



THE HONG KONG AND CHINA GAS COMPANY LIMITED
e-Tendering System (eTS) Terms of Use

THIS DOCUMENT IS ISSUED BY THE HONG KONG AND CHINA GAS COMPANY LIMITED (“HKCG”) AND IT CONTAINS THE TERMS AND CONDITIONS (the “Terms”) WHICH APPLY TO YOUR USE OF THIS E-TENDERING SYSTEM (“eTS”). PLEASE READ THESE TERMS BEFORE USING THIS E-TENDERING SYSTEM. BY BROWSING, ACCESSING AND USING THIS E-TENDERING SYSTEM, YOU AGREE TO BE BOUND BY THESE TERMS. YOUR USE OF THIS E-TENDERING SYSTEM SIGNIFIES YOUR ACCEPTANCE OF THESE TERMS AND AGREEMENT TO BE BOUND BY THEM.

1. Definitions

1.1 Capitalised terms used in this Agreement shall have the following meanings:

Agreement	This Agreement means these Terms, Privacy Statement, Disclaimer and any other terms and conditions issued by the Company in relation to the use of the eTS Website.
Certificate	A digital certificate issued by the System.
Clarification	A clarification issued by the Company, whereby the Company has raised certain queries and is asking for certain clarification from a Supplier/Contractor/Vendor with regard to a proposal, Tender or Quotation, as the case may be, submitted by it.
Closing Date	The closing date and time specified by the Company for Supplier/Contractor/Vendor to submit their Submissions to the Company in respect of a relevant Request for Quotation, Invitation to Tender, invitation to provide proposal and Invitation to Supplier Registration.
Company/we/us/our	<i>The Hong Kong and China Gas Company Limited</i> having its registered office at 23/F, 363 Java Road, North Point, Hong Kong, its subsidiaries (as defined in the Companies Ordinance, Cap. 622) and any company in which <i>The Hong Kong and China Gas Company Limited</i> or any of its subsidiaries holds not less than 20% of the issued share capital or is entitled to exercise or control the exercise of not less than 20% of the voting power at general meetings.
Confidentiality Undertaking	The letter of undertaking to be executed by a Supplier/Contractor/Vendor confirming that it will keep confidential all relevant Procurement Documents or Suppliers Registration Document, as the case may be, and information related to the Company as specified in the letter of undertaking.



Disabling Code	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 eTS, the System or any associated data or information.
Disclaimer	Disclaimer that can be accessed at the eTS Website.
eTS Website	The meaning given in Clause 2 below.
eTS Website Content	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 Company through eTS Website, including, without limitation, any Supplier Registration Documents, Procurement Documents, Tender Notices, Letters of Acceptance, Letters of Intent.
Intellectual Property Rights	Any trademarks, service marks, logos, trade names, corporate names, internet domain names, patents, registered designs, copyrights, design rights, database rights, inventions, semiconductor topography rights, know-how, trade secrets, company or any similar right exercisable in any part of the world, whether registered or not, and including any applications for the registration of any such rights, whether presently existing or created in the future, anywhere in the world, whether registered or not, and all benefits, privileges, rights to sue, recover damages and obtain relief from any past, current or future infringement, misappropriation or violation of the foregoing rights.
Letter of Intent	A letter and any schedules or attachments thereto issued by the Company to a Tenderer stating the intention on which the Company may issue a Letter of Acceptance to that Tenderer and includes all modifications, amendments and supplements thereto.
Letter of Acceptance	A letter and any schedules or attachments thereto issued by the Company to a Tenderer confirming that it accepts



	the Tenderer's offer in its Tender Submissions or Quotation, as applicable.
Loss	Losses, liabilities, actions, charges, claims, costs, damages, demands, fines, judgments, awards, penalties, sanctions, settlements, expenses and other liabilities of whatsoever nature (including without limitation attorney/legal fees for both internal and external counsel, and costs related to investigation, arbitration, litigation or settlement).
Privacy Statement	The Company's privacy policy statement that can be accessed at the eTS Website.
Procurement Documents	All or any documents issued by the Company in relation to an intended procurement (including, without limitation, any Invitation to Tender, Requests for Quotations, template Confidentiality Undertakings (if required), Response to Queries, Clarifications, Tender Clarifications, instructions to tenderers, forms and documents, 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.
Query	A query raised by a Supplier/Contractor/Vendor in relation to a Request for Quotation or a query raised by a Tenderer in relation to an Invitation to Tender.
Quotation	A quotation (including, without limitation, any supplemental quotations thereto) and any other information, materials and documents submitted by a Tenderer in response to and in accordance with the terms of the relevant Request for Quotation and the applicable Procurement Documents, including any schedules or attachments to that quotation.
Registered Account	An account established by the Company in connection with the eTS Website and to enable an user to use it.
Registered Supplier / Contractor / Vendor	A Supplier/Contractor/Vendor who holds a Registered Account issued by the Company.
Request for Quotation	An invitation to quote, and any schedules or attachments thereto, issued by the Company inviting Quotations to be submitted by a Supplier/Contractor/Vendor, in accordance with the request for quotation for any goods, services, materials or works that the Company requires and, if applicable, includes all or any of the Revisions.
Response to Clarification	A Tenderer's response to a Clarification in respect of a Request for Quotation or a Tenderer's response to a Tender Clarification in respect of an Invitation to



