

PART ONE

INSTRUCTIONS TO TENDERERS

PROVISION OF SYSTEM DESIGN, DEVELOPMENT AND IMPLEMENTATION SERVICES (WTSDHC)

1. **TENDER DOCUMENTS**

1.1 Unless the context otherwise required, defined words used herein shall have the meanings given to them in the General Conditions of Contract in Part Four.

1.2 The Tender Documents shall include the following: -

- | | | |
|------|-------------------|---|
| I. | Part One | Instructions to Tenderers |
| II. | Part Two | Evaluation Criteria |
| III | Part Three | Letter of Award |
| IV. | Part Four | General Conditions of Contract |
| V. | Part Five | Special Conditions of Contract |
| VI. | Part Six | Prescribed Forms Annexed to the General Conditions of Contract |
| | (a) | Form 1: Form of Tender |
| | (b) | Form 2: Schedule of Price |
| | (c) | Form 3: Form of Previous Experience in Similar Project |
| | (d) | Form 4: Bill of Materials & Products Information |
| | (e) | Form 5: Statement of Compliance |
| | (f) | Form 6: Declination Letter of Tender |
| VII. | Part Seven | Schedule to the General Conditions of Contract: Specification |
| | (a) | Schedule One: General Specification |
| | (b) | Schedule Two: Particular Specification |

2 **SUBMISSION OF TENDERS**

2.1 If a tenderer intends to provide the System, it shall prepare a Technical Proposal and a Price Proposal. Both Technical Proposal and Price Proposal shall be prepared in one (1) original set, two (2) sets of hard copy marked with "COPY" and one (1) set of softcopy (in either MS Word or PDF file format).

2.2 Technical Proposal and Price Proposal together with its own copies shall be put into separate sealed envelopes marked:

"SUBMISSION OF TENDER – PROVISION OF SYSTEM DESIGN, DEVELOPMENT AND IMPLEMENTATION SERVICES (WTSDHC) FOR HONG KONG SHENG KUNG HUI WELFARE COUNCIL LIMITED (Tender Ref: ITSD-2112-SR0391) – Technical Proposal / Price Proposal^{note} ";

^{note}: delete where inappropriate

and

The tenderer must deposit them into the Tender Box of Hong Kong Sheng Kung Hui Welfare Council Limited at 12/F, 112 Kennedy Road, Wan Chai, Hong Kong at or before 12:00 noon Hong Kong time on 21 February 2022 ("Closing Date").

The tenderers should ensure that the sizes of their tender documents are within the below dimensions such that tender documents can be deposited into the tender box:

Width: 47 centimeters

Height: 6 centimeters

Depth: 31 centimeters

- 2.3 Any late submissions or submissions that do not conform to the requirements of these Instructions to Tenderers will not be considered.
- 2.4 In the event a typhoon signal No. 8 or above is hoisted or a black rainstorm warning signal is issued between Hong Kong time 9:00 a.m. and 12:00 noon on the Closing Date, the Closing Date will be extended to Hong Kong time 12:00 noon on the next working day. For the purpose of this clause, Saturdays, Sundays and public holidays are not counted as working days.
- 2.5 All Tenders shall be valid and open for a period of 90 calendar days from the date fixed for submitting the Tenders for acceptance by the Welfare Council.

3 TECHNICAL PROPOSAL

- 3.1 The Technical Proposal shall contain the following information/documents and be prepared in accordance with the following guidelines:-

(a) The contents of the Technical Proposal shall contain the following information:

- (i) Name (must be the same as shown in the Business Registration Certificate), address, e-mail address and telephone number of the tenderer. Copy of Business Registration Certificate shall be provided for verification.
- (ii) Tenderer's contact person(s) if it is a corporation or a partnership.
- (iii) Company profile of the tenderer including a brief company history, total number of employees, and any information technology industry accreditations such as ISO, CMMI, and ITIL that are currently valid.
- (iv) Details of the tenderer's Technical Proposal for the System as described in Part Seven, which include, without limitation, the following:

Understanding of the objectives and scope under the Contract with detailed description of the proposed approaches and methodology, understanding of the functionality requirements and design approach of the System with proposed project plan

- 1) The tenderer shall provide a brief description of the tenderer's understanding of the objectives and the scope under the Contract.
- 2) The tenderer shall describe the methodologies and approaches in details to illustrate its capability to deliver the System in compliance with all the requirements and timeline. The tenderer shall also propose the implementation plan for performing the implementation services.
- 3) The tenderer shall provide a project plan which specifies how the proposed solution would fully meet the requirements listed in the Specification set out in Part Seven. The tenderer shall provide detailed explanation on the following areas:
 - (A) Functional Requirements;
 - (B) Design Requirements;
 - (C) Software and Architectural Requirements;
 - (D) Technical Requirements;
 - (E) Performance Requirements;
 - (F) Resilience Requirements; and

(G) Security Requirements.

