"**Tender Query**" means a query raised by the Supplier in relation to the Tender and the Procurement Documents. Such Tender Query, once submitted, will be disclosed and made available to all other Registered Suppliers on the **TVP ePROQ System** (together with the Response to Tender Queries) for fairness' sake in the open tender process.

"**Tender Submissions**" means all or any documents submitted by a Tenderer in response to and in accordance with the requirements of the relevant Invitation to Tender and the applicable Procurement Documents and includes, without limitation, executed Declaration(s) required by the Secretariat (including the Probity and Non-Collusive Quotation/Tendering Certificate), responses to clarifications and any other information, materials and documents submitted by the Tenderer (including, without limitation, any supplemental submissions thereto).

"**Tenderer**" means a Supplier that has submitted a Tender Submission.

"**TVP Guidance Notes**" means the "Guidance Notes for Applications" issued by the Government and/or the Secretariat for the purposes of the TVP application, which includes amendments from time to time (see: https://www.itf.gov.hk/filemanager/en/content_38/TVP-guide-e_202201.pdf).

"**TVP System**" means the TVP online application system which a TVP applicant uses to submit application for the TVP (see: <https://tvp.itf.gov.hk/>).

"**user**", "**you**" or "**your**" means the user of the **TVP ePROQ System** which includes any

company, organisation, partnership or entity whose employee, officer, director or representative is accessing or using the TVP ePROQ System on its behalf.

"Your Content" means any data, material, communications or information, in any format whatsoever, including, without limitation, any data files, text, computer software, images, graphics, photos, videos, sound, audio files, recordings directories, documents, that is made available on or transmitted through the **TVP ePROQ System** by you, your employees, directors or representatives, including, without limitation, any Tender Submissions, Tender Query, Response to Tender Queries and Procurement Documents.

- 1.2 Whenever the words include, includes, including or in particular (or similar derivatives) are used in these Terms, they are deemed to be followed by the words without limitation.
- 1.3 Clause headings and the division of these Terms into separate parts are for ease of reference only and are not intended to be part of or to affect the meaning, interpretation, construction or enforceability of any of the terms and conditions contained in these Terms, and are not intended and shall not affect the application of any of the provisions to the entirety of these Terms.

2. Introduction

The **TVP ePROQ System** is provided for the purposes of enabling the posting or transmission by the Applicant of any notice, information or document in relation to an intended procurement for TVP application which includes, without limitation, any Tender Notices and Procurement Documents, in an electronic format for downloading and viewing by users, and for the electronic submission and uploading of any Tender Submissions by Registered Suppliers through the use of the **TVP ePROQ System** and the System.

3. Acceptance of these Terms

By accessing the **TVP ePROQ System**, you agree to be bound by and accept these Terms and the Privacy Policy. Your access and use of the **TVP ePROQ System** is contingent upon you first agreeing to be bound by these Terms and the Privacy Policy. You may not use the **TVP ePROQ System** if you do not agree to accept all of these Terms and the Privacy Policy.

4. Change of Terms

We may amend the Terms and the Privacy Policy from time to time in our sole discretion without notice or liability to you. Any amended version of the Terms and the Privacy Policy shall be made available on the **TVP ePROQ System**. You are responsible for regularly reviewing the Terms and the Privacy Policy. By continuing to access and use the **TVP ePROQ System** following such amendments to the Terms and the Privacy Policy you agree to be bound by the latest version of the Terms and the Privacy Policy.

5. Changes to the TVP ePROQ System

We may, in our sole discretion and at any time, without notice or any liability to you, add to, amend or remove any TVP ePROQ System Content, or modify, discontinue, suspend or terminate the TVP ePROQ System (or any part thereof).

6. Procurement Documents

- 6.1. Applicants may upload Procurement Documents to the TVP ePROQ System using their application credentials obtained from the TVP Online System for tendering purposes. Only a Registered Supplier will be allowed to download the Procurement Documents and/or view the TVP ePROQ System Content after logging onto its own Registered Account.
- 6.2. You shall be solely and fully responsible for ensuring that you have the appropriate hardware, equipment and software that enables you to use the TVP ePROQ System and/or to upload, view or download any or all of the TVP ePROQ System Content through the TVP ePROQ System.
- 6.3. You acknowledge and agree that during the uploading, transmission or downloading of any TVP ePROQ System Content through the TVP ePROQ System, the TVP ePROQ System may fail, be interrupted, breakdown, contain viruses, malfunction, be slow to process, contain errors or any other defects or defaults. No guarantee, representation, undertaking or warranty is provided by us to avoid, prevent or rectify such circumstances. In the event of any failure, interruption, breakdown, malfunction, slow processing, error or any other defect or default in the TVP ePROQ System, you agree that you shall contact the Secretariat who may agree (in its sole discretion) to provide you with an alternative method to receive or view the TVP ePROQ System Content of the relevant intended procurement or prequalification exercise, as the case may be.
- 6.4. The Secretariat shall in no way be responsible or liable to you for any losses, damage, costs or expenses incurred or suffered by you as a result of any delay, failure, interruption, breakdown, viruses, malfunctions, errors, defects or defaults in the uploading, transmission or downloading of any of the TVP ePROQ System Content.

