The Hong Kong Polytechnic University

Tendering Website Terms of Use

PLEASE READ THIS DOCUMENT WHICH CONTAINS THE TERMS AND CONDITIONS APPLYING TO YOUR USE OF THIS WEBSITE ("TENDERING WEBSITE"). YOUR USE OF THIS TENDERING WEBSITE SIGNIFIES YOUR AGREEMENT TO BE BOUND BY THESE TERMS.

1. Defined terms and interpretation

1.1. The following words, unless the context otherwise requires, have the following meanings –

"**Addendum**" or "**Addenda**" means any written document issued by PolyU for the purposes of modifying, supplementing or amending any part of the Invitation to Tender, Request for Quotation or Prequalification Invitation.

"**Amendment Date**" has the meaning given in Clause 11.1 below.

"**Applicant**" means a Supplier/Contractor who has submitted a Prequalification Submission.

"**Clarification**" means a clarification issued by PolyU, whereby PolyU has raised certain queries and is requesting for certain clarification from a Tenderer or Applicant who has submitted a relevant Quotation, Tender Submission or Prequalification Submission.

"**Closing Date**" means the closing date and time specified by PolyU for Tenderers or Applicants to submit their Submissions to PolyU in respect of a relevant Request for Quotation, Invitation to Tender or Prequalification Invitation.

"**Confidentiality Undertaking**" means the letter of undertaking to be executed by the signing party confirming that it will keep confidential all the documents and information related to PolyU as specified in the letter of undertaking;

"**Content**" means any material, correspondence or information, in any format, including but not limited to any computer files, text, computer software, images, graphics, photos, videos, sound, recordings directories, documents or any other materials used, displayed on, or transmitted or made available through the Tendering Website.

"**e-Certificate**" means a digital certificate issued via the Tendering Website.

"**Intellectual Property Rights**" means any trademarks, service marks, logos, trade names, corporate names, internet domain names, patents, designs, copyrights, database rights, inventions, semiconductor topography rights, know-how, trade secrets or any similar right exercisable in any part of the world, whether registered or not, and including any applications for the registration of any such rights, 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.

"**Intended Purposes**" has the meaning given in Clause 2 below.

"**Invitation to Tender**" means an invitation to tender, including any information attached thereto, issued by PolyU inviting a Supplier/Contractor to submit Tender Submissions according to the invitation to tender and, if applicable, its Addenda, for any goods, works and/or services required by PolyU.

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

"**Malicious Code**" means any computer virus, "back door", "time bomb", "logic bomb", "Trojan Horse", "worm", "drop dead device" or any other software, disabling code, 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 Tendering Website, the System or any associated data or information.

"**PolyU**", "**we**", "**us**" or "**our**" means The Hong Kong Polytechnic University established under The Hong Kong Polytechnic University Ordinance.

"**Prequalification Documents**" means all or any documents issued by PolyU in relation to a prequalification event including but not limited to any Prequalification Invitations, Confidentiality Undertakings, Response to Queries, Clarifications, etc. and, if applicable, any information attached and Addenda.

"**Prequalification Invitation**" means a prequalification invitation, including any information attached thereto, issued by PolyU inviting an Applicant to submit Prequalification Submissions according to the prequalification invitation and, if applicable, its Addenda.

"**Prequalification Notice**" means a notice issued by PolyU notifying Suppliers/Contractors that a Prequalification Invitation has been issued and inviting Suppliers/Contractors to review the relevant Prequalification Documents.

"**Prequalification Submissions**" means all documents (including but not limited to any amendments or supplements made thereto) submitted by an Applicant in response to and according to the requirements of the relevant Prequalification Invitation and the applicable Prequalification Documents including but not limited to Confidentiality Undertaking, Responses to Clarifications and any other information submitted by the Applicant.

"**Privacy Policy**" means PolyU's Privacy Policy Statement that can be accessed at the PolyU Website: https://www.polyu.edu.hk/web/en/privacy_policy_statement/index.html.

"**Procurement Documents**" means all or any documents issued by PolyU in relation to an intended procurement including but not limited to any Invitation to Tender, Request for Quotation, Confidentiality Undertaking, Response to Queries, Clarifications, etc. and, if applicable, any information attached and Addenda.

"**Query**" means a query raised by a Tenderer or Applicant in relation to a Request for Quotation, Invitation to Tender or Prequalification Invitation.

