

**Retail Technology Adoption Assistance Scheme for  
Manpower Demand Management**

**Agreement**

Application Number: [Application Number]

This Agreement is made on the [Day (ordinal number)] day of [Year] between:

- (1) Hong Kong Productivity Council, a statutory body incorporated under the Hong Kong Productivity Council Ordinance (Chapter 1116) of Hong Kong whose office is situated at HKPC Building, 78 Tat Chee Avenue, Kowloon, Hong Kong (“HKPC”)
- (2) [Company Name as shown in BR], an enterprise registered in Hong Kong under the Business Registration Ordinance (Chapter 310) whose registered office is at [Company Address as shown in BR] (the “Grantee”).

**RECITALS**

- (A) The Government of the Hong Kong Special Administrative Region (the “**Government**”) has set up the Retail Technology Adoption Assistance Scheme for Manpower Demand Management (“**ReTAAS**”) in Hong Kong (as defined below) which aims to provide funding support for eligible retail enterprises to adopt relevant information and communications technology and other technologies for manpower demand management purposes.
- (B) The Government has engaged HKPC as the partner to implement ReTAAS.
- (C) On [date], the Grantee submitted a proposal to HKPC for financial assistance from ReTAAS in order to carry out the Project.
- (D) Subject to and upon the terms and conditions contained in this Agreement,
  - (i) such proposal is approved and accepted by HKPC, a copy of which is annexed hereto as the Appendix (“**Approved Project Proposal**”);
  - (ii) HKPC has approved the provision of a maximum sum of Hong Kong Dollars [ • ] Only (HK\$[ • ]) (“**Grant**”) to the Grantee for carrying out and completing the Approved Project Proposal by the Grantee and all the approved items of the budget set out in the Approved Project Proposal (“**Approved Budget**”); and
  - (iii) HKPC has agreed to grant, and the Grantee has agreed to accept, the Grant for the purpose of carrying out the Project.

**OPERATIVE PART:**

**1. Definitions and Interpretation**

1.1 In this Agreement, unless the context requires otherwise or expressly provided otherwise, the following expressions shall have the following meanings respectively:

“Approved Budget” has the meaning attributed to such term in Recital (D)(ii).

“Approved Project Proposal” has the meaning attributed to such term in Recital (D)(i).

“Associate” of any person means:

(a) a Relative or partner of that person; or

(b) a company one or more of whose Directors is in common with one or more of the Directors of that person.

“Associated Person” in relation to another person means:

(a) any person who has Control, directly or indirectly over the other; or

(b) any person who is Controlled, directly or indirectly, by the other; or

(c) any person who is Controlled by, or has Control over, a person at (a) or (b) above.

“Audited Accounts”	means any statement of account in respect of the Project containing an income and expenditure account prepared in accordance with the relevant laws of Hong Kong and the accounting standards as in effect from time to time and consistently applied in Hong Kong (including the Accounting Standards, Accounting Guidelines and Statements of Auditing as the Hong Kong Institute of Certified Public Accountants may issue and update from time to time) and duly audited, dated and signed by a practice unit as defined under the Professional Accountants Ordinance (Cap. 50) who is not in any way connected with the Project.
“Commencement Date”	means [Project Start Date] or such other date as the Government may approve in writing.
“Completion Date”	means [Project End Date] or such other date as the Government may approve in writing.
“Completion Report”	has the meaning attributed to such term in Clause 13.1.
“Control”	<p>in relation to another person means the power of a person to secure:</p> <ul style="list-style-type: none"><li>(a) by means of the holding of shares or interests or the possession of voting power in or in relation to that or any other person; or</li><li>(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 or any other person; or</li><li>(c) by virtue of holding office as a Director in that or any other person;</li></ul> <p>that the affairs of the first-mentioned person are conducted in accordance with the wishes of that other person.</p>
“Director”	includes any person occupying the position of director by whatever name called, including a de facto or shadow director.

“Equipment”	means the asset, instrument, machinery, computer hardware or computer software to be used for carrying out the Project including those listed as equipment in the Approved Project Proposal.
“Events of Default”	has the meaning attributed to such term in Clause 17.1.
“Government”	has the meaning attributed to such term in Recital (A).
“Grant”	has the meaning attributed to such term in Recital (D)(ii).
“HK or Hong Kong”	means the Hong Kong Special Administrative Region of the People’s Republic of China.
“HK\$”	means Hong Kong Dollars, the lawful currency of Hong Kong.
“Implementation Agent”	means any employee, contractor or any agent engaged by the Grantee to provide service for carrying out the Project.
“IPRs”	means patents, trademarks, service marks, trade names, design rights, copyright, domain names, database rights, rights in know-how, new inventions, designs or processes and other intellectual property rights whether now known or hereafter created of whatever nature and wherever arising and in each case whether registered or unregistered and including applications for the grant of any such rights.
“Matching Funds”	means the fund in cash to be paid by the Grantee for the carrying out and completion of the Project.
“Potential Event of Default”	means any event which would become (with the passage of time or the giving of notice or both) an Event of Default.
“Project”	means “[Project Title]”, the details of which are set out in the Approved Project Proposal.