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

- 7.1. Upon the Tender Addendum being issued by the Applicant, the TVP ePROQ System may at any time issue one or more Tender Addendum, Revisions or any other amendments to the relevant Procurement Documents, prior to the relevant Closing Date. An email will be sent to your Registered Account on the TVP ePROQ System once a Tender Addendum or Revision has been issued or any other amendments to the relevant Procurement Documents have been made, and the date of sending such email will be deemed to be the effective date of such Tender Addendum, Revision or any amendment to the relevant Procurement Documents, where applicable ("Amendment Date"). The Secretariat / Applicant shall in no way be liable in the event that you fail to receive any such email from the Secretariat.
- 7.2. You shall be fully responsible for checking the TVP ePROQ System on a regular basis to ensure that you are kept up-to-date and aware of any Tender Addendum, Revisions or other amendments to the relevant Procurement Documents and shall be responsible for ensuring that your Tender Submissions fully comply with and take into account the Tender Addendum, Revisions or any other amendments to the relevant Procurement Documents. The Secretariat

/ Applicant shall in no way be liable for any failure by you to take into account any Tender Addenda, Revisions or other amendments to the relevant Procurement Documents in your Tender Submissions.

7.3. In the event that the Applicant issues any relevant Tender Addendum, Revision or any other amendments to the relevant Procurement Documents in accordance with Clause 7.1 above, you acknowledge and agree that:

- (a) all of your relevant Tender Submissions submitted to the TVP ePROQ System before and/or after the relevant Amendment Date shall represent the full and entire offer made by you in response to the relevant Procurement Documents, as applicable;
- (b) if no amendments to Tender Submissions are submitted by you to the TVP ePROQ System following the Amendment Date, then the relevant Tender Submissions which were submitted by you prior to the relevant Amendment Date shall represent the full and entire offer made by you in response to the relevant Procurement Documents, as applicable.

7.4. Regardless the Applicant has issued any relevant Tender Addendum, Revision or any other amendments to the relevant Procurement Documents, you acknowledge and confirm that, shall there be any inconsistencies in your Tender Submissions (in full or in part) submitted to the TVP ePROQ System, the latest contents shall prevail. The Secretariat and the Applicant are entitled to consider your Tender Submissions based on the latest version.

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

8.1. You acknowledge and agree that you must be a Registered Supplier and must log onto your own Registered Account in order to submit Tender Query through the TVP ePROQ System.

8.2. You represent and warrant that your Tender Queries have been internally approved and is valid and enforceable against you.

8.3. The TVP ePROQ System shall not accept and/or the Secretariat / Applicant shall not be obligated to consider or provide any response to any Tender Query. Without prejudice to the generality of the foregoing, if the Tender Query submitted through the TVP ePROQ System:

- (a) does not comply with any of the formatting requirements specified by the Secretariat / Applicant;
- (b) is not in accordance with the Terms;
- (c) is contaminated with a virus or Disabling Code, or is otherwise corrupted, or not readable or printable into readable text;
- (d) has not successfully completed its transmission by the relevant deadline (if any) imposed by the Applicant; or
- (e) is irrelevant, prejudicial or unreasonable to the Tender;

then such Tender Query shall not be considered by the Secretariat / Applicant and the Secretariat / Applicant shall not be liable for any failure to consider or provide any response to Tender Query in such circumstances.

8.4. It is your sole responsibility to ensure that your Tender Query are fully compliant with our

terms and conditions contained in the relevant Procurement Documents, as applicable, and that your Tender Query should be raised through the TVP ePROQ System and are received by the Secretariat / Applicant by the relevant deadline specified by the Secretariat / Applicant (if any).