	Tender.
Response to Supplier Registration Clarifications	A response raised by the Supplier/Contractor/Vendor to a Supplier Registration Clarification.
Response to Queries	Any response issued by the Company to a Query or a Supplier Registration Query.
Revision	Any written document issued by the Company for the purposes of modifying, supplementing or amending any part of Request for Quotation or Supplier Registration Invitation.
Submissions	All or any of the Tender Submissions, submission of Quotation and Supplier Registration Submissions.
Supplemental Tenders	Any document issued by a Tenderer that amends, alters or supplements any Tender already submitted by it to the Company.
Supplier Registration Clarification	A clarification issued by the Company, in which the Company has raised certain queries and is asking for certain clarification from the Supplier/Contractor/Vendor with regard to the Supplier Registration Submissions.
Supplier Registration Documents	Any and all documents issued by the Company in relation to a supplier registration exercise and includes, without limitation, any Supplier Registration Invitations, Supplier Registration Notice, Revisions, Purchasing Policy, Terms and Conditions of Purchase Order, Response to Queries, Supplier Registration Clarifications, instructions to applicants, ancillary letters, forms and documents etc. and any and all schedules and attachments to such documents, including any amendments to them and the form of declaration etc.
Supplier Registration Invitation	A Supplier Registration Invitation, and any schedules or attachments thereto, issued by the Company inviting Supplier Registration Submissions to be submitted by the Supplier/Contractor/Vendor in accordance with the Supplier Registration Invitation and the applicable Supplier Registration Documents and, if applicable, includes all or any of the Revisions.
Supplier Registration Notice	A notice issued by the Company notifying organisations that a Supplier Registration Invitation has been issued and inviting the Suppliers/Contractors/Vendors to download copies of the Supplier Registration Documents.



Supplier Registration Query	A query raised by the Supplier/Contractor/Vendor in relation to a Supplier Registration Invitation.
Supplier Registration Submissions	Any and all documents submitted by the Suppliers/Contractors/Vendors in response to and in accordance with the requirements of the relevant Supplier Registration Invitation together with any Revisions and the applicable Supplier Registration Documents, and includes, without limitation, executed Confidentiality Undertaking (if required), Responses to Supplier Registration Clarifications and any other information, materials and documents submitted by the Suppliers/Contractors/Vendors.
Supplier/Contractor/Vendor	A person, company, organisation, partnership or entity that carries out the business of providing goods, services, materials or works, which may be required by the Company from time to time.
System	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 eTS. All references to the "eTS" shall be deemed to include references to the "System".
Tender	The offer submitted by a Tenderer in response to and in accordance with the terms of the relevant Invitation to Tender, including schedules or attachments to that offer and, if applicable, includes all or any of the Supplemental Tenders.
Tender Addendum	Any written document issued by the Company for the purposes of modifying, supplementing or amending any part of the Invitation to Tender.
Tender Clarifications	A tender clarification issued by the Company, in which the Company has raised certain queries and is asking for certain clarification from the Tenderer with regard to the Tender Submission submitted by it.
Invitation to Tender	Any Invitation to Tender, and any schedules or attachments thereto, issued by the Company inviting Tender Submissions to be submitted by a Supplier/Contractor/Vendor in accordance with the Invitation to Tender, for any goods, works, materials and/or services that the Company requires and, if applicable, includes all or any of the Tender Addendum.
Tender Notice	A notice issued by the Company notifying organisations that an Invitation to Tender has been issued and inviting Suppliers/Contractors/Vendors to download copies of the relevant Procurement Documents.



Tender Submissions	Any or all documents submitted by a Tenderer in response to and in accordance with the requirements of the relevant Invitation to Tender together with any Tender Addendum and the applicable Procurement Documents and includes, without limitation, executed Confidentiality Undertaking, Responses to Clarifications and any other information, materials and documents submitted by the Tenderer.
Tenderer	A Supplier/Contractor/Vendor that has submitted a Tender Submission or Quotation.
Terms and Conditions of Purchase Order	Terms and conditions of Purchase Order issued by the Company on its website at www.towngas.com , which may be amended by the Company from time to time.
Purchasing Policy	The Towngas Purchasing Policy issued by the Company on its website at www.towngas.com , which may be amended by the Company from time to time.
User/you/your	The user of the eTS Website which includes: (1) any person, company, organisation, partnership or entity; and (2) any employee, officer, director, partner, representative or agent of such company, organisation, partnership or entity who accesses or uses the eTS Website on its behalf.
Your Content	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 eTS Website by you, your employees, directors, representatives or agents, including, without limitation, any Submissions, Response to Clarifications, Response to Supplier Registration Clarifications, Queries or Supplier Registration Queries.

- 1.2 Whenever the words include, includes, including or in particular (or similar derivate) are used in this Agreement, they are deemed to be followed by the words without limitation.
- 1.3 Clause headings and the division of this Agreement 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 this Agreement, and are not intended and shall not affect the application of any of the provisions to the entirety of this Agreement. You shall be bound by and be fully obligated to comply with all the terms and conditions of this Agreement.



2. Introduction

The eTS Website at <https://ets.towngas.com> is provided for the purposes of enabling the posting or transmission by us of any notice, information or document in relation to an intended procurement or supplier registration exercise which includes, without limitation, any Tender Notices, Procurement Documents, Letters of Intent, Letters of Acceptance, Supplier Registration Notice, or Supplier Registration Documents, etc. in an electronic format for downloading and viewing by users, and for the electronic submission and uploading of any Submissions by Registered Suppliers/Contractors/Vendors through the use of the eTS Website and System.