"**Quotation**" means a quotation (including but not limited to any amendments or supplemental quotations made thereto) and any other information submitted by a Tenderer in response to and according to the terms of the relevant Request for Quotation and the applicable Procurement Documents.

"**Registered Account**" means an account established by PolyU to enable a user to use the Tendering Website for the Intended Purposes.

"**Registered Supplier/Contractor**" means a Supplier/Contractor who holds a Registered Account.

"**Request for Quotation**" means an invitation to quote, including any information attached thereto, issued by PolyU inviting a Supplier/Contractor to submit Quotations, according to the request for quotation and, if applicable, its Addenda, for any goods, works and/or services required by PolyU.

"**Response to Clarification**" means a Tenderer's or Applicant's response to a Clarification.

"**Response to Queries**" means any response issued by PolyU to a Query.

"**Submissions**" means all or any of the Tender Submissions, Quotations and Prequalification Submissions.

"**Supplier/Contractor**" means a person, company, organisation, partnership or entity who carries out the business of providing goods, services, or works, which may be required by PolyU from time to time.

"**Supplemental Tenders**" means any document issued by a Tenderer that amends, alters or supplements any Tender already submitted by it to PolyU.

"**System**" means the online platform and all hardware, software, networks, technology, interfaces and any other information technology systems in relation to the Tendering Website. All references to the "Tendering Website" shall be deemed to include references to the "System".

"**Tender**" means the offer (including but not limited to any Supplemental Tenders made thereto) and any other information submitted by a Tenderer in response to and according to the terms of the relevant Invitation to Tender and the applicable Procurement Documents.

"**Tender Notice**" means a notice issued by PolyU notifying Suppliers/Contractors that an Invitation to Tender has been issued and inviting Suppliers/Contractors to review the relevant Procurement Documents.

"**Tender Submissions**" means all documents (including but not limited to any Supplemental Tenders made thereto) submitted by a Tenderer in response to and according to the requirements of the relevant Invitation to Tender and the applicable Procurement Documents including but not limited to Confidentiality Undertaking, Responses to Clarifications and any other information submitted by the Tenderer.

"**Tenderer**" means a Supplier/Contractor that has submitted a Tender Submission or Quotation.

"**Terms**" means these Terms and Conditions for use of the Tendering Website.

"**user**", "**you**" or "**your**" means the user of the Tendering Website which includes any company, organisation, partnership or entity whose employee, officer, director, representative or agent is accessing or using the Tendering Website on its behalf.

1.2 In these Terms, unless the contrary intention appears, words denoting the singular include the plural and vice versa.

1.3 Headings of these Terms are for ease of reference only and are not intended to be part of or to affect the meaning, interpretation, construction or enforceability of any of the terms and conditions contained in these Terms, and are not intended and shall not affect the application of any of the provisions to the entirety of these Terms.

2. Introduction

2.1 The Tendering Website is developed for PolyU to post or transmit any notice, information or document in relation to any anticipated procurement or prequalification event which includes but not limited to, any Tender Notices, Procurement Documents, Prequalification Notices, or Prequalification Documents, etc. in an electronic format for downloading and viewing by users, as well as for Registered Suppliers/Contractors to submit and upload any Submissions in an electronic format through the use of the Tendering Website and System ("**Intended Purposes**").

3. Acceptance of these Terms

3.1 By accessing the Tendering Website, you accept and agree to be bound by these Terms and the Privacy Policy. Your access and use of the Tendering Website is contingent upon you first agreeing to be bound by these Terms and the Privacy Policy. You shall ensure that all of your employees, officers, directors, representatives or agents comply with these Terms and the Privacy Policy. You shall not use the Tendering Website if you do not accept all of these Terms and the Privacy Policy.

4. Amendment to these Terms

4.1 PolyU may change the Terms and the Privacy Policy from time to time in its sole discretion without notice or liability to you. The latest version of the Terms and the Privacy Policy are made available on the Tendering Website. You are responsible to review the Terms and the Privacy Policy every time before you access the Tendering Website. By continuing to access and use the Tendering Website you accept to be bound by the latest version of the Terms and the Privacy Policy.

5. Change of the Tendering Website Content

5.1 PolyU may, in its sole discretion and from time to time, without notice or any liability to you, change any Content of the Tendering Website, or revamp, suspend or terminate the Tendering Website (or any part thereof).