- 8.5. You acknowledge and agree that any Tender Query that are not fully and successfully received by the Secretariat / Applicant by the relevant deadline specified by the Secretariat / Applicant (if any) shall be invalid. The Secretariat / Applicant has no obligation to and shall not take into consideration any Tender Queries that are not fully and successfully transmitted to and received by the Secretariat / Applicant by the Closing Date or where applicable, the relevant deadline specified by the Secretariat / Applicant.
- 8.6. If applicable, the Applicant may issue a Response to Tender Queries to the relevant Procurement Documents prior to the relevant Closing Date. An email will be sent to your Registered Account on the TVP ePROQ System once a Response to Tender Queries is issued, and the time and date of sending such email will be final and conclusive evidence of the issue of the relevant Response to Tender Queries. The Secretariat / Applicant shall in no way be liable in the event that you fail to receive any such email from the Secretariat. In any event, it is recommended that you submit the Tender Query to the Applicant through the TVP ePROQ System well before the Closing Date so that the Applicant will have a reasonable period of time to consider and provide a response to such Tender Query, though you acknowledge and agree that responding to a Tender Query is never an obligation on the part of the Secretariat or the Applicant.
- 8.7. You shall be fully responsible for checking the TVP ePROQ System on a timely and regular basis to ensure that you are kept up-to-date and aware of any Response to Tender Queries, and shall be responsible for ensuring that your Tender Submissions fully comply with and take into account such Response to Tender Queries, as the case may be. The Secretariat / Applicant shall in no way be liable for any failure by you to take into account any Response to Tender Queries in your Tender Submissions.
- 8.8. In the event that the Secretariat / Applicant issues any Response to Tender Queries in accordance with Clause 8.6, you acknowledge and agree that:
- (a) all of your relevant Tender Submissions submitted to the Secretariat / Applicant before and/or after the date of the Response to Tender Queries, as the case may be, shall represent the full and entire offer made by you in response to the relevant Procurement Document, as applicable;
- if no amendments to your Tender Submissions are submitted by you to the Secretariat / Applicant following the date of the Response to Tender then the relevant Tender Submissions which were submitted by you prior to the date of the Response to Tender Queries shall represent the full and entire offer made by you in response to the relevant Procurement Documents as applicable.
- 8.9. Regardless the Applicant has issued any Response to Tender Queries, you acknowledge and confirm that, shall there be any inconsistencies in your Tender Submissions (in full or in part) submitted to the TVP ePROQ System, the latest contents shall prevail. The Secretariat and the Applicant are entitled to consider your Tender Submissions based on the latest version.

GENERAL PROVISIONS

9. Procurement Procedure

- 9.1. The **TVP ePROQ System** is intended to be used as a forum for communication between the Applicants and the Registered Suppliers in relation to the Tender for the purposes of TVP project(s) contemplated under the TVP Guidance Notes and the funding agreement to be entered into between an Applicant and the Secretariat. The Secretariat plays no part in the communication, negotiation or contract formation between an Applicant and a Registered Supplier.
- 9.2. After the Closing Date and upon comparison of Tender Submissions submitted by different Registered Suppliers, an Applicant should select and nominate a Registered Supplier with the lowest price quotation (unless with written justification if the selected / nominated Registered Supplier is not the one with the lowest price) for the Secretariat's consideration. Subject to the satisfaction of requirements stipulated in the TVP Guidance Notes and the supplier criteria / specification set out in the Procurement Documents, the Secretariat will conduct review and examination of the Tender Submissions submitted by the nominated Registered Supplier in respect of (i) the compatibility of the proposed goods or service contents in the Tender Submissions and the requirements in the Procurement Documents; (ii) price quoted in the Tender Submissions; and (iii) where applicable, written justification submitted by the Applicant.
- 9.3. Subject to Clause 9.2 above, the Secretariat may preliminarily approve the appointment of a nominated Registered Supplier ("**Appointed Supplier**") and the Applicant may enter into an agreement with the Appointed Supplier for the implementation of the project(s) contemplated under the Tender Submissions. The Applicant and the Appointed Supplier shall be responsible to negotiate and agree on the terms and conditions of such agreement among themselves before they enter into a contract ("**Procurement Agreement**") and to make sure that the agreement terms shall not contradict with the obligations imposed upon the Applicant and the Registered Supplier under these Terms, the TVP Guidance Notes or any agreement entered into between the Applicant and the Secretariat / the Government.
- 9.4. It is the Applicant's responsibility to monitor the work of the Appointed Supplier and the implementation of the project(s) to ensure due performance (including quality, etc.) by the Appointed Supplier in accordance with the approved Tender Submissions and the Applicant's project proposal submitted to the Secretariat. The Applicant and the Appointed Supplier shall resolve any disputes in relation to and arising out of the Procurement Agreement among themselves. It is the responsibility of the Applicant to ensure proper completion of the project(s) pursuant to these Terms, the TVP Guidance Notes or any agreement entered into between the Applicant and the Secretariat / the Government.
- 9.5. **Without prejudice to the generality of Clauses 14 and 15,** the Secretariat makes no representations or warranties as to the followings:
- (a) the capacity, legality, competency, quality or reliability of the Registered Supplier or the Appointed Supplier in relation to the performance of obligations stipulated under the Tender Submissions;
 - (b) the accuracy, quality, completeness, currentness, adequacy, reliability or validity of any information or material provided on or through the **TVP ePROQ System** (including