“Project Account”	means a HK\$ account established and maintained by the Grantee with a licensed bank in Hong Kong under the Banking Ordinance (Chapter 155) for the purpose of the Project in accordance with this Agreement.
“Project Coordinator”	means the project coordinator employed or engaged by the Grantee to carry out the Project.
“Project Cost”	means the costs and expenses incurred and paid by the Grantee in the discharge of the Project.
“Project Deliverables”	means those deliverables as specifically described in the Approved Project Proposal and any other outcome or results of the Project (tangible or intangible).
“Project Duration”	means the period from the Commencement Date and ending on the earlier of (i) the Completion Date or (ii) the date of expiry or termination of this Agreement (both dates inclusive).
“Project Materials”	means all Project Deliverables, works of authorship and materials of whatever media (including those in electronic format) developed, written, prepared, produced or created by the Grantee, its directors, employees, agents or sub-contractors in the performance of the Project and/or this Agreement (whether individually or jointly with the Government) (including all reports, studies, compilation of data, diagrams, charts, photographs, drawings, specifications, documents) and all drafts and working papers relating to any of the above items.
“Project Team”	means the team of officers or employees of the Grantee, and any Implementation Agent and Service Provider or other contractor, adviser, consultant, or agent, deployed or engaged by the Grantee to carry out the Project.
“Relative”	means the spouse, parent, child, brother or sister of the relevant person, and, in deducing such a relationship, an adopted child shall be deemed to be a child both of the natural parents and the adopting parent and a step child to be a child of both the natural parents and of any step parent.

- “ReTAAS” has the meaning attributed to such term in Recital (A).
- “ReTAAS Application Guide” means the publication “Guide to Application for the Retail Technology Adoption Assistance Scheme for Manpower Demand Management” published by HKPC in Dec 2014 as may be amended, supplemented or replaced by HKPC from time to time.
- “this Agreement” means this agreement, including all Appendices attached hereto.

1.2 In this Agreement, except where the context otherwise requires:

- (a) Clause and Appendix headings are for ease of reference only and shall not affect, limit or extend in any way the interpretation or construction of this Agreement;
- (b) any reference to Clause and Appendix shall be construed as a reference to a Clause and Appendix of this Agreement;
- (c) any reference in this Agreement or any other agreement or document shall be construed as a reference to this Agreement or, as the case may be, such other agreement or document as the same may have been, or may from time to time be, amended, varied, novated or supplemented;
- (d) any reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as replaced, amended, modified, substituted or re-enacted from time to time, and shall include all subordinate legislation made thereunder;
- (e) any agreement, consent or approval to be given by HKPC may be given or withheld in its discretion, and subject to any conditions as HKPC may consider appropriate, must be in writing, must be given before the act or matter or thing for which agreement, consent or approval is required and must be signed by HKPC or a duly authorized person on its behalf to be effective under this Agreement. Failure by HKPC to give any agreement, consent or approval shall be deemed a denial or refusal;
- (f) any opinion to be given by HKPC must be in writing and must be signed by HKPC or a duly authorized person on its behalf to be effective under this Agreement;

- (g) any act, default, neglect or omission of any Directors, employees, agents, contractors or sub-contractors of the Grantee (including any Implementation Agent or Service Provider,) shall be deemed to be the act, default, neglect or omission of the Grantee;
- (h) any reference in this Agreement to “continuing”, in relation to an Event of Default, shall be construed as a reference to an Event of Default which has not been waived in accordance with the terms hereof and, in relation to a Potential Event of Default, one which has not been remedied within the relevant grace period or waived in accordance with the terms hereof;
- (i) whenever the expression “including” is used in this Agreement, it shall be deemed to mean “including without limitation”;
- (j) any reference in this Agreement to “indebtedness” shall be construed so as to include any obligation (whether incurred as principal, as indemnifier, as guarantor or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (k) any reference to a “person” shall be construed as a reference to any individual, corporation, firm or any body of persons, corporate or unincorporated and includes any public body;
- (l) words denoting the singular shall include the plural and vice versa;
- (m) words denoting any one gender shall include the other genders;
- (n) words importing the whole shall be treated as including a reference to any part of the whole;
- (o) “or” is a reference to “and/or”; and
- (p) references to “Chapters” are to the Laws of Hong Kong.

1.3 If there is any inconsistency, ambiguity, repugnance or conflict between the main body of this Agreement and the Appendix or ReTAAS Application Guide, the main body of this Agreement shall prevail.

## **2. Commencement and Completion of Project**

2.1 Unless this Agreement is earlier terminated or extended as provided herein, this Agreement shall commence on the date when this Agreement is signed and shall expire on the Completion Date.

- 2.2 Unless HKPC agrees otherwise, the Grantee shall commence the Project on the Commencement Date and complete the Project on or before the Completion Date.

### **3. Grantee's Obligations, Warranties, Undertakings and Indemnity**

- 3.1 In consideration of HKPC agreeing to provide the Grant for the Project in accordance with this Agreement, the Grantee shall:

- (a) carry out and complete the Project in accordance with this Agreement (which, for the avoidance of doubt, includes the Approved Project Proposal), the ReTAAS Application Guide, and all requirements and directives as may from time to time be prescribed or given by HKPC or Government in writing;
- (b) bear no less than 50% of the Project Cost in carrying out and completion of the Project;
- (c) when required by HKPC or the Government from time to time during and after the performance of the Project (and notwithstanding the early termination of this Agreement or completion of the Project), provide input or materials (including information and documents) for publications related to ReTAAS and attend and participate in publicity and promotional activities for ReTAAS to share its experience in carrying out the Project.

- 3.2 The Grantee hereby warrants and undertakes and with continuing effect throughout the continuance of this Agreement (save that in the case of sub-clause (k) which the Grantee hereby warrants and undertakes and with continuing effect throughout the continuance of this Agreement up to the date falling seven years after its termination or expiry) that:

- (a) it shall have been registered and remain duly registered for carrying on a business in Hong Kong under the Business Registration Ordinance (Chapter 310) and shall have substantive retail business operations in Hong Kong with reference to guidelines issued by HKPC and guidelines issued by the Government from time to time throughout the Project Duration;
- (b) it shall not be a company or corporation which has any of its shares listed on The Stock Exchange of Hong Kong Limited (whether on the Main Board or Growth Enterprise Market) or similar exchanges in or outside Hong Kong;