- 4) The tenderer shall propose a preliminary design of various software and hardware components including but not limited to those that shall be developed for the implementation of the System. Tenderer shall complete and submit the information on the **Bill of Materials and Products Information** in **Form 4** without any indication of price information.
- 5) The tenderer shall provide information for the successful implementation of the System including various tests such as Installation Test, System Integration Test, User Acceptance Test, Performance Test, Failover Test and Stress Test.

Experience, track record and relevant sample references in terms of software/application, user experience setup, as well as hardware setup and calibration

- 6) The tenderer shall provide the details of the tenderer's relevant experience (including but not limited to year, contract value and scope of the project), together with at least one (1) relevant sample reference from previous projects within the past five (5) years in delivering the System or other similar solutions including Hong Kong and overseas experience. The tenderer may provide reference letter(s) issued by the clients; or hyperlink(s) to the website(s) of the clients together with valid contact email address of the clients by which the Welfare Council would be able to contact the clients and verify the job performed. The tenderer shall complete the information on **Previous Experience in Similar Project** in **Form 3**.

Proposed project team and resources to be committed to the project

- 7) The tenderer shall provide the project team structure and skill profiles together with résumés of the proposed project team.

Quality control

- 8) The tenderer shall describe the services to be provided for the Warranty Services during the Defects Liability Period.
- 9) The tenderer shall provide the service levels to be committed in the provision of the Ongoing Maintenance and Support Services (if applicable and required by the Welfare Council).

Contingency measures for meeting the technical specifications and project timeline

- 10) The tenderer shall provide project timeline to demonstrate time and manpower required to deliver each of the project milestones as stipulated in the Specification in **Part Seven**.
- 11) The tenderer shall identify the set of Documentation to be supplied as part of the Deliverables under the Contract.

Other information

- 12) Any other information, which the tenderer may consider relevant to the evaluation of the Tenders, or additional differentiating features to be included for the Services.

3.2 The Technical Proposal shall be prepared with the following information /documents and any other appropriate information:

- 1) A completed **Form 3** (Previous Experience in Similar Project);
- 2) A completed **Form 4** (Bill of Materials and Products Information); and
- 3) A completed **Form 5** (Statement of Compliance).

4 PRICE PROPOSAL

- 4.1 The tenderer is required to complete the Form of Tender (**Form 1**) for the supply of the System as provided in the Specification as per Part Seven on a “lump sum fixed price” basis, inclusive of all labour, licence fees, hardware, software, equipment, apparatus, management, insurance, supervision, materials and expenses incurred in the provision of the System, which, unless otherwise expressly permitted in the Contract, shall NOT be subject to any adjustment for rises or falls in the cost of labour, plant and materials or currency fluctuations occurring after the Closing Date. The Contract Price proposed shall be in Hong Kong Dollars. Payment of the Contract Price shall be made in accordance with the Schedule of Price.
- 4.2 The tenderer is required to break down the Contract Price and insert the required rates and data in accordance with the breakdown tables contained in the Schedule of Price (**Form 2**).
- 4.3 Any items that are considered by the tenderer to be of no value and not to be priced shall have dashes or other suitable marks placed against them in the cash columns. Costs of any such items not so priced shall be deemed to have been included in the proposed Contract Price.
- 4.4 The tenderer agrees that the all-in Unit Price for calculating value in all costs in the Schedule of Price shall be binding and used for pricing any additional services which may be ordered by the Welfare Council pursuant to the Contract.
- 4.5 The tenderer should also include, if applicable, Provisional Sum in the Form of Tender. Such sums are for services or items which are not certain or defined, and may be expended in whole or in part by the written instruction of the Welfare Council. If no written instruction is given, such sum or a part thereof will be deducted from the Contract Price.
- 4.6 The Price Proposal shall be prepared with the following information /documents:-
- (a) A completed and signed Form of Tender (**Form 1**). Any interest declared will be carefully considered but will not automatically bar the tenderer from being further considered in the selection process; and
 - (b) A completed Schedule of Price in **Form 2**;

5 ACCEPTANCE OF TENDER AND EXECUTION OF THE AGREEMENT

- 5.1 The successful tenderer will be notified of the acceptance of its Tender in writing by the Welfare Council.
- 5.2 The successful tenderer shall within **seven days** of the date of the Letter of Award issued by the Welfare Council sign and return to the Welfare Council a duplicate of the Letter of Award to acknowledge receipt of the Letter of Award.

5.3 Upon the award of the Contract, the successful tenderer, if requested by the Welfare Council, shall enter into a formal written Contract with the Welfare Council on the terms and conditions prepared by the Welfare Council.

5.4 Where the successful tenderer fails to perform any of its obligations in Clauses 5.2 and 5.3, the Welfare Council shall be entitled at its sole discretion to:-

- (a) revoke its acceptance of the successful tenderer's Proposal either in part or in whole;
- (b) re-tender and/or award the Tender to any party it deems fit.

The above shall be without prejudice to all other rights or remedies at law or otherwise which the Welfare Council may have against the successful tenderer including seeking specific performance and/or damages.

6. MISCELLANEOUS CONDITIONS

6.1 Until the expiry of the tender validity period, each and every Tender must constitute an unconditional and irrevocable offer from the tenderer which if accepted shall create a legally binding contract.