6. Applying for a Registered Account

6.1 For the application of Registered Account, you must complete the application and registration process as specified in the Tendering Website.

6.2 PolyU may, in its sole discretion and from time to time, without notice or any liability to you, revamp, suspend or terminate the application and registration process for a Registered Account on the Tendering Website.

6.3 PolyU has the right, in its sole discretion, to accept or decline any application to create a Registered Account.

6.4 In order to apply for a Registered Account, you are required to:

(a) be a duly registered and/or established business, institution or legal entity under applicable law;

(b) provide us with your full legal name as shown on your most up-to-date certificate of incorporation or business registration certificate, or any equivalent legally recognised document in your place of incorporation;

(c) provide us with your full principal office address and contact details, including an email address; and

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

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

7. Use of Registered Account

7.1 You agree that:

(a) you must only use your Registered Account for the Intended Purposes, including for the submission of any Submissions; to download or view any Procurement Documents or Prequalification Documents or any other Content of the Tendering Website; to provide or update any information required by PolyU; for any purpose directed related to the foregoing but not further or otherwise;

(b) you must only use your Registered Account in accordance with these Terms and the Privacy Policy;

(c) you shall undertake that any information you provide or submit to PolyU in relation to or via your Registered Account (including any application for a Registered Account) is current, true, accurate, complete and correct;

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

(e) you will not allow or suffer your Registered Account to be used by another business, institution, individual or legal entity;

(f) you shall at all times keep your password and login details for your Registered Account secure and confidential to prevent any unauthorised access, use or submissions; and

(g) without prejudice to Clause 7.2 below, you shall notify us immediately in writing upon becoming aware of any unauthorised use of your password or access to your Registered Account.

7.2 You shall be solely and fully responsible for all activities that occur under your Registered Account, and PolyU shall not be responsible or liable to you or any third party for any Loss or damage as a result of any unauthorised access to your Registered Account caused by your actions, negligence or omissions, including any or all actions of any person who uses your password and/or who submits any documents or Submissions through the use of your password or Registered Account, regardless of whether or not such persons are in fact authorised to do so.

8. Suspension or Termination of Your Registered Account

8.1 PolyU has the right, in its sole discretion, with or without notice, to suspend, terminate or

impose any limitations on your Registered Account.

8.2 Upon suspension or termination in accordance with Clause 8.1 above, you shall immediately cease to use or access your Registered Account or any related services (as required by PolyU). Any suspension, termination or limitation to your right to use or access (in whole or in part) your Registered Account or any related services, shall be without prejudice to any other rights or remedies available to PolyU against you.

9. Procurement Documents and Prequalification Documents

9.1 You acknowledge and agree that you must be a Registered Supplier/Contractor and must log onto your own Registered Account in order to download and view the Content of the Tendering Website.

9.2 You shall be solely and fully responsible for ensuring that you have the appropriate hardware, equipment and software that enables you to use the Tendering Website.

9.3 You acknowledge and accept that the Tendering Website may fail, be interrupted, breakdown, contain viruses, malfunction, be slow to process, contain errors or any other defects or defaults from time to time, with or without cause. PolyU does not guarantee, represent, undertake or warrant 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 Tendering Website, you shall contact PolyU who may agree (in its sole discretion) to provide you with an alternate method to receive or view the Content of the Tendering Website of the relevant intended procurement or prequalification event, as the case may be.

9.4 PolyU shall in no way be responsible or liable to you for any Losses incurred or suffered by you as a result of any delay, failure, interruption, breakdown, viruses, malfunctions, errors, defects or defaults in the use of the Tendering Website.

10. Submissions

10.1 You acknowledge and agree that you must:

(a) be a Registered Supplier/Contractor and must log onto your own Registered Account in order to submit or upload any Submissions through the Tendering Website;

(b) you must hold a valid e-Certificate, as applicable and in accordance with Clause 15 below, in order to submit any Tender Submission or Prequalification Submission through the Tendering Website; and

(c) you must use your relevant password in order to submit any Quotations through the Tendering Website, or to submit any Tender Submissions or Prequalification Submissions that PolyU has decided, in its sole discretion, does not need to be submitted through the use of an e-Certificate, in accordance with Clause 15.1 below.

10.2 You represent and warrant that:

(a) you hold the entire rights and title to all your Submissions submitted, transmitted or uploaded through the Tendering 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 and enforceable against you.