- (c) it shall carry out and complete the Project in an impartial, timely and diligent manner and the Grantee and the Project Team have all the necessary qualifications, ability, experience, skills, expertise and capacity to carry out the Project on the terms and conditions set out in this Agreement;
- (d) it shall forthwith notify HKPC in writing upon the Grantee, becoming aware of the occurrence of any Event of Default or any Potential Event of Default;
- (e) it shall carry out its duties and obligations in accordance with this Agreement including the Approved Project Proposal, the ReTAAS Application Guide, and all requirements and directives relating to the Project as may from time to time be prescribed or given by HKPC or the Government in writing;
- (f) it shall submit in writing to HKPC the request for endorsement of any variation of project deliverables;
- (g) it shall use the Grant solely and exclusively for the purpose of the Project in accordance with the Approved Project Proposal. The Grantee shall not change the Approved Project Proposal or any part thereof without prior written approval of HKPC or the Government;
- (h) it shall ensure that all receipts and payments in respect of the Project are properly and timely recorded;
- (i) it shall use the Equipment funded by the Grant solely and exclusively for the purpose of the Project;
- (j) it shall hold, operate and use the Equipment funded by the Grant in a proper way and keep and maintain the same at its own cost at all times in good repair and condition (fair wear and tear excepted);
- (k) it shall, upon request, allow HKPC, the Government or any person nominated by HKPC or the Government to enter at all reasonable times into and upon any premises of or controlled by the Grantee, where any document or record pertaining to the Project is kept or any item arising out of the Project is being carried out, experimented, manufactured, displayed or stored, for the purpose of inspection or copying, or for verifying the accuracy of any information given by the Grantee to HKPC, or otherwise verifying that the Grantee has complied with its obligations under this Agreement;
- (l) it shall comply in all respects, including the giving of all notices, the paying of all fees and the obtaining of all consents and approvals, with

the provisions of all legislation, regulations and by-laws affecting or in any way relating to the Project;

- (m) it has all power, authority and capacity to enter into this Agreement;
- (n) it has all the necessary authorisations and approvals in order to lawfully enter into and exercise its rights and perform its obligations under this Agreement;
- (o) the obligations expressed to be assumed by the Grantee in this Agreement are legal and valid obligations binding on it and enforceable against it in accordance with the terms thereof;
- (p) it is able to pay its debts as they fall due and has not commenced negotiations with any one or more of its creditors with a view to the general readjustment or rescheduling of its indebtedness or made a general assignment for the benefit of or a composition with its creditors;
- (q) no actions or steps have been taken or legal proceedings have been started or threatened against the Grantee for its winding up, dissolution, insolvency, administration, reorganisation or reconstruction (whether by voluntary arrangement, scheme of arrangement or otherwise) or for the appointment of a receiver, administrator, administrative receiver, conservator, custodian, trustee or similar officer of the Grantee or of any or all of the Grantee's assets or revenues; and
- (r) all information supplied, and statements and representations made by or on behalf of the Grantee in relation to the Project, the Approved Project Proposal or this Agreement are true, accurate and complete in all respects and are not misleading, whether by omission or otherwise.

3.3 The Grantee shall indemnify and keep indemnified each of HKPC the Government and any assigns and successors-in-title of HKPC, or those of the Government fully and effectively indemnified against (i) all action, claims (whether or not successful, compromised, settled, withdrawn or discontinued) and demands threatened, brought or established against HKPC, the Government, and any assigns and successors-in-title of HKPC or those of the Government and (ii) all costs (including all legal fees and other awards, costs, payments, charges and expenses), losses, damages and liabilities suffered or incurred by HKPC, the Government, and any assigns and successors-in-title of HKPC or those of the Government, which in any case arise directly or indirectly in connection with, out of or in relation to;

- (a) any breach of this Agreement by the Grantee, regardless of whether such breach was caused by the Grantee or any member of the Project

Team; or

- (b) any act or omission of the Grantee or any member of the Project Team in the implementation of the Project ; or
- (c) any allegation or claim that the use, operation or possession of the Project Deliverables or the exercise of any rights granted under this Agreement infringes any IPRs of any persons; or
- (d) any warranties or representations made by the Grantee in this Agreement, or any document (including reports and financial statements) or information provided by the Grantee to HKPC or the Government from time to time being untrue, misleading, forged or incomplete; or
- (e) any failure of the Grantee or of the Project Team to comply with or observe any applicable law or regulation (regardless of the law or regulation of which jurisdiction in the implementation of the Project).

#### **4. Project Cost and Method of Payment of the Grant**

- 4.1 In accordance with the Approved Budget, the Project Cost is estimated to be HK\$[Total Project Cost]. The actual entire amount of the Grant payable under this Agreement shall be no more than 50% of the Project Cost as estimated in the Approved Budget, or the Project Cost as audited in the Audited Accounts accepted by HKPC, whichever is the lesser amount, and subject to the funding cap of HK\$50,000 per Grantee for maximum 2 Projects (covering the maximum subsidy of HK\$1,000, on a dollar-to-dollar matching basis, for the costs of preparing audited accounts for each Project).
- 4.2 Subject to the Grantee's compliance with the terms and conditions of this Agreement, HKPC will pay the Grant on a reimbursement basis within 30 days after:
  - (a) the acceptance by HKPC of the Completion Report and Audited Accounts; and
  - (b) the production by the Grantee of documentary evidence, if requested by HKPC, to the satisfaction of HKPC showing payment of the Matching Funds paid by the Grantee,

provided that HKPC shall have the power to withhold payment or any part thereof if in its opinion:

- (i) the Grantee has failed or is likely to fail to carry out the Project in accordance with the Approved Project Proposal; or
- (ii) any of the reports or financial statements submitted by the Grantee or any Project Deliverables produced by the Grantee under this Agreement does not meet the requirements specified in this Agreement.