6.2 This Invitation to Tender is merely an invitation and shall not in any way be construed as an offer by the Welfare Council nor constitute a contractual relationship between the Welfare Council and the tenderers.

6.3 The acceptance of any Tender will be at the sole discretion of the Welfare Council and the Welfare Council reserves the right to accept or reject any Tender and/or any part thereof and/or award or not to award the Tender either wholly or partly and/or to postpone or cancel this Invitation to Tender at any time.

6.4 The Welfare Council shall consider Tender on Group basis. The Welfare Council reserves the right to award the Contract to more than one Tenderer for the item. The Welfare Council does not bind itself to accept the lowest or any tender at any time within the period during which the tenders remain open. The Welfare Council reserves the right to negotiate with any tenderer about the terms of the offer.

6.5 The Welfare Council shall not be bound to accept any Tender with the highest combined scores under the Technical and Price Proposals, nor to accept the best, lowest or any Tender. The Welfare Council reserves its right to accept the Tender which it in its sole discretion considers the most advantageous overall to the Welfare Council and best capable of undertaking the Services.

6.6 The tenderer will bear all costs incurred in connection with its participation in the Tender process, including the preparation and submission of its Tender, and other actions and activities mentioned or implicit in, or required by, these Instructions to Tenderers. The Welfare Council will not be liable to pay any costs nor be responsible for any loss, cost, expense or damage incurred by the tenderer arising out of or in relation to its participation in the tender process, regardless of whether or not the tenderer is successful. The Welfare Council is also under no obligation to discuss the evaluation or evaluation result of any Tender with any person.

6.7 After submission of the Tenders, the tenderers shall not attempt to initiate any further contact, whether direct or indirect, with the Welfare Council on their Tenders or in respect of the Instructions to Tenderers or any part thereof. The Welfare Council shall have the sole right to initiate any such further contact and all such contacts and any replies made by the tenderers thereto shall be in writing or formally documented in writing.

- 6.8 The Welfare Council may interview and/or seek clarification of any Tender and reserves the right to negotiate with any tenderer about any terms, conditions, clauses, paragraphs or parts of this Invitation to Tender, including any terms of its Tender.
- 6.9 The Welfare Council reserves the right to amend, vary or change any of the terms of this Invitation to Tender at any time.
- 6.10 All information in this Invitation to Tender provided by the Welfare Council is for reference only. No guarantee is given that the information is exhaustive, accurate or reliable. The tenderers are advised to seek independent advice with respect to all conditions and circumstances with respect to their undertaking the Services.

7. CONFIDENTIALITY OF TENDER INFORMATION

- 7.1 The tenderers must keep the Tender Documents or any information relating thereto confidential and must not disclose to any third party, even if the tenderer(s) do not intend to respond to this Invitation to Tender. Under no circumstances shall the tenderer use any such information for any purpose other than for the purpose of preparing and submitting a Tender.
- 7.2 Should a tenderer be awarded the Contract, it shall immediately, if requested by the Welfare Council, execute a separate non-disclosure and confidentiality agreement, the contents of which are specified in **Clause 10** (Non-Disclosure and Confidentiality Undertaking) of **Form 1** (Form of Tender).
- 7.3 The Welfare Council shall be entitled to retain and make copies of all Tenders and to use, adapt and modify any and all materials, information or data contained in or together with the Tenders for verification and assessment or statistical purposes or for any other purposes as the Welfare Council may in its absolute discretion consider appropriate.

8. CONFLICT OF INTERESTS

The tenderer warrants that to the best of its knowledge at the date of submitting its Tender, no conflict of interest exists or is likely to arise in the performance of its obligations under the Contract by itself, by its employees, or by its sub-contractors.

9. PROBITY AND ANTI-COLLUSION

- 9.1 The tenderer is required to comply with the following probity and anti-collusion requirements regarding the Services: -

(A) Offering Gratuities

- (i) Tenderers submitting Tenders shall not, and shall procure that their contractors, employees, agents, sub-contractors, or specialists shall not, offer, solicit or accept an advantage as defined in the Prevention of Bribery Ordinance, (Cap 201) in connection with the tendering and execution of the Services;
- (ii) If a Contractor or any of its contractors, employees, agents, sub-contractors, or specialists is found to have offered, procured or attempted to offer or procure or solicit, or accepted an advantage as referred to in (i) above, without affecting the Contractor's liability for such act, its Tender will be invalidated.

(B) Anti-collusion

- (i) The tenderers shall not communicate to any person other than the Welfare Council the

amount of any fee proposal, adjust the amount of any Price Proposal by arrangement with any other person, make any arrangement with any other person about whether or not it or that other person should or should not submit a Tender or otherwise collude with any other person in any manner whatsoever in the submission process until the expiry of the validity period of the Tender. Any breach of or non-compliance with this sub-clause by the tenderer shall, without affecting the tenderer's liability for such breach or non-compliance, invalidate its Tender.

- (ii) Sub-clause (i) of this Clause shall have no application to the tenderer's communications in strict confidence with its own insurers or brokers to obtain an insurance quotation for computation of the Price Proposal and communications in strict confidence with its contractors, employees, agents, sub-contractors, or specialists to solicit their assistance in preparation of a Tender.