3. Use of eTS Website Constitutes Acceptance

By agreeing to and using the eTS Website, you acknowledge and agree that you have fully read and agreed to be bound by and accept all provisions of this Agreement (including these Terms, the Privacy Statement and Disclaimer). You must not use the eTS Website if you do not agree to be bound by and accept this Agreement in its entirety.

4. Change of Terms

- 4.1 We may amend this Agreement from time to time in our sole discretion without notice or liability to you. Any amended version of this Agreement shall be made available on the eTS Website. You are responsible for regularly reviewing this Agreement. By continuing to access and use the eTS Website following such amendments to this Agreement, you acknowledge and agree that you have fully read and agreed to be bound by the latest version of this Agreement.
- 4.2 We may, in our sole discretion and at any time, without notice or any liability to you, add to, amend, modify or remove any eTS Website Content, or discontinue, suspend or terminate the eTS Website (or any part thereof).

5. The Application of Registered Account

- 5.1 You are required to follow and complete the application and registration procedures as stated in the eTS Website in order to apply for a Registered Account.
- 5.2 You acknowledge and agree that you must be a Registered Supplier/Contractor/Vendor and must log onto your own Registered Account in order to download and view the eTS Website Content.
- 5.3 You shall be solely and fully responsible for ensuring that you have the appropriate hardware, equipment and software that enable you to use the eTS Website and/or to view or download any or all of the eTS Website Content through the eTS Website.
- 5.4 The Company may, in its sole discretion, accept or decline any application to open a Registered Account and Company's decision shall be final.
- 5.5 The requirements for applying for a Registered Account are set out below:



(i) You must be a duly registered and/or established business, institution or legal entity under the applicable law and shall provide documents/evidence to substantiate the same as may be required;

(ii) You must register with your full legal name and registered name as shown on your most up-to-date certificate of incorporation or business registration certificate, or business licence or any legally recognized equivalent document in your place of incorporation;

(iii) You must provide us with your full principal office/business address(es) and contact details, including an email address; and

(iv) You must provide us with any other information or documents that may be required by us from time to time.

5.6 We may require you, at any time (whether before or after the establishment of your Registered Account), to provide any other information as may be required by us, or as required by applicable law or a competent government body, and you must comply with our request promptly and fully.

6. The Use of Registered Account

6.1 You agree that:

(i) you can only download any eTS Website Content or submit any Submissions through the eTS Website when you are a Registered Supplier/Contractor/Vendor and when you have logged into your Registered Account;

(ii) you shall only use your Registered Account for the purposes of Submissions, including for the purposes of making any Submissions; downloading or viewing any eTS Website Content; providing or updating any information, documents or details required by us; for any purpose directly related to the foregoing but not further or otherwise;

(iii) you shall only use your Registered Account in accordance with this Agreement and any other terms and conditions issued by the Company in relation to the Registered Account;

(iv) any information you provide or submit to the Company in relation to or via your Registered Account (including any application for a Registered Account) shall be up to date, true, accurate, complete and correct;

(v) you shall notify us promptly upon any changes to your details and/or any other information provided by you to us in relation to the Registered Account;

(vi) you will not allow other person, firm, company or organization to have access to or to use your Registered Account;

(vii) you shall at all times keep your login details (including your login name, password, and token) of your Registered Account secure and confidential to prevent any unauthorized access, use or submissions;



(viii) without prejudice to Clause 6.2 below, you shall notify us immediately in writing upon becoming aware of any unauthorized use of your login details of your Registered Account; and

(ix) you shall procure all of your employees, officers, directors, representatives or agents to comply with this Agreement.

- 6.2 You shall be solely and fully responsible for all activities that occur under your Registered Account, and the Company shall not be responsible or liable to you or any third party for any Loss as a result of any unauthorized access to your Registered Account whether or not caused by your actions or omissions, including any actions of any person who uses your password and/or token and/or who submits any documents, or Submissions through the use of your password or token or Registered Account, regardless of whether or not such persons are in fact authorized to do so. Any Submission, content or material submitted via your Registered Account shall be deemed to be submitted by you. The Company shall not be under any obligation to verify whether any such Submission, content or material has been provided via the authorised use of your Registered Account.
- 6.3 Save to the extent required by any mandatory applicable law, none of the eTS Website, eTS Website Content or services are subject to any warranty or condition, express or implied, including, without limitation, any warranty of merchantability, satisfactory quality, fitness for a particular purpose or use, and non-infringement. The Company does not guarantee the accuracy or completeness of any eTS Website Content or services. In addition, the Company does not warrant that provision of the eTS Website, any eTS Website Content or any services will be uninterrupted, or that any service will continue to be available. You acknowledge and agree that during the transmission or downloading of any eTS Website Content through the eTS Website, the eTS Website 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 eTS Website, you agree that you shall contact us and we shall, in our sole discretion, provide you with an alternate method to receive or view the eTS Website Content of the relevant intended procurement or exercise, or to make your Submissions, as the case may be.
- 6.4 The Company shall in no way be responsible or liable to you for any Loss incurred or suffered by you as a result of any delay, failure, interruption, breakdown, viruses, malfunctions, errors, defects or defaults in the transmission or downloading of any of the eTS Website Content.