4.3 The Grantee shall not be entitled to charge any interest or claim any compensation or relief of whatever nature against HKPC in the event of any late or withholding of payment of any Grant by HKPC for any reason whatsoever.

4.4 HKPC, whether on its own account or for and on behalf of the Government, makes no representation or warranty, by virtue of the funding of the Project hereunder, as to the safety, value or utility of the Project, nor shall the fact of participation of the Government, its funding or the Government's, acting through HKPC, exercise of its rights hereunder be deemed an endorsement of the Project or of the Grantee, nor shall the name of the Government be used for any purpose by the Grantee or be publicised in any way by the Grantee, except for the acknowledgement of the funding support from the Government placed by the Grantee on Equipment, facilities or in publications for disseminating the result/experience gained in the Project.

## **5. Project Account**

5.1 The Grantee shall maintain and use a Project Account under its name for the purpose of processing all receipts and payments relating to the Project.

## **6. Cash Payment**

6.1 In addition and without prejudice to other provisions of this Agreement, the Grantee may purchase, procure or lease the Equipment, goods or services for the Project in cash to meet immediate needs, provided that the total value of the single transaction of the Equipment, goods or services or all of the above in relation to or for the purposes of the Project shall not exceed HK\$5,000 each and such transaction shall be reasonably necessary for the discharge of the obligations and duties owed by the Grantee under this Agreement and the rates obtained are reasonable and an authorised officer of the Grantee has certified that such requirements are satisfied in file. For the avoidance of doubt, any single transaction by the Grantee with a total value exceeding HK\$5,000 shall not be made in cash without the prior written approval of HKPC.

## **7. Financial and Budgetary Control**

- 7.1 The Grantee acknowledges that HKPC will not make any payment in respect of, or be liable for, any expenditure incurred by the Grantee in excess of the Grant. To the maximum extent permitted by law, the Grantee acknowledges that none of the Government or HKPC will accept any liabilities for any loss, deficit, damage, liability or claim incurred or sustained by the Grantee or any other person in respect of or arising from the Project.
- 7.2 The Grantee may reallocate the Grant from one approved item of the Approved Budget to another from time to time provided that:
- (a) any internal reallocation of Grant shall be among the approved items of the Project as stated in Approved Budget;
  - (b) no reallocation of Grant from one item to another shall exceed 20% in total of the amount originally approved for each item; and
  - (c) the reallocation shall not adversely affect the quantity and quality of any deliverables under the Project.

The revised budget shall comply with the relevant rules in the ReTAAS Application Guide.

- 7.3 If any reallocation of Grant exceeds the limit as stated in Clause 7.2 above, the Grantee shall apply in writing to obtain the prior written approval from HKPC with supporting documentary evidence to demonstrate the need and benefit for such reallocation of funds. HKPC may in its sole discretion determine whether or not to grant its approval, and approval will only be granted in exceptional circumstances.

## **8. Books and Records**

- 8.1 The Grantee shall keep a proper and separate set of books and records for the Project. The Grantee shall maintain the books and records in such a manner so as to enable the production of statement of income and expenditure (items in the same format as shown in the Approved Budget) in respect of each Project. The Grantee shall ensure that all transactions relating to the Project shall be properly and timely recorded in its books of accounts.
- 8.2 The Grantee shall ensure that accrual basis of accounting shall be adopted for the Project, and expenditure may only be charged after the Equipment, and goods have been received and used by the Grantee, or services procured by the Grantee have been provided. Moreover, the Grantee shall ensure that the expenditure so charged shall be incurred during the Project Duration only and shall be fully

settled no later than two months after completion of the Project. Also, the Grantee shall ensure that all receipts and expenditure relating to the Project shall be fully and properly recorded in the books and records in accordance with this Agreement and all requirements or directives as may be prescribed or given by HKPC or the Government in respect of the Project.

- 8.3 The Grantee shall maintain, during the continuance of this Agreement and for a minimum period of seven years after the expiry or termination of this Agreement, full and proper books of accounts and records (including receipts, counterfoils, vouchers, quotations and tendering documents and other supporting documents) in connection with the Project (including all matters in respect of the receipt, expenditure and custody of the Grant which may be provided for any purposes relating to the Project). The Grantee shall ensure that HKPC, the Government and its authorised representatives shall be allowed access to all or any of the aforesaid books and records for conducting audit (including value for money audit), inspection, verification and copying from time to time upon reasonable notice during the continuance of this Agreement and the seven-year period mentioned above. In this connection, the Grantee shall be obliged to make available all project books of accounts and records and explain to HKPC, the Government and their authorised persons any matters relating to the receipt, expenditure or custody of any money derived from the Project.
- 8.4 The Grantee shall submit to HKPC Audited Accounts in respect of all income and expenditure arising from or relating to the Project in respect of the entire Project Duration within two months after the end of the Project Duration.
- 8.5 The Grantee shall ensure that the Audited Accounts shall contain statements by an auditor expressing its opinion on whether:
- (a) the Grantee has, during the entire Project Duration, complied with the provisions set out in this Agreement (including the Approved Project Proposal, the ReTAAS Application Guide as well as all requirements and directives relating to the Project as may from time to time be prescribed or given by HKPC or the Government in writing); and
  - (b) the Audited Accounts have been prepared in accordance with this Agreement.

The Audited Accounts shall show a true and fair view of the state of affairs of the Project as well as the operations of the Grantee in relation to the Project for the entire Project Duration. The Grantee shall also instruct the auditor to make full disclosure of any such non-compliance in the auditor's report.

- 8.6 Late submission of the Audited Accounts may lead to suspension or termination of the Grant for the Project by HKPC.