10. PERSONAL DATA PRIVACY

- 10.1 All personal data provided in the Tender will be used for the evaluation and for contract award purposes. If insufficient and inaccurate information is provided, the Tender may not be considered.
- 10.2 By submitting the Tender, the tenderer is regarded to have agreed to, and to have obtained from each individual whose personal data is provided in the Tender his consent for, the disclosure of the personal data to the Welfare Council.

11. COMMUNICATIONS

Any communication from the tenderer regarding the Tender Documents or any matter referred to in these Instructions to Tenderers shall be made in writing and send to **Mr. Danny CHOW, Chief Information Officer at email: dchow@skhwc.org.hk.**

PART TWO

EVALUATION CRITERIA

PROVISION OF SYSTEM DESIGN, DEVELOPMENT AND IMPLEMENTATION SERVICES (WTSDHC)

1. **EVALUATION CRITERIA OF THE TENDER**

1.1 The selection of the Contractor will be made in accordance with the Welfare Council's procurement policy and procedures.

1.2 The Tender will be assessed in accordance with the tenderer's Technical (Non-Price) and Price Proposals.

1.3 The Technical (Non-Price) and Price Weighting is to be set at **70%** and **30%** respectively.

2. **Technical (Non-Price) assessment**

2.1 It will be conducted with the following assessment criteria:

	Technical (Non-Price) Assessment Criteria	Weighting Percentage
1	Proposed approaches, methodology and design approach to meet project objectives	12
2	Compliance of requirements	30
3	Company experience and commitment: a. Experience, track record and relevant sample references in terms of software/application, user experience setup, as well as hardware setup and calibration b. Proposed project team and resources to be committed to the project	20
4	Quality control and contingency measures for meeting the technical specifications and project timeline	10
5	Able to provide united solution across categories	10
6	Willing to offer optional service	8
7	Willing to offer additional value added services	10
	Total Technical Score:	100

2.2 Examples of considerations

The followings are few examples to illustrate the meaning of assessment criteria

	Technical (Non-Price) Assessment Criteria	Examples for illustration purpose
1	Proposed approaches, methodology and design approach to meet project objectives	~approach to collect and confirm requirements such as agile approach, waterfall approach or else ~approach to design the system in order to enhance usability, flexibility
2	Compliance of requirements	~ elaborate and illustrate the function & features for compliance
3	Company experience and commitment: a. Experience, track record and relevant sample references in terms of software/application, user experience setup, as well as hardware setup and calibration b. Proposed project team and resources to be committed to the project	~relevant project reference ~any communication plan proposed for efficient communications ~committed resources and their relevant background
4	Quality control and contingency measures for meeting the technical specifications and project timeline	~any checkpoint before system ready for UAT ~any feasible plan to handle late delivery of hardware ~any feasible plan to catch up the slippage of software development
5	Able to provide united solution across categories	~Submit tender reply for more than one category ~Propose ways to streamline the work process if offering more than one category
6	Willing to offer optional service	Willing to provide the quotes for services under optional services
7	Willing to offer additional value added services	Value added services such as refreshment training after a period of time; on loan of health data measuring devices

3. Price Assessment

- 3.1 The Price Proposal will be assessed on the proposed Contract Price in the Form of Tender (**Form 1**).

PART THREE

LETTER OF AWARD

PROVISION OF SYSTEM DESIGN, DEVELOPMENT AND IMPLEMENTATION SERVICES (WTSDHC)

Letter of Award (Sample)

Tender Ref:

Date

By Email & By Registered Post

Company Name
Company Address

Dear xxxx,

Re: Letter of Award
for xxxx

We are pleased to inform you that your tender regarding the Provision of System Design, Development and Implementation Services is accepted subject to the terms and conditions set out in the tender documents which include Parts 1 to 7.

This Letter of Award serves to notify you that we have decided to award the contract of the above works/services to your company.

Please acknowledge receipt of this Letter of Award by completing and signing the original and duplicate of this letter and returning the duplicate to us within one week from date of this letter. The original is for your retention.

Should you have any enquiries, please feel free to contact xxxxx.

Yours sincerely,

xxxxx

Encl.

Acknowledgement of Receipt of Letter of Award

I,, in the capacity of duly authorized to sign for and on behalf of the Contactor (namely [Name]), hereby acknowledge our receipt of the Letter of Award.

Signature & Chop of Company

Date: _____

PART FOUR

GENERAL CONDITIONS OF CONTRACT

PROVISION OF SYSTEM DESIGN, DEVELOPMENT AND IMPLEMENTATION SERVICES (WTSDHC)

1 **DEFINITIONS**

1.1 The following expressions shall where the context so permits have the meanings hereby respectively assigned to them:-

“Commencement Date” means the commencement date of the Services as notified by the Welfare Council to the Contractor in writing upon the award of the Contract or **7 days** after the date of the Letter of Award, whichever is later.