7. Submissions

- 7.1 You acknowledge and agree that you must:
- (a) be a Registered Supplier/Contractor/Vendor and must log onto your own Registered Account in order to submit or upload any Submissions through the eTS Website;
 - (b) hold a valid Certificate, which has been verified beforehand by the Company, or a valid Certificate, as applicable and in accordance with Clause 12 below,



in order to submit any Quotations / Tender Submission or Supplier Registration Submission through the eTS Website; and

- (c) use your relevant password in order to submit any Quotations, Tender Submissions or Supplier Registration Submissions using the above certificate, if required by the system.

7.2 You represent and warrant that:

- (a) you hold the full rights and title to all Submissions submitted, transmitted or uploaded by you through the eTS Website, free of all encumbrances, liens and charges.
- (b) your Submissions are accurate and complete and shall not infringe upon the rights or Intellectual Property Rights of any third party; and
- (c) your Submissions have been internally approved and any digital signature used by you on the Submissions is valid binding and enforceable against you.

7.3 The eTS Website shall not accept and/or the Company shall not be obligated to consider any Submissions where you are in breach of this Agreement, including Clause 7.2 above. Without prejudice to the generality of the foregoing, if any Submission submitted through the use of the eTS Website:

- (a) does not comply with any of the formatting requirements specified by the Company;
- (b) is not in accordance with this Agreement;
- (c) is contaminated with a virus or Disabling Code, or is otherwise corrupted, or not readable or printable into readable text; or
- (d) has not successfully completed its transmission by the relevant Closing Date;

then such Submission may not be considered by the Company and we shall not be liable for any failure to consider your Submission in such circumstances.

7.4 It is your sole responsibility to ensure that your Submissions are fully compliant with our terms and conditions contained in the relevant Procurement Documents or Supplier Registration Documents, as the case may be, and that your Submissions complete their transmission through the eTS Website and are received by the Company by the relevant Closing Date specified by us.

7.5 You acknowledge and agree that any Submissions that are not fully and successfully transmitted to and received by the Company by the relevant Closing Date will be considered invalid. We have no obligation to and may not take into consideration any Submissions that are not fully and successfully transmitted to and received by the Company by the relevant specified Closing Date.

7.6 All notices or messages that appear on the eTS Website that display any date, time, time zone, or time remaining for any Submissions to be filed, are for reference only. Notwithstanding the generality of the foregoing, any upload end time generated automatically by the Company's System, which specifies exactly when the



transmission of your Submission through the eTS Website was completed, shall be final and binding and shall be relied on by the Company to determine whether or not your Submission was submitted by the relevant Closing Date. Such upload end time will be shown in an acknowledgement notice displayed on the screen, The Tenderer or applicant who has successfully completed the uploading and transmission of its Submissions through the eTS Website by the relevant Closing Date will receive an email or a message on eTS Website confirming the same from the Company sent to your Registered Account.

- 7.7 You shall be solely and fully responsible for ensuring that you have the appropriate hardware, equipment and software that enables you to access the eTS Website, your Registered Account and the System, and to upload and submit your Submissions through the eTS Website.
- 7.8 You acknowledge and agree that during the transmission, uploading and/or submission of any Submissions or any other of Your Content through the eTS Website, the eTS Website 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 such failure, interruption, breakdown, malfunction, slow processing, error or any other defect or default in the eTS Website, you agree that you shall contact us who may agree (in our sole discretion) to provide you with an alternate method to submit your Submissions to the Company by the relevant Closing Date.
- 7.9 The Company shall in no way be responsible or liable to you for any Loss incurred or suffered by you as a result of any delay, failure, interruption, breakdown, viruses, malfunctions, errors, defects or defaults in the transmission or uploading of any Submissions or any other of Your Content.
- 7.10 All of Your Content, including any information, material and data in your Submissions shall be encrypted for security reasons when uploaded or submitted by you and transmitted through the eTS Website and the System. You agree that any of Your Content or information, material and data that is so encrypted, shall be complete and accurate after decryption and, in any event, you accept any error, misrepresentation of statement or omission that may occur upon decryption or encryption.
- 7.11 The results of Your Content, Submissions or any information, material or data that has been encrypted and decrypted, shall be used and relied on by the Company as received by the Company, and you agree to be bound by such contents of Your Content, Submissions, or any information, material or data as decrypted and as received by the Company.
- 7.12 Submissions that are successfully uploaded and transmitted through the eTS Website shall be encrypted and electronically stored in a secure location, which shall be accessed by the Company for processing and consideration.
- 7.13 You shall ensure that Your Content, including your Submissions, which are uploaded, transmitted or submitted through the eTS Website must be in a standardised electronic format that allows the eTS Website to capture, record, store, transmit



and/or process it and any other formatting requirements specified by us on the eTS Website or the Procurement Documents or the Supplier Registration Documents.

- 7.14 You hereby waive any and all rights you may have to challenge the validity of or accuracy of any information contained in a Certificate, or of any submissions submitted by you through the eTS website, or any contract that arises from such submissions and/or our acceptance of such, on the basis that the document was not physically signed by you or that Certificate or password, as applicable, was used without your authorisation.