10.3 The Tendering Website shall not accept and/or PolyU shall not be obligated to consider any Submissions where you are in breach of these Terms, including Clause 10.2 above. Without prejudice to the generality of the foregoing, PolyU shall not consider your Submissions and not be liable for any failure to consider your Submission if any Submission submitted through the use of the Tendering Website:

(a) does not comply with these Terms and/or any of the formatting requirements specified by PolyU;

(b) contains Malicious Code, or is otherwise corrupted, or not readable or printable into readable text; or

(c) has not successfully completed its transmission by the relevant specified Closing Date.

10.4 You shall be solely responsible for ensuring that your Submissions are fully compliant with our terms and conditions contained in the relevant Procurement Documents or Prequalification Documents, as the case may be, and that you complete the transmission of your Submissions through the Tendering Website by the relevant specified Closing Date.

10.5 You acknowledge and agree that any Submissions that are not fully and successfully transmitted to PolyU by the relevant specified Closing Date shall be invalid. PolyU has no obligation to and shall not take into consideration any Submissions that are not fully and successfully transmitted to PolyU by the relevant specified Closing Date.

10.6 All notices or messages that appear on the Tendering Website that display any date, time, time zone, or time remaining for any Submissions to be filed, are for reference purposes only. Notwithstanding the foregoing, any upload end time generated automatically by PolyU's System, which specifies exactly when the transmission of your Submission through the Tendering Website was completed, shall be final and binding and shall be relied on by PolyU 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. An email confirmation will be sent to the Registered Account of the Tenderer or Applicant who has successfully completed the uploading and transmission of its Submission through the Tendering Website by the relevant Closing Date.

10.7 It is your sole responsibility to ensure that you have the appropriate hardware, equipment and software that enables you to access the Tendering Website, your Registered Account and the System, and to upload and submit your Submissions through the Tendering Website.

10.8 You acknowledge and agree that the Tendering Website may fail, be interrupted, breakdown, contain viruses, malfunction, be slow to process, contain errors or any other defects or defaults during the transmission, uploading and/or submission of any Submissions (or any other of your Content) through the Tendering Website. PolyU does not guarantee, represent, undertake or warrant 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 Tendering Website, you agree that you shall contact PolyU who may agree (in its sole discretion) to provide you with an alternate method to submit your Submissions to PolyU by the relevant Closing Date.

10.9 PolyU 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.

10.10 All of your Content, including any information, material and data in your Submissions shall be encrypted for security reasons and electronically stored in a secure location when uploaded or submitted by you and transmitted through the Tendering 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, misstatement or omission that may occur upon decryption or encryption.

10.11 You acknowledge and agree that PolyU shall use and be relied on the results of your Content, Submissions or any information, material or data that has been encrypted and decrypted, and as received by PolyU. You agree to be bound by such contents of your Content, Submissions, or any information, material or data as decrypted and as received by PolyU.

10.12 You shall ensure that your Content, including your Submissions, which are uploaded, transmitted or submitted through the Tendering Website must be in a standardised electronic format that allows the Tendering Website to capture, record, store, transmit and/or process it and any other formatting requirements specified by PolyU on the Tendering Website or the Procurement Documents or the Prequalification Documents.

10.13 You hereby waive any and all rights you may have to challenge the validity of or accuracy of any information contained in an e-Certificate, or of any Submissions submitted by you through the Tendering 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 the e-Certificate or password, as applicable, was used without your authorisation.

11. Addenda and Other Amendments to the Procurement Documents or Prequalification Documents

11.1 PolyU may at any time issue one or more Addenda or any other amendments to the relevant Procurement Documents or Prequalification Documents, prior to the relevant Closing Date. An email shall be sent to your Registered Account on the Tendering Website once an Addendum has been issued or any other amendments to the relevant Procurement Documents or Prequalification Documents have been made, and the date of sending such email will be deemed to be the effective date of such Addendum or any amendment to the relevant Procurement Documents or Prequalification Documents, as applicable ("**Amendment Date**"). PolyU shall in no way be liable if you are not aware of such email.

11.2 It is your entire responsibility to check the Tendering Website from time to time in order to ensure that you are kept up-to-date and aware of any Addenda or other amendments to the relevant Procurement Documents or Prequalification Documents, and to ensure that your Submissions fully comply with and take into account the Addenda or any other amendments to the relevant Procurement Documents or Prequalification Documents. PolyU shall in no way be liable for any failure by you to take into account any Addenda or other amendments to the relevant Procurement Documents or Prequalification Documents in your Submissions.

