

THE HONG KONG UNIVERSITY OF SCIENCE AND TECHNOLOGY

CONTRACT FOR SERVICES

DATED:

PARTIES:

(1) THE HONG KONG UNIVERSITY OF SCIENCE AND TECHNOLOGY a body corporate established by the Hong Kong University of Science and Technology Ordinance (Cap. 1141 of the Laws of Hong Kong) (“HKUST”).

(2)

(“Contractor”).

PROVISIONS:

1. Warranty and Appointment

1.1 The Contractor represents and warrants to HKUST that it is aware of and understands the provisions of the Prevention of Bribery Ordinance of the laws of Hong Kong (“PBO”), that HKUST is a public body within the meaning of PBO and that the Contractor has not at any time prior to the date of this Contract in contravention of section 5 of PBO or otherwise offered or caused or permitted to be offered any advantage within the meaning of PBO to any employee or officer of HKUST or to any member of any council, senate, court, board, committee or other body of HKUST in connection with the negotiation or making of this Contract.

1.2 HKUST appoints the Contractor to provide the services as detailed in Schedule 1 (“Services”) in return for the payments as detailed in Schedule 2 (“Payments”). This appointment shall be for a term commencing on [] and terminating on [] (“Term”).

2. Contractor’s obligations

The Contractor agrees with HKUST as follows:-

2.1 Services

To provide the Services throughout the Term.

2.2 Secrecy

- 2.2.1 Not at any time during or after the Term to divulge or allow to be divulged to any person any confidential information relating to the business or affairs of HKUST whether arising out of or in connection with the Services or otherwise other than to persons who have signed a secrecy undertaking in a form approved by HKUST; and
- 2.2.2 Not to permit any person to assist in the provision of the Services unless such person has signed such an undertaking.

2.3 Personal Data Privacy

- 2.3.1 To comply with the Personal Data (Privacy) Ordinance of Hong Kong, the HKUST's Data Privacy Policy Statement (PPS) and Personal Information Collection Statement (PICS). A copy of the current PPS and PICS for [e.g. student/ staff] are attached as Appendix [] and Appendix [] respectively.
- 2.3.2 To take appropriate steps to protect personal data entrusted to you to prevent unauthorized or accidental access, processing, erasure, loss or use of the data.
- 2.3.3 To return or destroy any personal data entrusted to you after the Term in accordance with statutory requirements and the HKUST's policy and instruction.

2.4 Delegation

Not to delegate any duties or obligations arising under this Contract for Services otherwise than may be expressly permitted under its terms.

2.5 Intellectual Property

Not to cause or permit anything which may damage or endanger any copyright, trade marks, patents or other intellectual property of HKUST or HKUST's title to it or assist or allow others to do so.

2.6 Indemnity

To indemnify and keep indemnified HKUST from and against any and all loss damage or liability (whether criminal or civil) suffered and legal fees and costs incurred by HKUST resulting from:-

- 2.6.1 any act neglect or default of the Contractor or any of its employees or agents; or
- 2.6.2 any breach of this Contract for Services in respect of any matter arising from the supply of the Services resulting in any successful claim by any third party.

2.7 Insurance

To maintain at its own cost an adequate comprehensive policy of insurance to cover the liability of the Contractor in respect of any act or default for which it may become liable to indemnify HKUST under the terms of this Contract for Services.

2.8 Work and Reports

2.8.1 To carry out all work in relation to the Services with all due speed and in accordance with the highest standards of current established practice and in compliance with the requirements of all relevant ordinances and another regulations which may from time to time be in force and to permit HKUST to attend at the premises of the Contractor and inspect progress from time to time at reasonable intervals.

2.8.2 To prepare and submit to HKUST full reports (including interim reports where required by HKUST) of the results of all work carried out pursuant to this Contract for Services with all due speed in such form or manner and in such detail as is necessary in order to meet the requirements of HKUST.

2.9 No assignment or subcontracting

Not to assign or sub-contract any of its rights or duties under this Contract for Services without the consent in writing of HKUST.

2.10 No improper payments

Not at any time during the Term in relation to the Services or any other arrangements with HKUST whether or not arising out of this Contract to offer or cause or permit to be offered in contravention of the provisions of PBO any advantage within the meaning of PBO to any employee or officer of HKUST or to any member of any council, senate, court, board, committee or other body of HKUST.

3. HKUST's Obligations

HKUST agrees with the Contractor that in consideration of the services to be rendered by the Contractor under this Contract for Services, HKUST shall make the Payments as they fall due for payment and in accordance with the provisions of Schedule 2.