**9. No Double Emoluments**

9.1 Unless otherwise agreed by HKPC in writing ,

- (a) the Grantee shall ensure that the Grant is not used to pay any emoluments of any person working on or otherwise involved in the Project who is on the payroll of the Grantee unless such allocation is set out in the Approved Project Proposal (irrespective of whether the relevant service/work is rendered within or outside the normal working hours of the person concerned); and
- (b) the Grantee shall not be entitled to make any claims against the Grant in respect of remuneration or reward payable to any person other than remuneration or reward wholly, exclusively and necessarily attributable to that person's service or services in the performance of the Project.

**10. Procurement of Resources**

10.1 With the objectives of ensuring openness, fairness and value for money, the Grantee shall ensure that all procurement and, where applicable, leases, of all goods, services and Equipment funded by the Grant of any value in relation to or for the purposes of the Project are made on an open, arms' length and competitive basis, in accordance with the prudent commercial principles and only from suppliers/contractors who are not Associates or Associated Persons of the Grantee, unless HKPC agrees otherwise. The Grantee shall also use reasonable endeavours to segregate the duties in the procurement process of the Grantee (including the assignment of different staff members to source suppliers or contractors for invitation of quotations or tenders, to approve quotations or tenders, and to certify receipt or completion of the Equipment, goods or services required under this Agreement). Moreover, the acceptance of an offer can only be approved by another staff member not lower than the rank of the staff member calling the quotations or tenders.

10.2 Without prejudice to the strict observance of these objectives and requirements, the Grantee shall adhere to the following procurement procedures and practices unless HKPC agrees otherwise:

- (a) for every procurement or lease of the Equipment, goods or services in relation to or for the purposes of the Project, the aggregate value of which does not exceed HK\$50,000, the Grantee shall invite quotations in writing from at least two suppliers or contractors or service providers

or lessors and accept the lowest conforming bid. Full justifications must be given to HKPC for approval before procurement if fewer than two suppliers or contractors or service providers or lessors could be identified from the market. If the lowest conforming quotation is not selected, prior written consent must be obtained from HKPC and full justifications shall be given;

- (b) for every procurement or lease of the Equipment, goods or services in relation to or for the purposes of the Project, the aggregate value of which is over HK\$50,000 but does not exceed HK\$1.43 million, the Grantee shall invite quotations in writing from at least five suppliers or contractors or service providers or lessors and accept the lowest conforming bid. Full justifications must be given to HKPC for approval before procurement if fewer than five suppliers or contractors or service providers or lessors could be identified from the market. If the lowest conforming quotation is not selected, prior written consent must be obtained from HKPC and full justifications shall be given;
- (c) for every procurement or lease of Equipment, goods or services in relation to or for the purposes of the Project, the aggregate value of which exceeds HK\$1.43 million, the Grantee shall use open and competitive tender procedures. Channels which are easily accessible by the general public shall be used to publicise the tender notices.
- (d) unless prior written approval from HKPC is obtained, the Grantee or any person authorised by the Grantee to call for or in any way involved in the quotation or tender exercise shall not participate in the bid itself.

## **11. Risk in and Title to the Equipment**

- 11.1 The full legal and equitable title and interest in any piece of Equipment, software and other assets funded by Grant monies shall vest with the Grantee. The risk in the Equipment, software and other assets purchased under the Project (e.g. loss, damages, liabilities,) shall be also borne by and remain with the Grantee.
- 11.2 The Grantee shall use, maintain and keep the Equipment, software and other assets purchased under the Project for one (1) further year after completion of the Project, and shall make such available for inspection of HKPC upon its request.

## **12. Conflict of Interest**

- 12.1 The Grantee shall, during the continuation of this Agreement and for six months thereafter:



- (a) ensure that it (including its Associates and Associated Persons), the Project Team, and its directors, employees, agents, contractors, consultants and other personnel and their respective Associates and Associated Persons (collectively “**Restricted Group**”), shall not undertake any service, task or job or do anything whatsoever on his own account or for or on behalf of the Grantee or any third party (other than in the performance of this Agreement) which conflicts, or which may be seen to conflict, with the Grantee’s duties to HKPC under this Agreement unless and to the extent HKPC permits otherwise and before giving such permission, HKPC has been fully informed by the Grantee, in a timely fashion of all the circumstances in which the permission is sought; and
- (b) immediately notify HKPC in writing of all or any facts which may reasonably be considered to give rise to a situation where the financial, professional, commercial, personal or other interests of any member of the Restricted Group, conflict or compete, or may conflict or compete, with the Grantee’s duties to HKPC under this Agreement.

12.2 The Grantee shall notify HKPC in writing immediately upon knowing of any interests (whether actual or potential, direct or indirect) that any member of the Restricted Group may have in, or of any association or connection which a member of the Restricted Group may have with, any person, product, service or equipment proposed or recommended or to be acquired or procured by the Grantee for the Project.

12.3 The Grantee shall ensure that each of member of the Restricted Group inform the Grantee and keep it informed regularly of all facts which may reasonably be considered to give rise to a situation where the interests of such member, conflict or compete, or may conflict or compete, with the Grantee’s duties to HKPC under this Agreement.

12.4 Unless already included in the Approved Project Proposal, prior written approval from HKPC shall be sought if the Grantee or any other member of the Restricted Group proposes to supply or provide or perform for consideration (whether in cash or in specie) any equipment, goods, service, task or activity for the Project.

### 13. **Reports**

13.1 The Grantee shall submit to HKPC a report (“**Completion Report**”) in the format specified by HKPC. The Completion Report shall include but not limited to a summary of technologies adopted, a statement as to any deviation from the Project Proposal and benefits achieved under the Project and shall be submitted within two months after the end of the Project Duration.