“Completion Date” means the date for the System becoming Ready for Use which may be extended at the discretion of the Welfare Council and, unless otherwise stipulated in the Special Conditions of Contract or Schedules to the General Conditions of Contract, be **not later than one (1) year** after the Commencement Date.

“Confidential Information” means any and all written, tangible or intangible form of information, documents, materials and data (including any personal particulars records and personal data (as defined in the Personal Data (Privacy) Ordinance, Cap. 486), in whatever media, which the Welfare Council has for the purposes of or in the course of performing the Services or in connection with the Contract, supplied, made available or communicated to the Contractor or which may come to the Contractor’s knowledge or be accessible by the Contractor in the course of performing the Services and all Materials given by the Contractor to the Welfare Council under the Contract.

“Contract” means the agreement, the terms of which are contained in the Form of Tender submitted by the Contractor and its attachments, these General Conditions of Contract together with its Prescribed Forms and Schedules; the Special Conditions of Contract (if any); the Letter of Clarification (if any); the Letter of Award; and any documents specified in the Letter of Clarification and in the Letter of Award as forming part of the Contract.

“Contract Price” means the sum payable by the Welfare Council to the Contractor, which includes the Licence Fees, in accordance with the Schedule of Price, for the provision of the System and Services.

“Contractor” means the tenderer to whom the Contract has been awarded by the Welfare Council.

“Contractor’s Representative” means the person appointed by the Contractor and notified in writing to the Welfare Council's Representative, to represent the Contractor in respect of all matters connected with the Contract.

“Contractor Supplied Hardware”

means any and all of the hardware (except the Welfare Council’s supplied hardware, if any) comprised in, installed, or provided to the Welfare Council in connection with the use, operation and maintenance of the System in accordance with the Specification. A list of all Contractor Supplied Hardware (whenever appropriate) is set out in the Bill of Materials and Products Information in **Form 4** which may be subject to changes during the system analysis and design stage with the approval of the Welfare Council’s Representative in accordance with the Contract, and any other additional or replacement hardware or equipment provided by the Contractor under the provisions of the Contract.

“Contractor Supplied Software”

means any proprietary software which is proprietary to the Contractor and/or any third party software supplied directly or indirectly in connection with the Contract or which are incorporated into, or used in conjunction with the System. A list of all Contractor Supplied Software (whenever appropriate) is set out in the Bill of Materials and Products Information in **Form 4** which may be subject to changes during system analysis and design stage with the approval of the Welfare Council’s Representative in accordance with the Contract, and any other additional or replacement software supplied by the Contractor under the provisions of the Contract.

“Custom Programs”

means application computer programs, documents or materials (including source codes, object codes and command codes of such programs) developed or provided by the Contractor including customisation of any existing software for the Welfare Council pursuant to the requirements of the Contract.

Obfuscated source code is not accepted unless it is specified in the Contract.

“Defects Liability Period”
or “DLP”

means the period specified in the System Acceptance Certificate or from the Completion Date until **[31st May 2025]** (whichever is longer) during which period, Warranty Services comprising of **[3 months]** of nursing services and the remaining months of maintenance and support services will be provided by the Contractor to the Welfare Council.

“HKSAR”

means Hong Kong Special Administrative Region of the People’s Republic of China.

“Intellectual Property Rights”	means patents, utility models, trademarks, service marks, trade names, design rights, copyright and neighbouring and related rights, domain names, database rights, rights in know-how, new inventions, designs or processes and all other intellectual property rights (of whatever nature and wherever arising, whether now known or hereafter created) and in each case whether registered or unregistered and including applications for the grant, renewal or extension of any such rights.
“Letter of Award”	means a letter issued by the Welfare Council to the Contractor entitled as such in which the Welfare Council accepts the Tender and any attachments thereto.
“Letter of Clarification”	means a letter or an email from the Welfare Council to the Contractor entitled as such which clarifies or confirms the matters agreed between the Welfare Council and the Contractor subsequent to the submission by the Contractor of the Tender and any attachments thereto.
“Licence Fees”	means the total payment payable by the Welfare Council to the Contractor for the supply of the Contractor Supplied Software and its licence, the rollout of Updates or New Releases and the provision of the Licenced Support Services. Such Licence Fees are included in the Contract Price to be paid in accordance with the Schedule of Price. Under no circumstances shall the Welfare Council be liable or responsible for paying to the Contractor or any other person any money (whether on a recurrent or non-recurrent basis) for any of the Contractor Supplied Software.
“Licence Period”	means the period for the Use of the Contractor Supplied Software, and unless otherwise stipulated in the Special Conditions of Contract or Schedules to the General Conditions of Contract, commencing from licence activation to the end of Defect Liability Period (DLP) or the Ongoing Maintenance Period.
“Licenced Support Services”	means the maintenance and support services for each individual item of the Contractor Supplied Software including the provision of all Updates and New Releases.