4. Cancellation

HKUST may cancel this Contract for Services at any time on not less than [] days' notice and shall then be liable to pay to the Contractor such reasonable sum as may then be due on a quantum meruit basis.

5. Termination for breach

HKUST shall without prejudice to any other remedy available to it be entitled to determine this Contract for Services without notice in any of the following events:-

- 5.1 Any breach by the Contractor of any warranty or provision of this Contract for Services or of any obligation herein on the part of the Contractor to be observed and complied with.
- 5.2 The levying of any distress or execution against the Contractor or the making by it of any composition or arrangement with creditors or being a company the Contractor's liquidation (other than a members' voluntary liquidation).
- 5.3 The doing or permitting of any act by which HKUST's rights in any of its intellectual property may be prejudiced or put in jeopardy.

6. Copyright

The copyright in all work done by and in all reports prepared and submitted by the Contractor pursuant to this Contract for Services shall belong solely to HKUST and HKUST shall have the sole right to use publish and turn to account the results of all such work.

7. Force majeure

Both parties shall be released from their respective obligations in the event of national emergency war prohibitive governmental regulation or if any other cause beyond the reasonable control of the parties or either of them renders the performance of this Contract for Services impossible.

8. Miscellaneous

8.1 Whole agreement

Each party acknowledges that this Contract for Services contains the whole agreement between the parties and that it has not relied upon any oral or written representation made to it by the other or its employees or agents and has made its own independent investigations into all matters relevant to it.

8.2 Notices

Any notice to be served on either of the parties by the other shall be sent by prepaid recorded delivery or registered post to the address of the relevant party shown at the head of this Contract for Services or by facsimile transmission or by electronic mail and shall be deemed to have been received by the addressee with [72] hours of posting or [24] hours if sent by facsimile transmission or by electronic mail to the correct facsimile number or electronic mail number of the addressee (with correct answerback).

8.3 Joint and several

All agreements on the part of either of the parties which comprises more than one person or entity shall be joint and several and the neuter singular gender throughout this Contract for Services shall include all genders and the plural and the successor in title to the parties.

8.4 HKUST's right to assign

This agreement and all rights under it may be assigned or transferred by HKUST.

8.5 Proper law and jurisdiction

8.5.1 This Contract for Services shall be governed by the laws of Hong Kong in every particular including formation and interpretation and shall be deemed to have been made in Hong Kong. Both parties hereby submit to the non-exclusive jurisdiction of the courts of Hong Kong.

8.5.2 The Contractor hereby irrevocably appoints as its agent in Hong Kong for the service of proceedings:-

and any time limits in any proceedings shall not be extended by virtue only of the foreign residence of the Contractor.

8.6 Rights Cumulative

All rights granted to either of the parties shall be cumulative and no exercise by either of the parties of any right under this Contract for Services shall restrict or prejudice the exercise of any other right granted by this Contract for Services or otherwise available to it.

8.7 Waiver

The failure by either party to enforce at any time or for any period any one or more of the terms or conditions of this Contract for Services shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Contract for Services.

8.8 Status of the Contractor

8.8.1 In providing its services pursuant to this Contract for Services, the Contractor shall be an independent contractor and not the servant or employee of HKUST.

8.8.2 In such capacity the Contractor shall bear exclusive responsibility for the discharge of any tax and other liability arising out of remuneration for its work performed by it under this Contract for Services.

8.8.3 The Contractor shall not be subject to directions from HKUST as to the manner in which it shall perform its work.

9. Arbitration

9.1 Any dispute or difference arising out of or in connection with this Contract for Services shall first be referred to mediation at Hong Kong International Arbitration Centre (HKIAC) and in accordance with its Mediation Rules. If the mediation is abandoned by the mediator or is otherwise concluded without the dispute or difference being resolved, then such dispute or difference shall be referred to and determined by arbitration at HKIAC and in accordance with its Domestic Arbitration Rules.

9.2 The parties hereby agree that this Contract for Services is or is to be treated as a domestic arbitration agreement notwithstanding the provisions of the Arbitration Ordinance Chapter 341 of the Laws of Hong Kong. The parties further agree that all or any dispute that may arise under the terms of this Contract for Services are to be arbitrated as a domestic arbitration.

9.3 In relation to all matters referred to arbitration by this Contract for Services, the right of appeal under section 23 of the Arbitration Ordinance Chapter 341 of the Laws of Hong Kong and the right to make an application under section 23A thereof are hereby excluded.

AS WITNESS whereof the parties hereto have executed this Contract for Services the day and year first above written.

SIGNED by)
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for and on behalf of)
THE HONG KONG UNIVERSITY)
OF SCIENCE AND TECHNOLOGY)
in the presence of : -)
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