11.3 In the event that PolyU issues any relevant Addendum or any other amendments to the relevant Procurement Documents or Prequalification Documents as stated in Clause 11.1 above, you acknowledge and agree that:

(a) all of your relevant Submissions submitted to PolyU before and/or after the relevant Amendment Date shall represent your full and entire offer in response to the relevant

Procurement Documents or Prequalification Documents, as applicable; or

(b) if you do not submit any amendments to Submissions to PolyU following the Amendment Date, then the relevant Submissions which were submitted by you prior to the relevant Amendment Date shall represent your full and entire offer in response to the relevant Procurement Documents or Prequalification Documents, as applicable.

12. Query and Response to Query

12.1 You acknowledge and agree that you must be a Registered Supplier/Contractor and must log onto your own Registered Account in order to submit any Query through the Tendering Website.

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

12.3 The Tendering Website shall not accept and/or PolyU shall not be obligated to consider or provide any response to any Query where you are in breach of these Terms, including Clause 12.1 above. Without prejudice to the generality of the foregoing, PolyU shall not consider your Query and not be liable for any failure to consider or provide any response to your Query if any Query submitted through the use of the Tendering Website:

(a) does not comply with these Terms and/or any of the formatting requirements specified by PolyU;

(b) contains Malicious Code, or is otherwise corrupted, or not readable or printable into readable text; or

(c) has not successfully completed its transmission by the relevant deadline imposed by PolyU.

12.4 You shall be solely responsible for ensuring that your Queries are fully compliant with our terms and conditions contained in the relevant Procurement Documents or Prequalification Documents, as applicable.

12.5 If applicable and practicable, PolyU will issue a Response to Queries relevant to the Procurement Documents or Prequalification Documents prior to the relevant Closing Date. An email shall be sent to your Registered Account on the Tendering Website once a Response to Queries has been issued, and the time and date of sending such email will be final and conclusive evidence of PolyU's issue of the relevant Response to Queries. PolyU shall in no way be liable in the event that you are not aware of any such email.

12.6 It is your entire responsibility to check the Tendering Website from time to time in order to ensure that you are kept up-to-date and aware of any Response to Queries, and to ensure that your Submissions fully comply with and take into account the Response to Queries. PolyU shall in no way be liable for any failure by you to take into account any Response to Queries in your Submissions.

12.7 In the event that PolyU issues any Response to Queries in accordance with Clause 12.5 above, you acknowledge and agree that:

(a) all of your relevant Submissions submitted to PolyU before and/or after the date of the Response to Queries shall represent the full and entire offer made by you in response to the relevant Procurement Document or Prequalification Document, as the case may be; or

(b) if you do not submit any amendments to your Submissions to PolyU following the date of the Response to Queries, then your relevant Submissions submitted 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 Prequalification Documents, as the case may be.

13. Clarifications and Response to Clarification

13.1 PolyU may issue one or more Clarifications to your Registered Account on the Tendering Website. PolyU shall not be liable in the event that you fail to receive any of such Clarifications sent by PolyU to you. PolyU shall in no way be liable for any failure by you to take into consideration any Clarifications sent by it to you.

13.2 It is your sole responsibility to submit your Response to Clarification through the Tendering Website by the deadline imposed by PolyU as stated in the Clarification. PolyU shall in no way be liable for any failure by you to submit a Response to Clarification.

14. Result of the Intended Procurement or Prequalification Event

14.1 PolyU will notify you the result of the intended procurement or prequalification event, as the case may be, via the Tendering Website.

15. Digital Certificates and Other Requirements

15.1 You must apply for and obtain a valid e-Certificate for each Invitation to Tender or Prequalification Invitation before you can submit any of the relevant Submissions through the Tendering Website, unless PolyU, in its sole discretion, states in writing beforehand that the relevant Submissions do not need to be submitted through the use of an e-Certificate. In such an event, the relevant Submission may be submitted through the use of a password in accordance with Clause 10.1(c) above.