“Materials” or “Documentation”	includes but is not limited to all the reports, works of authorship, summaries, briefings, presentations, diagrams, drawings, charts, tables, graphs, pictures, photographs, questionnaires, plans, models, analyses, work programmes, technical notes, information papers, opinions, comments, specification, data, information, materials, documents, and computer software (including source codes, object codes and command codes of such software programs), used, collected, compiled, developed, produced or created by the Contractor, the employees, directors, officers, agents and sub-contractors of the Contractor in relation to and/or in the course of the performance of the Services or for the purposes of the Contract including but without limitation, the pre-contractual and contractual documents in respect thereof which are recorded or stored by whatever means in whatever form or media and the drafts of any of the above items.
“New Release”	means in respect of each item of Contractor Supplied Software, a new release of the Contractor Supplied Software which has been produced primarily to extend, alter or improve the Contractor Supplied Software by providing additional functionality or performance enhancement (whether or not defects in the Contractor Supplied Software are also corrected) while still retaining the original designated purpose of the Contractor Supplied Software.
“Ongoing Maintenance Period”	Starting from the expiry of the Defects Liability Period for the provision of Ongoing Maintenance and Support Services.
“Ongoing Maintenance and Support Services”	means the maintenance and support services to be provided by the Contractor for the support and maintenance of the System after the expiry of the Defects Liability Period for the Ongoing Maintenance Period at the ongoing maintenance charges in the Schedule of Price (if any).
“Ready for Use”	means the System being fully installed and successfully tested and completed in accordance with the provisions of the Contract.
“Schedule of Price”	means Form 2 annexed to these General Conditions of Contract in the final form agreed and accepted by the Welfare Council and named as such in the Contract, which describes the manner in which the Contract Price is to be paid to the Contractor.
“Services”	means the services referred to in or as may reasonably be implied from the Specification and the completion of the Works together with any other additional services instructed by the Welfare Council’s Representative pursuant to the provisions of the Contract from time to time.

“Special Conditions of Contract”	means the Special Conditions of Contract, if any, contained in Part Five which shall take priority over any inconsistent provision contained in the Contract.
“Specification”	means the specification contained in Schedules One & Two of Part Seven annexed to these General Conditions of Contract and named as such in the Contract together with all its attachments upon the basis of which the Contractor was invited to tender and any modification thereof or addition thereto which may from time to time be furnished by the Welfare Council to the Contractor.
“System”	means the system that are under the scope of the Tender and more particularly described in the Specification and includes, as the context requires, all software (including the Contractor Supplied Software), data, hardware (including the Contractor Supplied Hardware), device drivers, firmware, Custom Programs and other infrastructure comprised in or required for the full and efficient operation of the system.
“System Acceptance Certificate”	means the certificate(s) to be issued by the Welfare Council’s Representative as an evidence of the acceptance of the System or part of the System by the Welfare Council.
“Tender”	means the latest offer received by the Welfare Council from the tenderer for the Services.
“Update”	means a new release of the Contractor Supplied Software which has been produced primarily to overcome defects in, or to improve the operation of the Contractor Supplied Software, without significantly altering the functionality of the Contractor Supplied Software.
“Use”	means the use of the Intellectual Property Rights for the purpose of using, operating, maintaining and enhancing the System, and shall include any act which is reasonably incidental to such use, or any use so as to benefit from the Services or for the purposes as reasonably contemplated by the Contract, including, without limitation, any use to amend, improve, modify or enhance the Intellectual Property Rights in the System.
“Warranty Services”	means the nursing services and the maintenance and support services as specified herein or in the Specification or Special Conditions of Contract to be provided by the Contractor to the Welfare Council during the Defects Liability Period.
“Welfare Council”	means Hong Kong Sheng Kung Hui Welfare Council Limited.
“Welfare Council’s Representative”	means the person appointed by the Welfare Council to represent the Welfare Council in all dealings with the Contractor in respect of the Contract.

“Works”

means all the works, duties and obligations to be carried out by the Contractor under the Contract including, without limitation, the provision of the Services.

- 1.2 In the Contract, words importing the singular shall include the plural and vice versa, and reference to a “Clause”, “Sub-Clause”, “Paragraph” or “Schedule” in a document shall mean the clause, sub-clause, paragraph or schedule in that document, unless otherwise expressly stated.
- 1.3 The several documents forming the Contract will be bound together in a bundle and are to be taken as mutually explanatory. In the event of any inconsistency or discrepancy between the documents comprising the Contract, the documents shall be interpreted by reference to the following decreasing order of priority with the terms and conditions of the prior document prevailing and taking precedence, unless a contrary intention is expressed by any other provision of the Contract:
- (a) Letter of Award;
 - (b) Letter of Clarification (if any);
 - (c) Special Conditions of Contract (if any);
 - (d) Schedules to the General Conditions of Contract;
 - (e) General Conditions of Contract together with its Prescribed Forms;
 - (f) Other documents comprising the Contract.

If the Contractor shall find any ambiguity or discrepancy in or between the documents comprising the Contract, the Contractor shall notify the Welfare Council's Representative in writing who shall, within a reasonable time, issue instructions to the Contractor which, in the Welfare Council's Representative's opinion, resolves the ambiguity or discrepancy.