- 13.2 Upon request of HKPC, the Grantee shall immediately provide clarification and/or additional information on the contents of the above-mentioned report and shall make available for inspection, verification or copying by HKPC, the Government or their authorised representatives all documents and records relating to the above-mentioned reports. Such documents and records shall be kept by the Grantee and make available to HKPC, the Government or their authorised representatives during the Project Duration and for at least seven years from the Completion Date.
- 13.3 HKPC may conduct on-site checking to verify the progress and results of the Project at any time during the period from signing of this Agreement to one (1) year after completion of the Project. Such checking may be arranged with or without advance notice. In this connection, the Grantee shall cooperate with HKPC for the proper arrangement of on-site checking and make available all project documents and explain to HKPC for any matters relating to the progress and results of the Project.

#### **14. Intellectual Property Rights**

14.1 The Grantee represents, warrants, undertakes and agrees that:

- (a) the Grantee has the full capacity, power and authority to enter into this Agreement including without limitation the grant of the rights referred to in Clause 14.7 upon the terms and conditions of this Agreement;
- (b) the implementation of the Project, the provision of any Project Materials, reports, works, materials or services by the Grantee in performing this Agreement, the use or possession by HKPC, its authorised users, assigns and successors-in-title of any Project Materials, reports, works or materials relating to the Project or any part thereof for any of the purposes contemplated by this Agreement does not and will not infringe any Intellectual Property Rights of any person;
- (c) in respect of any Project Materials, reports, works or materials used by the Grantee in the performance of the Project and in respect of which any Intellectual Property Rights are vested in a third party, prior to the use or incorporation of such Project Materials, reports, works or materials, the Grantee shall have obtained the grant of all necessary consents, approvals and clearances for itself and its authorised users and for HKPC, assigns and successors-in-title authorising the use of such Project Materials, reports, works or materials for any of the purposes contemplated by the Agreement;

- (d) any Project Materials, reports and work (whether finished or in manuscript or unpublished format) created, used or performed by the Grantee in implementing the Activities shall be either;
    - (i) original work of the Grantee which it is entitled to use or perform in public without the licence or permission of any other person; or
    - (ii) original work of a third party which the Grantee is entitled to use or perform in public by reason of the Grantee holding all necessary licences or permission from such third party entitling it to use or perform such work;
  - (e) the exercise by HKPC, its authorised users, assigns and successors-in-title of any of the rights granted under this Agreement will not infringe any Intellectual Property Rights and moral rights of any person.
- 14.2 If required by HKPC, the Grantee shall produce satisfactory evidence including assignments or licences from the authors and/or other owners of Intellectual Property Rights in any Project Materials, reports and work (whether finished or in manuscript or unpublished format) that the Grantee has the right to use the work aforesaid for public release and performance purposes as set out in the Agreement, and such right will not infringe any Intellectual Property Rights of any person.
- 14.3 The Grantee shall be responsible for obtaining all the requisite licences and rights for implementing the Project and the performance of this Agreement, and pay all the fees and royalties therefor.
- 14.4 The Grantee shall at its own cost and expense execute any further documents, as required by HKPC from time to time, in order to give effect to its granting of the rights referred to in this Clause upon the terms and conditions of this Agreement.
- 14.5 The Grantee shall inform HKPC promptly from time to time of any Intellectual Property Rights that may arise in the implementation of the Project and how such Intellectual Property Rights would be handled, including the acquisition, use and the grant of licence of such Intellectual Property Rights and any sharing of royalties or any sorts of income to be generated from the implementation of the Project.
- 14.6 The Grantee hereby grants unconditionally to HKPC, its authorized users, assigns and successors-in-title a non-exclusive, perpetual, irrevocable, royalty-free, worldwide, transferable and sub-licensable licence to do the acts restricted by copyright that are stipulated in sections 23 to 29 of the Copyright

Ordinance (Cap. 528) in relation to the Project Materials, reports, works and materials relating to the Project. In relation to any parts of the Project Materials, reports, work and materials relating to the Project to which the Grantee is not empowered to grant the sub-licence(s), the Grantee undertakes to procure at its sole cost and expense the grant of such rights for the benefits of HKPC, its authorised users, assigns and successors-in-title by the relevant third party Intellectual Property Rights owners in respect of such Project Materials, reports, works and materials relating to the Project to be granted prior to their use by the Grantee for any purpose contemplated by this Agreement.

- 14.7 The Grantee hereby waives and undertakes to procure at its own cost and expense all relevant authors and directors of the Project Materials, reports, works and materials relating to the Project or any part thereof to waive all moral rights (whether past, present or future) in the said items, such waiver shall operate in favour of HKPC, its authorised users, assigns and successors-in-title and shall take effect upon the grant of licence to HKPC, its authorised users, assigns and successors-in-title.

## 15. **Project Coordinator**

- 15.1 The Grantee shall appoint a Project Coordinator for the Project.

- 15.2 The Project Coordinator shall:

- (a) oversee the carrying out of the Project generally to ensure that all the provisions of this Agreement are complied with and that all the requirements relating to the Project as may from time to time be prescribed by HKPC or the Government in writing are met;
- (b) monitor the proper use of the Grant to ensure that the Grant is expended in accordance with the Approved Budget;
- (c) exercise economy in the use of the Grant and ensure that the Grant is spent in the most cost-effective manner;
- (d) liaise with HKPC on matters relating to the Project; and
- (e) attend meetings on the Project as may be convened by HKPC from time to time.

- 15.3 HKPC reserves the right to require replacement of the Project Coordinator. Any proposed change of the Project Coordinator initiated by the Grantee must be subject to the prior written approval of HKPC.

15.4 In the event of the death, incapacity or termination of employment of the Project Coordinator before the Completion Date, the Grantee shall immediately or within such period as may be approved by HKPC, arrange to substitute or replace the outgoing individual.

15.5 The Grantee shall ensure that the substitute or replacement is:

(a) no less qualified in terms of relevant experience and qualifications than the outgoing individual; and

(b) available at the relevant time to act as such substitute or replacement.