8. Tender Addendum, Revisions and Other Amendments to the Procurement Documents or Supplier Registration Documents

- 8.1 The Company may at any time issue one or more Tender Addendum, Revisions or any other amendments to the relevant Procurement Documents or Supplier Registration Documents, prior to the relevant Closing Date. Your Registered Account will receive a message on the eTS Website or e-mail once a Tender Addendum or Revision has been issued or any other amendments to the relevant Procurement Documents or Supplier Registration 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 or Supplier Registration Documents, as applicable ("**Amendment Date**"). We shall in no way be liable in the event that you fail to receive any such email from the Company.
- 8.2 You shall be fully responsible for checking the eTS Website 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 or Supplier Registration Documents, and shall be responsible for ensuring that your Submissions fully comply with and take into account the Tender Addendum, Revisions or any other amendments to the relevant Procurement Documents or Supplier Registration Documents. We shall in no way be liable for any failure by you to take into account any Tender Addendum, Revisions or other amendments to the relevant Procurement Documents or Supplier Registration Documents in your Submissions.
- 8.3 In the event that the Company issues any relevant Tender Addendum, Revision or any other amendments to the relevant Procurement Documents or Supplier Registration Documents in accordance with Clause 8.1 above, you acknowledge and agree that: all of your relevant Submissions submitted to the Company 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 or Supplier Registration Documents, as applicable; or if no amendments to Submissions are submitted by you to us following the Amendment Date, then the relevant 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 or Supplier Registration Documents to the fullest extent of applicability.

9. Query, Supplier Registration Query and Response to Queries.

- 9.1 You acknowledge and agree that you must be a Registered Supplier/Contractor/Vendor and must log onto your own Registered Account in order to submit any Query or Supplier Registration Query through the eTS Website.



- 9.2 You represent and warrant that your Queries or Supplier Registration Queries have been internally approved and is valid and enforceable against you.
- 9.3 The eTS Website shall not accept and/or the Company shall not be obligated to consider or provide any response to any Query or Supplier Registration Query where you are in breach of this Agreement, including Clause 9.1 above. Without prejudice to the generality of the foregoing, if any Query or Supplier Registration Query submitted through the use of the eTS Website:
- (a) does not comply with any of the formatting requirements specified by the Company;
 - (b) is not in accordance with this Agreement or terms and conditions contained in the relevant Procurement Documents or Supplier Registration Documents, as applicable;
 - (c) is contaminated with a virus or Disabling Code, or is otherwise corrupted, or not readable or printable into readable text; or
 - (d) has not successfully completed its transmission by the relevant deadline imposed by the Company;
- then such Query or Supplier Registration Query shall not be considered by the Company and we shall not be liable for any failure to consider or provide any response to your Query or Supplier Registration Query in such circumstances.
- 9.4 It is your sole responsibility to ensure that your Query or Supplier Registration Query are fully compliant with our terms and conditions contained in the relevant Procurement Documents or Supplier Registration Documents, as applicable, and that your Query or Supplier Registration Query complete their transmission through the eTS Website and are received by the Company by the relevant deadline specified by the Company.
- 9.5 You acknowledge and agree that any Query or Supplier Registration Query that are not fully and successfully transmitted to and received by the Company by the relevant deadline specified by the Company shall be invalid. We have no obligation to and shall not take into consideration any Query or Supplier Registration Query that are not fully and successfully submitted to and received by the Company by the relevant deadline specified by the Company.
- 9.6 If applicable, the Company may issue a Response to Queries prior to the relevant Closing Date. Your Registered Account will receive a message on the eTS Website or e-mail once a Response to Queries has been issued, and the time and date of sending such email will be final and conclusive evidence of the Company's issuance of the relevant Response to Queries. We shall in no way be liable in the event that you fail to receive any such message or email from the Company.
- 9.7 It is your responsibility to check the eTS Website on a regular basis to ensure that you are kept up-to-date and aware of any Response to Queries, and shall be responsible for ensuring that your Submissions fully comply with and take into account the Response to Queries, as the case may be. The Company shall in no way be liable for any failure by you to take into account any Response to Queries in your Submissions.



9.8 In the event that the Company issues any Response to Queries in accordance with Clause 9.6 above, you acknowledge and agree that:

- (a) all of your relevant Submissions submitted to the Company before and/or after the date of the Response to Queries, as the case may be, shall represent the full and entire offer made by you in response to the relevant Procurement Document, or the full and entire submission made by you in response to the relevant Supplier Registration Document, as applicable; or
- (b) if no amendments to your Submissions are submitted by you to the Company following the date of the Response to Queries, then the relevant Submissions which were submitted by you prior to the date of the Response to Queries shall represent the full and entire offer made by you in response to the relevant Procurement Documents or Supplier Registration Documents, as applicable.

10. Clarifications, Tender Clarification, Response to Clarification, Supplier Registration Clarification and Response to Supplier Registration Clarification

10.1 We may, at any time prior to the issuance of the relevant Letter of Acceptance, issue one or more Clarifications, Tender Clarifications or Supplier Registration Clarification to you via the eTS Website to your Registered Account. We shall not be liable in the event that you fail to receive any Clarifications, Tender Clarification or Supplier Registration Clarification sent by the Company to you in accordance with the foregoing. The Company shall in no way be liable for any failure by you to take into account any Clarifications, Tender Clarification or Supplier Registration Clarification sent by us to you.

10.2 You shall be responsible for submitting your Response to Clarification or Response to Supplier Registration Clarification through the eTS Website by the deadline imposed by the Company as stated in the Clarification, Tender Clarification or Supplier Registration Clarification, as the case may be. We shall in no way be liable for any failure by you to submit a Response to Clarification or Response to Supplier Registration Clarification.

11. Result of the Intended Procurement or Supplier Registration Exercise

11.1 The Company will notify you the result of the intended procurement or supplier registration exercise, via the eTS Website.