2 PROVISION OF THE SYSTEM AND SERVICES

- 2.1 The Contractor agrees to supply the System and carry out the Services and complete the Works for the Welfare Council in accordance with the Contract, and shall:
- (a) Design and develop the System on a total solution basis;
 - (b) Supply the Contractor Supplied Software and grant or procure the grant of the licence of the Contractor Supplied Software for the Licence Period to the Welfare Council;
 - (c) Supply the Contractor Supplied Hardware to the Welfare Council free from all encumbrances;
 - (d) Provide or procure the provision of the Licenced Support Services for the Contractor Supplied Software;
 - (e) Design, write, test and install all the Custom Programs;
 - (f) Provide project management and implementation services;
 - (g) Deliver, install and commission the System;
 - (h) Carry out all acceptance tests of the System;
 - (i) Render the System Ready for Use by the Completion Date;
 - (j) Deliver to the Welfare Council all Materials and Documentation;
 - (k) Provide training services;
 - (l) Provide the Warranty Services for the System during the Defects Liability Period;
 - (m) If instructed by the Welfare Council to do so, provide Ongoing Maintenance and Support Services after the end of the Defects Liability Period; and
 - (n) Provide other services or works as specified in the Specification and in accordance with the Contract.

- 2.2 The Contractor shall commence the Services forthwith on the Commencement Date and shall thereafter proceed with the same regularly, diligently and with due expedition and shall complete the Services in accordance with the provisions of the Contract.
- 2.3 Without prejudice to any warranties implied by common law or otherwise, the Contractor warrants and undertakes to the Welfare Council that:
- (a) it has exercised and will exercise in the performance of the Services the skill, care and diligence to be expected of a properly qualified and competent contractor experienced in the provision of services of similar size, scope and complexity to the Services;
 - (b) it has performed, and will continue to perform, its obligations promptly, in a proper and efficient manner, and in accordance with the highest professional standards and all applicable laws of the HKSAR from time to time in force, and that the Services will be undertaken by its employees and agents possessing the necessary skills, professional qualifications and experience in full compliance with the Contract;
 - (c) it will provide all labour, transportation, materials, machinery, equipment and apparatus, hardware, software, licences, and system of all kinds and the provision of all technical support, design, supervision and management of the Services so far as the necessity for providing the same is identified in the Contract or could reasonably be inferred therefrom by a competent professional contractor experienced in undertaking services of a similar nature and scope to the Services; and
 - (d) it will cause minimum disruption to the operations and facilities of the Welfare Council, including the existing systems of the Welfare Council.
- 2.4 The Contractor shall attend regular progress and review meetings and other meetings in the HKSAR as may be required and notified to the Contractor's Representative from time to time by the Welfare Council's Representative and shall advise and assist the Welfare Council's Representative in respect of all matters relating to the performance of the Services.
- 2.5 The Contractor shall submit progress and other written reports to the Welfare Council's Representative and answer all reasonable enquiries from the Welfare Council's Representative at intervals and in a form to be agreed with the Welfare Council's Representative.
- 2.6 The Contractor shall provide all specialists and sub-contractors required for the satisfactory delivery and completion of the Services. No additional fees or expenses for such provision rendered locally or overseas shall be payable by the Welfare Council, except as otherwise provided for in the Schedule of Price. The Contractor shall hold regular meetings with any of its own specialists and shall forward the meeting minutes to the Welfare Council's Representative within two weeks after holding such meetings.

3 THE CONTRACT PRICE AND PAYMENT

- 3.1 In consideration of the provision of the Services, the Welfare Council will pay to the Contractor the Contract Price or such sum as shall be ascertained in accordance with the Schedule of Price (**Form 2**).
- 3.2 Notwithstanding any provision in the Contract, unless otherwise agreed by the Welfare Council, in respect of any Services provided to the Welfare Council, the Welfare Council shall not have any obligation to pay the Contractor any part of the Contract Price unless and until the Services have been accepted by the Welfare Council. The Welfare Council will pay the Contract

Price within 30 days after the date of receipt of the invoice or the date of acceptance of the Services, whichever is later.

3.3 Notwithstanding any provision of the Contract, the Welfare Council is entitled to withhold payment of all or any part of the Contract Price and any other sum payable by the Welfare Council to the Contractor under the Contract if:

- (a) the Contractor fails to observe or perform any provision of the Contract;
- (b) the Welfare Council disputes on any reasonable ground its obligation to pay the amount in question;
- (c) the Welfare Council has reasonable grounds to believe that the Contractor is or will be liable to the Welfare Council under any provision of the Contract for loss or damage suffered by the Welfare Council; or
- (d) withholding of payment is required by any applicable law.

4 CONTRACTOR'S REPRESENTATIVE AND STAFF

4.1 The Contractor's Representative shall have full authority to act on behalf of the Contractor for all purposes connected with the Contract, to direct and control the performance of the Services and the administration and co-ordination of each aspect thereof.

4.2 Without limiting the Contractor's obligations under the Contract, the Contractor shall employ sufficient competent staff as may be required for the proper performance of the Services. The Contractor shall ensure that if the Welfare Council's Representative shall call on any individual member of its staff to discuss, explain or make presentations on any part of the Services, such individual shall be readily available to do so in the HKSAR.