The Grantee shall without delay forward the curriculum vitae of the proposed substitute or replacement to HKPC and shall warrant that it is complete and accurate in all material respects. The deployment of such substitute or replacement shall be subject to HKPC's prior written consent. The Grantee shall be solely responsible for all direct, indirect and consequential costs or losses that may arise from the substitution or replacement of the Project Coordinator.

## 16. **Probity**

16.1 The Grantee shall observe the Prevention of Bribery Ordinance (Chapter 201) ("**PBO**"). The Grantee shall not, and shall procure that the Project Team, directors, employees, agents, suppliers, consultants, contractors and other personnel who are in any way involved in the Project shall not, offer to or solicit or accept from any person any money, gifts or advantages (as defined in the PBO) in relation to the Project.

16.2 If the Grantee or any of the Project Team, directors, employees, agents, suppliers, consultants, contractors and other personnel who are in any way involved in the Project commit any offence under the PBO in relation to this Project, HKPC shall be entitled to terminate this Agreement and shall hold the Grantee liable for any loss or damages the Government may thereby sustain.

## 17. **Termination**

17.1 Without prejudice to any other rights or remedies which HKPC or the Government may have, HKPC may at any time on the occurrence of any of the following events ("**Events of Default**") terminate this Agreement immediately by giving written notice to the Grantee with immediate effect:

(a) the Grantee fails to comply with any terms, conditions or undertakings in this Agreement and (in the case of a breach capable of being remedied)

the Grantee fails to remedy the breach to the satisfaction of HKPC within seven days after receipt of a notice in writing from HKPC requiring it to do so or within such other period as HKPC may in its sole discretion allow;

- (b) the Grantee persistently or flagrantly fails to comply fully and punctually with its obligations and duties under this Agreement;
- (c) the Grantee has failed to commence the Project on the Commencement Date or proceed with the Project with due diligence any time after the Commencement Date;
- (d) the Grantee has, without the prior written approval of HKPC, assigned, transferred, sub-contracted or otherwise disposed of any or all of its rights or obligations under this Agreement to any other third party or purported to do so;
- (e) the Grantee has abandoned this Agreement;
- (f) the Grantee fails to submit any reports, financial accounts or other documents in accordance with this Agreement, or any information or document represented to or provided by the Grantee to HKPC about the Project or this Agreement is incomplete, incorrect, untrue, inaccurate or misleading or forged;
- (g) the Grantee or any of the Project Team, directors, employees, agents, consultants, contractors and other personnel who are in any way involved in the Project commits any offence when carrying out the Project under the law of any applicable jurisdiction, or commits any other criminal offence which in the opinion of HKPC or the Government has affected the Grantee's abilities to perform this Agreement;
- (h) the Grantee fails or is unable to pay the Matching Funds or produce documentary evidence to the satisfaction of HKPC showing payment of the Matching Funds;
- (i) the Grantee engages in any conduct which is reasonably considered by HKPC to be prejudicial to the Project;
- (j) the Grantee stops or suspends payment to its creditors generally, or is unable or admits its inability to pay debts generally as they fall due or is declared or becomes bankrupt or insolvent;
- (k) the passing of any resolutions, the initiation of any proceedings, or the making of any order which may result in the winding up, or dissolution, insolvency, administration, reorganisation or reconstruction of the

Grantee (otherwise than a solvent reorganisation or reconstruction which HKPC has approved in advance prior to its implementation) or the appointment of a receiver, provisional liquidator, liquidator, administrator, administrative receiver, conservator, custodian, trustee or similar officer of the Grantee or of any or all of the Grantee's assets or revenues, or if the Grantee makes an assignment for the benefit of or composition with its creditors generally or threatens to do any of the above, or any event occurs under the laws of any jurisdiction that has a similar or analogous effect; or

- (l) the Grantee's use of any IPRs for the purpose of or otherwise in connection with the performance of this Agreement or any of the Project Deliverables is held by a court or is alleged to constitute an infringement of any person's IPRs.

17.2 Notwithstanding anything provided herein to the contrary, HKPC may at any time at its option terminate this Agreement by giving the Grantee not less than 30 days' prior written notice.

## 18. **Consequences of Expiry or Termination**

18.1 Upon the expiry or termination of this Agreement, this Agreement shall be of no further force and effect, but without prejudice to:

- (a) HKPC's rights and claims under this Agreement or otherwise at law against the Grantee arising from antecedent breaches of this Agreement by the Grantee (including any breach(es) which entitle HKPC to terminate this Agreement);
- (b) the rights and claims which have accrued to HKPC prior to the termination of this Agreement; and
- (c) the continued existence and validity of those provisions which are expressed to survive the expiry or termination of this Agreement or which in their context appropriately survive the expiry or termination of this Agreement and any provisions of this Agreement necessary for the interpretation or enforcement of this Agreement.

18.2 Upon the expiry or termination of this Agreement, the Grantee shall:

- (a) deliver to HKPC the Audited Accounts as required and in accordance with the time specified in Clause 8.4; and the Completion Report as required and in accordance with the time specified in Clause 13.1; and

(b) at the request of HKPC, the Grantee shall promptly enter into and perform all deeds of assignment, transfer or novation in favour of HKPC or any person whom HKPC may designate, for the assignment, transfer or novation of any contract, arrangement or other subject matter whatsoever on such terms and conditions as HKPC may stipulate; and procure any other third party whom HKPC considers necessary for effecting or perfecting such assignment, transfer or novation to enter into and perform any such deeds of assignment, transfer or novation.

18.3 Without prejudice to HKPC's other rights and remedies, notwithstanding anything herein to the contrary, upon termination of this Agreement pursuant to Clause 17.1 or upon occurrence of any event set out in Clause 17.1 (a) to (l), the Grantee shall, upon the request of HKPC, immediately repay to HKPC all or any sums (including the Grant) provided by HKPC to the Grantee pursuant to this Agreement together with Interest, and all administrative, legal and other costs incurred by HKPC and the Government arising from this Agreement or the Project (regardless of whether the Grantee has already spent the Grant or not).