15.2 An e-Certificate must only be used and applied for, and will only be accepted by PolyU. The e-Certificates that are issued to you shall only be used by you for the purpose for which the e-Certificate has been issued and in accordance with any policies, procedures, terms and conditions provided in relation to the e-Certificates but not further or otherwise. An e-Certificate is not a recognised digital certificate under the Hong Kong Electronic Transactions Ordinance (Cap. 553). Your use of an e-Certificate issued and assigned to you in relation to any Invitation to Tender or Prequalification Invitation shall indicate that:

(a) you intend to be legally bound by your relevant Submissions and all applicable terms and conditions thereto;

(b) the e-Certificate correctly identifies you, the Tenderer or the Applicant, as applicable; and

(c) all information contained in the e-Certificate is correct and has not been altered or tampered with.

15.3 Upon the submission of any Submissions (except for Quotations) via the Tendering Website, you must use a valid e-Certificate in order to encrypt and digitally sign the Submissions (except for Quotations).

15.4 You agree and acknowledge that your Submissions to PolyU in relation to any Procurement Document or Prequalification Document must be submitted with a valid e-Certificate or

password, as applicable, through the Tendering Website.

15.5 You are responsible to ensure that you obtain your e-Certificate in time to submit any Submissions (except for Quotations) through the Tendering Website prior to the relevant Closing Date, and PolyU shall not be liable or responsible for any failure of you to do so.

16. Hardcopy Submissions

16.1 PolyU may, in its sole discretion, allow or request you to submit your Submissions (in whole or in part) in hard copy as well as through the Tendering Website, either by stating such in the Procurement Documents or Prequalification Documents or otherwise issuing a notice to you or on the Tendering Website. In the event that any of your Submissions (in whole or in part) are submitted by you to PolyU in hard copy, as well as electronically through the Tendering Website:

(a) you represent, warrant and undertake that the hard copy version of your Submissions shall be fully identical to the electronic version submitted by you through the Tendering Website;

(b) you acknowledge and agree that the electronic version submitted by you through the Tendering Website shall prevail in the event of any discrepancies between the electronic version or hard copy version of the Submissions; and

(c) you shall indemnify PolyU for any Loss as a result of any discrepancies between the hard copy version and electronic version of the Submissions.

17. Your General Obligations

17.1 You shall use the Tendering Website or any Content of the Tendering Website only for purposes that are permitted by:

(a) these Terms;

(b) the Privacy Policy; and

(c) any applicable law, regulation or generally accepted practices or guidelines in the relevant jurisdiction.

17.2 Your use of the Tendering Website or any Content of the Tendering Website shall not contravene or infringe upon any of our rights or any third parties' rights (including Intellectual Property Rights).

17.3 You agree that:

(a) you will not engage in any activity that interferes with or disrupts the Tendering Website or the System;

(b) you will not copy, reproduce, download, re-publish, sell, exploit or distribute any part of the Tendering Website or Content of the Tendering Website (subject to Clause 17.3(c) below);

(c) you shall only use the Tendering Website, your Registered Account or Content of the Tendering Website, and may only download and copy the Content of the Tendering Website, solely and exclusively as needed for the Intended Purposes;

(d) 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 Malicious Codes or similar malicious instructions, codes, techniques or devices capable of disrupting, disabling, damaging or shutting down the Tendering 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 Tendering Website, System or any other telecommunications, computer systems, networks or devices connected to the Tendering Website;

(e) 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;

(f) you are solely responsible for, and PolyU has no responsibility to you or to any third party for any breach of your obligations under these Terms, and for the consequences of any such breach;

(g) you shall not use the Tendering Website, your Registered Account or any Content of the Tendering Website 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;

(h) you shall not use the Tendering Website, your Registered Account or any Content of the Tendering Website to post, communicate or transmit any advertisements or other unsolicited commercial communications, or engage in spamming;

(i) you shall not interfere with another persons use and enjoyment of the Tendering Website or Content of the Tendering Website;

(j) 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

(k) PolyU has the right at any time, and without notice, to monitor and record your access to and use of the Tendering Website, your Registered Account and Content of the Tendering Website.

18. Your Content

18.1 It is your sole and full responsibility and liability for all of your Content.

18.2 You represent and warrant that your Content is accurate, current and complete and shall not infringe the rights of any third party (including Intellectual Property Rights).

19. Intellectual Property Rights

19.1 You acknowledge and agree that PolyU and/or its licensors own all legal rights, title and interest, including any Intellectual Property Rights, in and to the Tendering Website, the System and the Content of the Tendering Website.