11.2 The Company may issue a notice via the eTS Website to your Registered Account to confirm acceptance of the Supplier Registration Submissions and advise that you have been added to HKCG's approved Supplier/Contractor/Vendor list. The Company reserves the right to invite any Supplier/Contractor/Vendor from HKCG's approved Supplier/Contractor/Vendor list to participate into any procurement on the eTS Website. You acknowledge and agree that:-

- (1) although you will be added to HKCG's approved Supplier/Contractor/Vendor list, each of the entities that comprises the Company shall not be bound to issue Invitation to Tender or Request for Quotation to you;



- (2) each of the entities that comprises the Company reserves the right to issue Invitation to Tender or Request for Quotation to all or part of Supplier/Contractor/Vendors selected from HKCG's approved Supplier/Contractor/Vendor list as it shall in its sole discretion see fit; and
 - (3) you will only be eligible to submit Tender Submissions or Quotation upon receipt of the Invitation to Tender or Request for Quotation, as the case may be.
- 11.3 Any entity which comprises the Company may issue any Letter of Acceptance or Purchase Order to you, via the eTS Website to your Registered Account to confirm acceptance of the Tender Submissions or Quotation. Any Letter of Acceptance or Purchase Order, as the case may be, shall be subject to any relevant Clarification (if any) issued by the Company and/or any relevant Response to Clarification submitted by you (if applicable) in accordance with this Agreement.
- 11.4 In the event that any entity which comprises the Company issues any Letter of Acceptance or Purchase Order to you in accordance with this Clause 11, a binding contract will immediately be constituted between you and the entity which issues the Letter of Acceptance or Purchase Order, and the contract documents shall comprise this Agreement, the Letter of Acceptance or Purchase Order, the Procurement Documents, the Supplier Registration Documents and your Submissions. Unless otherwise provided in Letter of Acceptance or Purchase Order, the priority of the contract documents shall be in accordance with the following sequence:-
- (a) Letter of Acceptance or Purchase Order;
 - (b) Procurement Documents;
 - (c) your Submissions;
 - (d) Supplier Registration Documents; and
 - (e) This Agreement.

Subject to the above, in the event of any conflict and/or discrepancy between the terms of various parts within each category of the contract documents listed above, those bearing or formed on a later date shall take precedence.

12. Digital Certificates and Other Requirements

- 12.1 Prior to submitting any Submissions (except for Quotation and Supplier Registration Submissions), you must hold a valid Certificate, and must verify your Certificate through your Registered Account.
- 12.2 Upon the submission of any Submissions (except for Quotation and Supplier Registration Submissions) via the eTS Website, you must use a valid Certificate, as applicable, in order to encrypt and digitally sign the Submissions (except for Quotation and Supplier Registration Submissions).



- 12.3 You agree and acknowledge that all responses sent by you to the Company in relation to any Procurement Document through the eTS Website must be submitted with a valid Certificate or password, as the case may be.
- 12.4 You are responsible for ensuring that you obtain or renew your Certificate, as applicable, in time to submit any Submissions (except for Quotation and Supplier Registration Submissions) through the eTS Website prior to the relevant Closing Date, and we shall not be liable or responsible for any of your failure to do so.

13. Hardcopy Submissions

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

14. Your General Obligations

- 14.1 You agree to use the eTS Website or any eTS Website Content only for purposes that are permitted by:
- (a) this Agreement;
 - (b) any applicable law, regulation or generally accepted practices or guidelines in the relevant jurisdiction.
- 14.2 You agree not to use the eTS Website or any eTS Website Content in any way that
- (a) is unlawful and/or breaches any applicable laws, regulations, codes, guidelines or orders; or
 - (b) contravenes or infringes upon any of our rights or any third parties' rights (including Intellectual Property Rights).



14.3 You agree that:

- (a) you will not engage in any activity that interferes with or disrupts the eTS Website or the System;
- (b) you will not copy, reproduce, download, re-publish, sell, exploit or distribute any part of the eTS Website or eTS Website Content (subject to Clause 14.3(c) below);
- (c) you shall only use the eTS Website, your Registered Account or eTS Website Content, and may only download and copy the eTS Website Content, solely and exclusively as needed for the purposes expressly permitted in this Agreement;
- (d) you will not use the eTS Website, your Registered Account or any eTS Website Content for any purpose not expressly permitted in this Agreement;
- (e) you, and your employees, sub-contractors, agents, representatives or affiliates, shall not install, import or transmit (and shall take reasonable measures to prevent against the installation, importation or transmission of) any Disabling Codes or similar malicious instructions, codes, techniques or devices capable of disrupting, disabling, damaging or shutting down the eTS Website 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 eTS Website, System or any other telecommunications, computer systems, networks or devices connected to the eTS Website;
- (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 Company has no responsibility to you or to any third party for any breach of your obligations under this Agreement, and for the consequences of any such breach;
- (h) you shall not use the eTS Website, your Registered Account or any eTS Website 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 eTS Website, your Registered Account or any eTS Website 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 eTS Website or eTS Website Content;
- (k) you shall not commit fraud or otherwise impersonate any person or falsely state or misrepresent yourself as being or being affiliated with another person; and



- (l) we have the right at any time, and without notice, to monitor and record your access to and use of the eTS Website, your Registered Account and eTS Website Content

15. Your Content

- 15.1 You agree that you are solely and fully responsible and liable for all of Your Content.
- 15.2 You acknowledge and warrant that Your Content is accurate, current and complete and shall not infringe the rights of any third party (including Intellectual Property Rights).
- 15.3 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 or the Supplier Registration Documents.