## 19. **Relationship of the Parties**

19.1 Nothing contained or implied in this Agreement or in the arrangements contemplated by it is intended or shall create a partnership, joint venture or association of any kind between the parties hereto or between the Grantee and the Government. The Grantee shall have no authority to enter into any engagement or make any representation or warranty on behalf of HKPC or the Government; or bind HKPC or the Government to any obligation. Nothing contained or implied in this Agreement shall be so construed as to constitute either party hereto, or as between the Grantee and the Government, to be the agent of the other.

19.2 HKPC shall have the authority to exercise for and on behalf of the Government the rights and powers as specified in this Agreement and other powers which are necessary in the exercise of the aforesaid powers.

## 20. **Waiver**

20.1 No failure by either party to exercise and no delay by either party in exercising any right or remedy available to it under this Agreement or in law or in equity shall operate as a waiver of such right or remedy, nor shall any single or partial exercise of any such right or remedy preclude any other or further exercise thereof nor shall any such failure to exercise, or delay in exercising, or single or partial exercise of, any such right or remedy preclude the exercise of any other right or remedy. The rights and remedies of each party herein contained shall



be cumulative and not exclusive of any other rights or remedies provided by law or in equity.

**21. Modifications**

21.1 Subject to the provisions of this Agreement, no amendment or modification or addition to or waiver of this Agreement shall be valid unless made in writing and signed by both the authorised signatories of HKPC and the Grantee.

**22. Entire Agreement**

22.1 This Agreement constitutes the entire agreement between the parties in relation to the provision of the Grant by the Government through HKPC to the Grantee and supersedes all prior agreements (whether oral or in writing), letters and other documents in whatever form concerning the same. The parties confirm that they have not entered into this Agreement upon the basis of any statements, undertakings, warranties or representations that are not expressly stated in this Agreement.

**23. Severability**

23.1 If any provision of this Agreement or its application to any circumstances shall, to any extent, be invalid, illegal or unenforceable, the remainder of this Agreement and the application of that provision to other circumstances shall not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

**24. Assignment**

24.1 Save as provided in Clause 24.2 below, the Grantee shall not assign, transfer, sub-contract or otherwise dispose of any or all of its rights or obligations under this Agreement.

24.2 The Grantee may, subject to the prior written approval of HKPC, engage the services of independent Implementation Agents or Service Providers of its own to assist it to carry out the Project, provided that the Grantee:

(a) shall not be relieved from any of its obligations and duties under this Agreement by engaging any such independent Implementation Agent or Service Provider and shall remain fully liable to HKPC for the performance of such obligations and duties;

(b) shall remain liable for any act or omission of any such independent

Implementation Agent or Service Provider as if such act or omission were its own; and

- (c) shall secure binding obligations from all such independent Implementation Agents and Service Providers so as to ensure that the Grantee can comply with its obligations under this Agreement.

## 25. Notice

- 25.1 Each notice, demand or other communication given or made under this Agreement shall be in writing and delivered or sent to the relevant party at its address or facsimile number set out below (or such other address or facsimile number as the addressee has by five days' prior written notice specified to the other party):

To HKPC:                    Hong Kong Productivity Council  
                                  HKPC Building, 78 Tat Chee Avenue,  
                                  Kowloon, Hong Kong  
                                  Facsimile Number: 2788 5878

To the Grantee:        **[Company Name as shown in BR]**  
                                  **[Company Address as shown in BR]**  
                                  Attention: **[Name of Project Coordinator]**  
                                  Facsimile Number: **[Facsimile Number]**

- 25.2 Such notices, demands or other communications shall be addressed as provided in Clause 23.1 and, if so addressed, shall be deemed to have been duly given or made as follows, whichever is earlier:
  - (a) if sent by personal delivery, upon delivery at the address of the relevant party;
  - (b) if sent by post, two business days for local post after the date of posting;
  - (c) if sent by facsimile, when dispatched with confirmed receipt as evidenced by the transmission report generated at the end of the transmission of such facsimile by the facsimile machine used for such transmission.

## 26. Saving

- 26.1 Nothing in this Agreement shall be taken to restrict, derogate from or otherwise interfere with any powers, discretions or duties, or the exercise or performance of any powers, discretions or duties, conferred or imposed by or under any law upon the Government, any Government bureau or department or any public

officer or other person in the employ of the Government.

**27. Governing Law and Jurisdiction**

27.1 This Agreement shall be governed by and construed in accordance with the laws of Hong Kong and each party agrees to submit to the exclusive jurisdiction of Hong Kong courts.

**AS WITNESS hereof this Agreement is signed in duplicate by the Parties hereto the day and year first above written.**

SIGNED BY	}
Mr. Wong Ka Wai, Wilson	}
General Manager,	}
IT Industry Development Division	}
the duly authorised representative of	}
HONG KONG PRODUCTIVITY COUNCIL	}
	.....
	} Mr. Wong Ka Wai, Wilson
	}
in the presence of	}
Mr. Ng Che Wing, Kevin	}
Principal Consultant,	}
IT Industry Development Division	}
HONG KONG PRODUCTIVITY COUNCIL	}
	.....
	} (Company chop)

\_\_\_\_\_  
Mr. Ng Che Wing, Kevin

SIGNED BY	}
[Name of Signer]	}
[Post title of Signer]	}
for and on behalf of the	}
[Company Name as shown in BR]	}
	.....
	} [Name of Signer]
	}
in the presence of	}
[Name of Witness]	}
[Post title of Witness]	}
[Company Name as shown in BR]	}
	.....
	} (Grantee's company Chop)

\_\_\_\_\_  
[Name of Witness]

**Appendix**  
(Approved Project Proposal)