19.2 You agree not to modify, copy, rent, lease, loan, sell or distribute the Content of the Tendering Website (either in whole or in part) unless expressly authorised by PolyU

beforehand in writing.

20. Links

20.1 The Tendering Website may include links to other websites, content or resources, which are hosted, offered or provided by third parties. You understand and agree that:

(a) PolyU has no control over and does not monitor such third party websites, content, or resources;

(b) PolyU does not guarantee or warrant, and does not have any responsibility 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) PolyU does not endorse any websites linked to the Tendering Website, or any advertising, products, goods, services or other materials on or available through such websites or resources.

20.2 You understand and agree that your access to such external websites, content or resources at your own risk, and PolyU does not have any responsibility or liability for any Loss, in relation to third party websites, content or resources.

21. Warranties and Disclaimers

21.1 The Content of the Tendering Website is provided for your general reference only, and is not intended to amount to any advice on which you should rely. You shall seek professional or specialist advice before taking or refraining from taking any action based on the Content of the Tendering Website. It is your sole responsibility to ensure that your use of the Content of the Tendering Website and/or Tendering Website complies with your requirements and all applicable laws.

21.2 You acknowledge and agree that your use of the Tendering Website, Content of the Tendering Website and your Registered Account, and your participation in the application and registration process for a Registered Account, are at your own risk and that such is provided "as is" and "as available".

21.3 To the fullest extent permitted applicable laws, PolyU 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.

21.4 Without prejudice to the generality of Clause 21.3 above, PolyU does not represent or warrant:

(a) as to the accuracy, quality, completeness, currency, adequacy, reliability or validity of any information or material provided on or through the Tendering Website, your Registered Account and/or during your registration and application process for a Registered Account, including but not limited to, the Content of the Tendering Website;

(b) that the Tendering Website, Content of the Tendering Website or Registered Account will meet your requirements, or are free of defect, error, omission, Malicious Code, or anything which may change, erase, add to or damage your software, data or equipment;

(c) that your use of the Tendering Website, Content of the Tendering Website or

Registered Account, or the application and registration process for a Registered Account, will be uninterrupted, timely, secure or error-free; or

(d) that defects in the operation or functionality of the Tendering Website, Content of the Tendering Website, your Registered Account or the application and registration process for a Registered Account, will be corrected.

21.5 Any materials, including Content of the Tendering Website, downloaded or otherwise obtained through the use of the Tendering Website or your Registered Account is done at your own discretion and risk and you shall be solely responsible for any damage to your computer system or other devices or loss of data that results from the downloading of any such material.

22. Limitation of Liability

22.1 Nothing in this Clause 22.1, or Clause 21 above, shall exclude or restrict any warranty or liability:

(a) for death or personal injury caused by PolyU'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 PolyU's liability will be limited to the maximum extent permitted by the applicable law.

22.2 PolyU shall not be liable to you in contract, tort (including negligence), breach of statutory duty or otherwise for any Loss whatsoever, including loss of profit; loss of revenue; loss of time; loss of anticipated savings; loss of opportunity; loss or corruption of data; loss of use; loss of business; wasted expenditure; loss of or damage to physical property; business interruption; loss of or damage to goodwill; or cost of procuring substitute services, which may arise in relation to these Terms, the Content of the Tendering Website, the Tendering Website, your Content or your Registered Account whether or not PolyU were advised in advance of the possibility of such loss.

22.3 Without prejudice to Clause 21 or the generality of Clause 22.2, PolyU shall not be liable to you for any Loss whatsoever, 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 Tendering Website, Content of the Tendering Website, your Content, your Registered Account or the application and registration process for a Registered Account;

(b) any changes made by PolyU to the Tendering Website, Content of the Tendering Website, 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 Tendering Website, Content of the Tendering Website, your Registered Account or the application and registration process for a Registered Account;

(c) any deletion of, corruption of or failure to store any of your Content and other communications data maintained or transmitted by you through the use of the Tendering 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 Tendering 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 Tendering Website, your Registered Account or during the application and registration process for a Registered Account, or the Content of the Tendering Website;

(f) any statements made by, or the conduct of, any third party on or through the Tendering Website; or

(g) violation of your Intellectual Property Rights by any third party.

22.4 Clause 22.2 and 22.3 above shall apply irrespective of whether or not PolyU has been advised or should have been aware of the possibility of any such losses arising.