without limitation, the Procurement Documents or Tender Submissions);

- (c) the due performance of obligations under the Procurement Agreement by the Applicant or the Appointed Supplier; or
- (d) any matters of similar nature as the above or in relation to the performance of the Procurement Agreement.

10. Your General Obligations

10.1. You agree to use the TVP ePROQ System or any TVP ePROQ System Content only for purposes that are permitted by:

- (a) these Terms;
- (b) the Privacy Policy;
- (c) the TVP Guidance Notes; and
- (d) any applicable law, regulation or generally accepted practices or guidelines in the relevant jurisdiction.

10.2. You agree not to use the TVP ePROQ System or any TVP ePROQ System Content in any way that:

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

10.3. You agree that:

- (a) you will not engage in any activity that interferes with or disrupts the TVP ePROQ System or the System;
- (b) you will not copy, reproduce, download, re-publish, sell, exploit or distribute any part of the TVP ePROQ System or TVP ePROQ System Content unless prior written consent is obtained from the Secretariat;
- (c) you shall only use the TVP ePROQ System, your Registered Account or TVP ePROQ System Content, and may only download and copy the TVP ePROQ System Content, solely and exclusively as needed for the e-procurement purposes;
- (d) you will not use the TVP ePROQ System, your Registered Account or any TVP ePROQ System Content for any purpose not expressly permitted in the Terms;

- (e) you, and you will procure that your employees, sub-contractors, representatives or affiliates, shall not install, import or transmit (and shall take reasonable measures to prevent against the installation, importation or transmission of) any Disabling Codes or similar malicious instructions, codes, techniques or devices capable of disrupting, disabling, damaging or shutting down the **TVP ePROQ System** or System (or any part thereof) or any other telecommunications or computer systems, networks or devices, or otherwise attempt to gain unauthorised access to the **TVP ePROQ System**, System or any other telecommunications, computer systems, networks or devices connected to the **TVP ePROQ System**;
 - (f) you shall not take any action or allow any third party to take any action that would enable you, or any third party, to gain unauthorised access to, or to tamper with or use the System or any of our computer systems or networks;
 - (g) you are solely responsible for, and the Secretariat has no responsibility to you or to any third party for any breach of your obligations under these Terms, and for the consequences of any such breach;
 - (h) you shall not use the **TVP ePROQ System**, your Registered Account or any **TVP ePROQ System** Content to post, send, communicate, transmit, knowingly receive, upload or download any material that is (or engage in any behaviour that is or encourages any) harassing, disruptive, offensive, abusive, threatening, indecent, defamatory, obscene, unlawful, fraudulent, misleading, causes annoyance, or are intended to deceive, or are otherwise objectionable or unreasonable;
 - (i) you shall not use the **TVP ePROQ System**, your Registered Account or any **TVP ePROQ System** Content 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 the **TVP ePROQ System** or **TVP ePROQ System** Content; and
 - (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.
- 10.4. The Secretariat shall have the right at any time, and without notice, to monitor, record, restrict, refuse, suspend, block or terminate your access to and use of the **TVP ePROQ System**, your Registered Account and **TVP ePROQ System** Content, shall there be any breach or non-compliance of the obligations / requirements stipulated in the above Clause 10.3.

11. Your Content

- 11.1. You agree that you are solely and fully responsible and liable for all of Your Content.
- 11.2. You represent and warrant that Your Content is true, accurate, current and complete and shall not infringe the rights of any third party (including Intellectual Property Rights).