16. Intellectual Property Rights

- 16.1 You acknowledge and agree that the Company and/or its licensors or contractors own all legal rights, title and interest, including any Intellectual Property Rights, in and to the eTS Website, the System, the eTS Website Content and all Procurement Documents and Supplier Registration Documents.
- 16.2 You shall not modify, copy, rent, lease, loan, sell, distribute or create derivative works based on the eTS Website Content or Procurement Documents or Supplier Registration Documents either in whole or in part) unless expressly authorised under this Agreement or by the Company beforehand in writing.
- 16.3 Nothing in this Agreement shall give you a right to use any of the Company's trade names, trademarks, service marks, logos or domain names for any purpose whatsoever.
- 16.4 You agree that you shall not remove, obscure, or alter any proprietary rights notices (including copyright and trade mark notices) which may be affixed to or contained within the eTS Website, eTS Website Content or Procurement Documents or the Supplier Registration Documents.

17. Hyperlinks

- 17.1 The eTS Website may include hyperlinks to other websites, content or resources, which are hosted, offered or provided by third parties unrelated to the Company. You understand and agree that:
 - (a) We have no control over and do not monitor such third party websites, content, or resources;
 - (b) We make no guarantee or warranty, and are not responsible for any such external sites, content or resources (or any products, goods or services promoted, referred to or offered on such external sites or resources); and



- (c) We do not endorse any websites linked to the eTS Website, or any advertising, products, goods, services or other materials on or available through such websites or resources.

17.2 You understand and agree that you access such external websites, content or resources at your own risk, and the Company shall not be responsible or liable for any Losses 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.

18. Warranties and Disclaimers

18.1 The eTS Website Content is provided for your general reference only, and is not intended to amount to any advice on which you should rely. You are responsible to ensure that your use of the eTS Website Content and/or eTS Website complies with your requirements and all applicable legal requirements.

18.2 You expressly acknowledge and agree that your use of the eTS Website, eTS Website Content and your Registered Account, and your participation in the application and registration process for a Registered Account, are at your sole risk.

18.3 To the fullest extent permitted by applicable law, the Company 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.

18.4 Without prejudice to the generality of Clause 18.3 above, the Company makes no representations or warranties:

- (a) in regards to the accuracy, quality, completeness, adequacy, reliability, validity or of it being up-to-date of any information or material provided on or through the eTS Website, your Registered Account and/or during your registration and application process for a registered account, including, without limitation, the eTS Website Content;
- (b) that the eTS Website, eTS Website 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 eTS Website, eTS Website Content or Registered Account, or the application and registration process for a registered account, will be uninterrupted, timely, secure or without error; or
- (d) that defects in the operation or functionality of the eTS Website, eTS Website Content, your Registered Account or the application and registration process for a registered account, will be corrected.

18.5 Any materials, including eTS Website Content, downloaded or otherwise obtained through the use of the eTS Website or your Registered Account is done at your own discretion and risk and you shall be solely liable for any damage to your computer



system or other devices or loss of data that results from the downloading of any such material.

19. Limitation of Liability

19.1 Nothing in this Clause 19.1, or Clause 18 above, shall exclude or restrict any warranty or liability:

- (a) for death or personal injury caused by the Company's negligence;
- (b) for fraud or fraudulent misrepresentation; or
- (c) 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 Company's liability will be limited to the maximum extent permitted by the applicable law.

19.2 The Company 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; any penalties; or cost of procuring substitute services, which may arise in relation to this Agreement, the eTS Website Content, the eTS Website, Your Content or your Registered Account whether or not the Supplier/Contractor/Vendor were advised in advance of the possibility of such loss.

19.3 Without prejudice to clause 18 or the generality of clause 19.2, We shall not be liable to you for any Loss (whether special, indirect, direct, punitive, incidental or consequential), whether in contract, tort (including negligence), equity or otherwise, or any other loss resulting from or in relation to:

- (a) your use, access or inability to use or access the eTS Website, eTS Website Content, Your Content, your Registered Account or the application and registration process for a registered account;
- (b) any changes made by the Company to the eTS website, eTS Website 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 eTS Website, the eTS Website Content, your Registered Account or the application and registration process for a Registered Account;
- (c) any removal 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 eTS website 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, representatives or agents' failure) to keep any password or account details



required to access your Registered Account or the eTS Website, 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 eTS Website, your Registered Account or during the application and registration process for a registered account, or the eTS Website Content;
- (f) any statements made by, or the conduct of, any third party on or through the eTS Website; or
- (g) violation of your Intellectual Property Rights by any third party.

19.4 Clause 19.2 and 19.3 shall apply irrespective of whether or not the Company has been advised or should have been aware of the possibility of any such Losses arising.

20. Indemnity

20.1 You hereby agree to indemnify, defend and hold harmless the Company, its employees, contractors, partners, officers, directors, agents, affiliates, and licensors (“**the Indemnified Parties**”) from and against all Losses that may arise directly or indirectly out of or in connection with:

- (a) any breach or non-compliance by you of any of this Agreement or applicable policies and terms and conditions;
- (b) your use of the eTS Website, eTS Website Content or your Registered Account;
- (c) Your Content, including:
 - (i) any use by the Company 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 Company's or any third party's Intellectual Property Rights, or the unauthorised use or misappropriation of any trade secret or confidential information of the Company or any third party, caused by you, or your employees, officers, members, owners, agents or affiliates; or
- (e) any breach by you of the Hong Kong Personal Data (Privacy) Ordinance (Cap. 486) and/or any other applicable data protection laws.