23. Indemnity

23.1 You shall indemnify, defend and hold PolyU harmless from and against all Losses that may arise directly or indirectly out of or in connection with:

(a) your breach or non-compliance of any of these Terms or applicable policies and terms and conditions;

(b) your use of the Tendering Website, Content of the Tendering Website or your Registered Account;

(c) the use of your Content by PolyU or other third parties, and 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 Intellectual Property Rights of PolyU or any third party, caused by you, your employees, officers, members, owners, agents or affiliates; or

(e) your breach of the Hong Kong Personal Data (Privacy) Ordinance (Cap. 486) and/or any other applicable data protection laws.

23.2 You must cooperate fully with PolyU in the defence of any claim made by any third parties. PolyU reserves the right to assume the exclusive defence and control of any matter or claim that is subject to indemnification by you in accordance with Clause 23.1 above. You hereby acknowledge that damages for improper use of the Tendering Website or any Content of the Tendering Website may be irreparable, and PolyU is entitled to seek equitable relief, including injunctions and preliminary injunctions, in addition to all other remedies.

24. Personal Data Privacy

24.1 Any personal data collected by PolyU through the Tendering Website shall be governed by the Privacy Policy and this Clause 24. In the event of any inconsistencies between this Clause 24 and the terms of the Privacy Policy, this Clause 24 shall take precedence over any conflicting provision in the Privacy Policy.

24.2 You agree to 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.

24.3 You hereby represent and warrant that we have the right and the required consent to use any personal data provided by you to us for the purposes of:

(a) processing your application for a Registered Account;

(b) managing or administering your Registered Account;

(c) providing you with any services related to your Registered Account or the Tendering Website;

(d) processing, assessing, evaluating or communicating with you with regard to any Submissions submitted by you or any Procurement Documents or Prequalification Documents;

(e) any site visits or briefings organised by PolyU which your employees, officer, owners, members, representatives or agents may attend;

(f) communicating with you in respect of your Registered Account or the Tendering Website and any related services;

(g) the procurement process contemplated under the Intended Purposes; and

(h) any purpose directly related to any of the above.

25. Termination

25.1 PolyU may terminate your use of and access to any part of or all of the Tendering Website or any related services at any time, with immediate effect and without notice to you, for any reason whatsoever, including but not limited to:

(a) your breach these Terms;

(b) PolyU being unable to verify or authenticate any information provided by you;

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

25.2 Upon termination in accordance with Clause 25.1 above, you shall immediately cease using or accessing the Tendering Website or any related services, and shall immediately destroy all material obtained from the Tendering Website and any copies thereof. Termination of your right to use or access (in whole or in part) the Tendering Website or any related services, shall be without prejudice to any other rights or remedies available to PolyU against you.

26. Disputes and Applicable Law

26.1 If any dispute arises between PolyU and you in reference to these Terms, or any part thereof, PolyU or you may forthwith give to the other party written notice requiring the matter to be referred to a single arbitrator, in accordance with the procedures governed by th Arbitration Ordinance, whose decision shall be final, and binding on the parties. The costs of such reference shall be in the discretion of the arbitrator.

26.2 These Terms shall be governed by and construed in accordance with the laws of Hong Kong.

27. Notices

All notices, demands or other communications to or upon you shall be effective and deemed to be in writing if transmitted to you through the use of the Tendering 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 Tendering Website that is publicly accessible, without a charge. You shall be deemed to have received any such notice, if and when:

(a) PolyU is able to demonstrate that the notice has been sent to you; or

(b) immediately upon PolyU posting such notice on an area of the Tendering Website that is publicly accessible without charge,

whichever date is earlier.

28. Force Majeure

Without prejudice to the generality of Clauses 21 and 22.1 above, under no circumstances shall PolyU be liable for any delay or failure or disruption in relation to the Tendering Website, your Registered Account or any related services, including the application and registration process for a Registered Account, or the Content of the Tendering Website or Your Content resulting directly or indirectly from anything beyond our reasonable control, including but not limited to, Internet failures, telecommunications or any other hardware 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.

29. Severability

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

30. Entire Agreement

These Terms contain the entire agreement between you and PolyU and replaces all previous written or oral agreements relating to its content.

31. Waiver

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

32. Assignment

You may not, without the written consent of PolyU, assign or otherwise transfer any of your rights or obligations under these Terms.

33. No Partnership or Agency

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