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

12. Intellectual Property Rights

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

13. Hyperlinks

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

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

14. Warranties and Disclaimers

- 14.1. The **TVP ePROQ System** Content is provided for your general reference only, and is not intended to amount to any advice on which you should rely. You must obtain professional or specialist advice before taking or refraining from taking any action based on the **TVP ePROQ System** Content. You are responsible to ensure that your use of the **TVP ePROQ System** Content and/or **TVP ePROQ System** complies with your requirements and all applicable legal requirements.
- 14.2. You expressly understand and agree that your use of the **TVP ePROQ System**, E- Procurement Platform content and your registered account, and your participation in the application and registration process for a registered account, are at your sole risk and that such is provided “as is” and “as available”.
- 14.3. To the fullest extent permitted by applicable law, the Secretariat expressly disclaims all warranties and conditions of any kind, whether express or implied, including, but not limited to the implied warranties and conditions of merchantability, satisfactory quality, fitness for a particular purpose, non-infringement, compatibility, security, completeness and accuracy.
- 14.4. Without prejudice to the generality of **Clause 9.5, the** Secretariat makes no representations or warranties:
 - (A) As to the accuracy, quality, completeness, currentness, adequacy, reliability or validity of any information or material provided on or through the **TVP ePROQ System** (including without limitation, any information or material provided by the Applicant or Supplier), your Registered Account and/or during your registration and application process for a Registered Account, including, without limitation, the **TVP ePROQ System** content;
 - (B) That the **TVP ePROQ System**, **TVP ePROQ System** Content or Registered Account will meet your requirements, or are free of defect, error, omission, virus or anything which may change, erase, add to or damage your software, data or equipment;
 - (C) That your use of the **TVP ePROQ System**, **TVP ePROQ System** Content or Registered Account, or the application and registration process for a Registered Account, will be uninterrupted, timely, secure or error-free; or
 - (D) That defects in the operation or functionality of the **TVP ePROQ System**, **TVP ePROQ System** Content, your Registered Account or the application and registration process for a Registered Account, will be corrected.
- 14.5. Any materials, including **TVP ePROQ System** Content, downloaded or otherwise obtained through the use of the **TVP ePROQ System** or your Registered Account is done at your own discretion and risk and you shall be solely responsible for any damage to your computer system or other devices or loss of data that results from the downloading of any such material.

15. Limitation of Liability

15.1. Nothing in these Terms shall exclude or restrict any warranty or liability:

- (a) for fraud or fraudulent misrepresentation; or
- (b) that may not be lawfully excluded or limited by applicable law.

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

15.2. The Secretariat shall not be liable to you in contract, tort (including negligence), breach of statutory duty or otherwise for any Loss whatsoever (including whether general, special, indirect, direct, nominal, punitive, incidental or consequential), including loss of profit; loss of revenue; loss of time; loss of anticipated savings; loss of opportunity; loss or corruption of data; loss of use; loss of business; wasted expenditure; loss of or damage to physical property; business interruption; loss of or damage to goodwill; or cost of procuring substitute services, which may arise in relation to these Terms, the System, the TVP ePROQ System Content, the TVP ePROQ System, Your Content or your Registered Account, whether or not the Secretariat were advised in advance of the possibility of such Loss.

15.3. Without prejudice to the generality of Clauses 14 and 15, the Secretariat shall not be liable to you for any Loss (whether special, indirect, direct, punitive, incidental or consequential), whether in contract, tort (including negligence), equity or otherwise, or any other loss resulting from or in relation to:

- (A) Your use, access or inability to use or access the TVP ePROQ System, TVP ePROQ System Content, Your Content, your Registered Account or the application and registration process for a Registered Account;
- (B) Any changes made by the Secretariat to the TVP ePROQ System, TVP ePROQ System Content, your Registered Account or the application and registration process for a Registered Account, or for any permanent or temporary cessation (in whole or in part) in the provision of the TVP ePROQ System, the TVP ePROQ System Content, your Registered Account or the application and registration process for a Registered Account;
- (C) Any deletion of, corruption of or failure to store any of Your Content and other communications data maintained or transmitted by you through the use of the TVP ePROQ System or Registered Account or during the application and registration process for a Registered Account;
- (D) Your failure (or any of your employees, officers, members, owners or representatives' failure) to keep any password, token or account details required to access your Registered Account or the TVP ePROQ System, confidential and secure;
- (E) Any third-party materials accessed, viewed, downloaded, used, relied on or otherwise obtained by you in relation to or via the TVP ePROQ System, your Registered Account or during the application and registration process for a Registered Account, or the TVP ePROQ System Content;

(F) Any statements made by, or the conduct of, any third party on or through the **TVP ePROQ System**; or

(G) Violation of your intellectual property rights by any third party.