20.2 You shall cooperate fully with Company in the defence of any claim made by any third parties. We reserve 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 20.1 above. You hereby acknowledge that damages for improper use of the eTS Website or any eTS Website Content may be irreparable, and we are entitled to seek equitable relief, including injunctions and preliminary injunctions, in addition to all other remedies.



21. Personal Data Privacy

21.1 Any personal data that may be collected by the Company shall be governed by the Privacy Statement and this Clause 21. In the event of any inconsistencies between this Clause 21 and the terms of the Privacy Statement, this Clause 21 shall take precedence over any conflicting provision in the Privacy Statement.

21.2 You shall:

- (a) fully comply with the Hong Kong Personal Data (Privacy) Ordinance (Cap. 486) and/or any other applicable data protection laws in respect of any personal data provided by you to us;
- (b) ensure, acknowledge and warrant that we have the right and the required consent to use any personal data provided by you to us for the purposes of:
 - (i) processing your application for a Registered Account;
 - (ii) managing or administering your Registered Account;
 - (iii) providing you with any services related to your Registered Account or the eTS Website;
 - (iv) processing, assessing, evaluating or communicating with you with regard to any Submissions submitted by you or any Procurement Documents or Supplier Registration Documents;
 - (v) any site visits or briefings organised by the Company which your employees, officer, owners, members, representatives or agents may attend and, if necessary, application for permits for the above purposes;
 - (vi) to communicate with you in respect of any Procurement Documents, Response to Clarification, Letter of Acceptance, Letter of Intent, Supplier Registration Documents and Response to Supplier Registration Clarifications;
 - (vii) to communicate with you in respect of your Registered Account or the eTS Website and any related services;
 - (viii) the procurement process contemplated under the System; and
 - (ix) any purpose directly related to any of the above.

22. Termination

22.1 We may terminate your use of and access to any part of or all of the eTS Website or any related services at any time, with immediate effect and without notice to you, for any reason whatsoever, including without limitation, due to:

- (a) your breach of this Agreement;
- (b) the Company being unable to verify or authenticate any information provided by you;



- (c) if the Company believes that your actions or omissions may give rise to any liability, or are otherwise objectionable, inappropriate or illegal.

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

- 22.2 If you provide any information that is untrue, inaccurate, not current or incomplete, we have the right to suspend or terminate your registration and/or refuse any and all current or future use of the service (or any portion of it). If you have registered with us on behalf of a company or other entity, then you represent and warrant that you have the authority to bind such company or other entity to this Agreement.
- 22.3 Upon termination in accordance with Clause 22.1 and Clause 22.2 above, you agree to immediately cease using or accessing the eTS Website or any related services (as required by the Company), and shall immediately destroy all material obtained from the eTS Website and any copies thereof. Termination of your right to use or access in whole or in part the eTS Website or any related services, shall be without prejudice to any other rights or remedies available to the Company against you.

23. Governing Law, Jurisdiction, Language, Transfer of Rights, Partnership and Agency

- 23.1 This Agreement is governed by the laws of Hong Kong, and are subject to the exclusive jurisdiction of the courts of Hong Kong.
- 23.2 This Agreement is drafted in the English language. If this Agreement is translated into any other language, such translation is provided for reference purposes only and the English language version shall prevail.
- 23.3 You may not transfer any of your rights or obligations under this Agreement without the written consent of the Company. We may transfer our rights or obligations or both to any person or entity, including any of its affiliates, without your consent.
- 23.4 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between you or the Company, constitute you as the agent of the Company, or authorise you to make or enter into any commitments for or on behalf of the Company.

24. Notices

All legal notices or demands to or upon you shall be effective and deemed to be in writing if transmitted to you through the use of the eTS Website, or otherwise delivered personally, sent by courier, certified mail, by facsimile or email to the last-known correspondence address, fax number or email address provided by you to us, or by posting such notice or demand on an area of the eTS Website that is publicly accessible, without a charge. You shall be deemed to have received any such notice, if and when:

- a. the Company are able to demonstrate that the notice has been sent to you; or



- b. immediately upon the Company posting such notice on an area of the eTS Website that is publicly accessible without charge,

whichever date is earlier.

25. Force Majeure

Without prejudice to the generality of Clauses 18 and 19.1 above, under no circumstances shall the Company be liable for any delay or failure or disruption in relation to the eTS Website, your Registered Account or any related services, including the application and registration process for a Registered Account, or the eTS Website 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, 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.

26. Severability

If any provisions of this Agreement are held invalid, illegal or unenforceable by any court or tribunal of competent jurisdiction, they will be severed and the remaining terms will continue in full force and effect as if this Agreement 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.

27. Entire Agreement

This Agreement contains the entire agreement between you and the Company and replaces all previous written or oral agreements relating to its content.

28. Waiver

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

29. Assignment

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

30. Rights of Third Parties



The parties do not intend any terms of this Agreement to be enforceable by any party other than you and the Company pursuant to the Contracts (Rights of Third Parties) Ordinance (Cap 623). You agree that no third parties shall be entitled to enforce the terms of this Agreement and the Contracts (Rights of Third Parties) Ordinance (Cap 623) does not apply.