15.4. **Clause 15.2 and 15.3** shall apply irrespective of whether or not the Secretariat has been advised or should have been aware of the possibility of any such Loss arising.

16. Indemnity

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

(a) any breach or non-compliance by you of any of these Terms, the TVP Guidance Notes or applicable policies and terms and conditions;

(b) your use of the **TVP ePROQ System**, **TVP ePROQ System** Content or your Registered Account;

(c) Your Content, including:

(i) any use by the Secretariat or other third parties of Your Content;

(ii) any claim that Your Content violates any applicable laws or infringes the rights of any third party (including a third party's Intellectual Property Rights);

(d) any violation, contravention, breach or infringement of the Secretariat's or any third party's Intellectual Property Rights (including those of the Government), or the unauthorised use or misappropriation of any trade secret or confidential information of the Secretariat or any third party (including those of the Government), 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, Laws of Hong Kong) (“**Ordinance**”) and/or any other applicable data protection laws.

16.2. You shall cooperate fully with the Secretariat in the defence of any claim made by any third parties. The Secretariat reserves the right to assume the exclusive defence and control of any matter or claim that is subject to indemnification by you in accordance with Clause 16.1. You hereby acknowledge that damage for improper use of the **TVP ePROQ System** or any **TVP ePROQ System** Content may be irreparable, and the Secretariat is entitled to seek equitable relief, including injunctions and preliminary injunctions, in addition to all other remedies.

17. Restriction, Suspension and Termination

17.1. We may restrict, suspend, or terminate your use of and access to any part of or all of the **TVP ePROQ System** or any related services at any time (including without limitation the invalidation or deletion of a Registered Account or removal of any information or materials uploaded), with

immediate effect and without notice to you, for any reason whatsoever, including without limitation, due to:

- (a) your breach of these Terms, any part of the TVP Guidance Notes and any declaration or undertaking made by you to the Secretariat or the Government in relation to the TVP, whether in whole or in part;
- (b) the Secretariat being unable to verify or authenticate any information provided by you;
- (c) if the Secretariat believes that your actions or omissions may give rise to any liability, or are otherwise objectionable, inappropriate or illegal.

17.2. Upon termination in accordance with **Clause 17.1** above, you agree:

- (a) That you will immediately cease using or accessing the **TVP ePROQ System** or any related services (as required by the Secretariat), and shall immediately destroy all material obtained from the **TVP ePROQ System** and any copies thereof;
- (b) any procedures related to the Tender and Tender Submissions in relation to the TVP will also be terminated, and the Secretariat will not be liable for any Loss related to or arising from such termination.
- (c) That the termination of your right to use or access (in whole or in part) the **TVP ePROQ System** or any related services, shall be without prejudice to any other rights or remedies available to the Secretariat against you.

18. Governing Law and Jurisdiction

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

19. Language

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

20. Notices

Without prejudice to the foregoing, all notices or demands to or upon a party of these Terms shall be effective and deemed to be in writing if transmitted to a party through the use of the **TVP ePROQ System**, 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 such party, or by posting such notice or demand on an area of the **TVP ePROQ System** that is publicly accessible, without a charge. Without prejudice to the foregoing, you shall be deemed to have received any such notice, if and when:

- (a) the Secretariat are able to demonstrate that the notice has been sent to you (either on the **TVP ePROQ System**, or otherwise as referred to above); or

- (b) immediately upon the Secretariat posting such notice on an area of the **TVP ePROQ System** that is publicly accessible without charge,

whichever date is earlier.

21. Force Majeure

Without prejudice to the generality of **Clauses 14 and 15 above**, under no circumstances shall the Secretariat be liable for any delay or failure or disruption in relation to the **TVP ePROQ System**, your Registered Account or any related services, including the application and registration process for a Registered Account, or the **TVP ePROQ System** Content or Your Content resulting directly or indirectly from anything beyond our reasonable control, including without limitation, Internet failures, computer, telecommunications or any other equipment failures, electrical power failures, labour disputes, war, riots, civil disturbances, shortages of labour or materials, fires, flood, typhoons, earthquakes, explosions, pandemic, 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.

22. Severability

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

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

23. Entire Agreement

These Terms (including all documents explicitly referred to herein) shall constitute an entire agreement between you and the Secretariat and replace all previous written or oral agreements relating to its content.

24. Waiver

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

25. Assignment

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

26. No Partnership or Agency

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