5 REVIEWS BY THE WELFARE COUNCIL'S REPRESENTATIVE

5.1 The Welfare Council, through the Welfare Council's Representative, shall supply to the Contractor any information in its possession which is reasonably requested by the Contractor's Representative in writing from time to time and which, in the opinion of the Welfare Council's Representative, is required by the Contractor to perform the Services or any part thereof.

5.2 The Welfare Council's Representative shall give any consent, review without objection or approval to any submission made by the Contractor within any express period referred to in the Contract for providing such consent, review without objection or approval. If no express period is specified in the Contract in respect of any consent, review without objection or approval, the Welfare Council's Representative shall respond to any submission made by the Contractor within a reasonable time of receipt by the Welfare Council's Representative of the submission, so as not to delay or disrupt the performance of the Services by the Contractor.

5.3 The Contractor shall not make any material alteration, addition to or omission from any design, diagram, flowchart or other document previously consented to, reviewed without objection or approval, as appropriate, by the Welfare Council's Representative, without the knowledge and consent of the Welfare Council's Representative.

5.4 No act or omission of the Welfare Council's Representative in relation to any aspect of the Services, including, without limitation, the issue of any consent, review without objection or approval shall relieve the Contractor in whole or in part from any duty, obligation or liability to the Welfare Council arising out of or in connection with the Contract, including, without limitation, to pay damages, whether arising under the Contract or otherwise howsoever.

6 CONTRACTOR'S PROGRESS AND EXTENSION OF TIME

- 6.1 If, in the reasonable opinion of the Welfare Council's Representative, the Contractor is not performing the Services satisfactorily or at all due to the Contractor's personnel being insufficient in number, or inefficient or incompetent, and as a result of which the performance of the Services is being or is likely to be delayed, the Contractor shall, within 14 days of receipt of notice in writing from the Welfare Council's Representative, remedy such insufficiency and/or inefficiency and/or replace relevant Contractor's personnel to the Welfare Council's Representative's satisfaction.
- 6.2 Should the Contractor fail to comply with its obligations under Clause 6.1, the Welfare Council may, without prejudice to any other right or remedy which it may have:
- (a) employ such other contractors of the Welfare Council to assist the Contractor as the Welfare Council's Representative deems appropriate; or
 - (b) omit part of the Services, in which event the Contractor shall have no claim of whatsoever nature or howsoever arising due to such omission; or
 - (c) terminate the Contractor's appointment.
- 6.3 Without prejudice to any other obligation of the Contractor under the Contract, the Contractor shall afford to any other contractors of the Welfare Council employed by the Welfare Council pursuant to Clause 6.2, all assistance as may be necessary for them to carry out the task, which the Contractor ought to have carried out. The Welfare Council shall deduct the cost of the employment of such other contractors of the Welfare Council from the Contract Price as such costs are incurred.
- 6.4 The Contractor's Representative shall report promptly to the Welfare Council's Representative the occurrence of any event or condition that might delay or prevent the performance of the Services or any part thereof indicating what steps the Contractor proposes to take to avoid or mitigate the delay and the likely duration of the delay.
- 6.5 If, in the reasonable opinion of the Welfare Council's Representative, a delay in the performance of the Services has arisen due to reasons beyond the control of the Contractor which fairly entitles the Contractor to receive an extension of time, the Welfare Council's Representative shall, within a reasonable time of receipt of particulars under Clause 6.4 which the Welfare Council's Representative considers sufficient on which to reach a decision, extend the Completion Date as the Welfare Council's Representative considers fair and reasonable, to reflect the delay and shall notify the Contractor's Representative in writing of any such extension made.
- 6.6 If the Contractor receives an extension of time for the Services pursuant to Clause 6.5, the Contractor shall, as soon as practicable thereafter, and in any event within 28 days, notify the Welfare Council's Representative if the Contractor considers that the Welfare Council's Representative has incurred or will in the future incur additional costs not included in the Contract Price arising from such extension. Such notice shall be accompanied by full particulars of the additional costs incurred or to be incurred arising from such extension.
- 6.7 The Welfare Council's Representative shall, within a reasonable time of receipt of any particulars as referred to in Clause 6.6 which the Welfare Council's Representative considers sufficient on which to reach a decision, determine the sum, if any, which in his opinion should be added to the Contract Price as a result of such extension of time awarded pursuant to Clause 6.5 and shall notify the Contractor in writing accordingly. Any addition to the Contract shall

be calculated by the Welfare Council's Representative by reference to the applicable rates contained in the Schedule of Price and where rates are not contained in the Schedule of Price or if such rates are in the absolute opinion of the Welfare Council inappropriate or not applicable, at such sum as shall be determined by the Welfare Council's Representative to be fair and reasonable in the circumstances.

7 VARIATIONS OF SERVICES

- 7.1 The Welfare Council's Representative may, from time to time, instruct the Contractor in writing to alter, amend, omit, add to, re-sequence or otherwise vary the Services, or any part thereof or request a change in any component in the System or require the supply of or change in any software as the Welfare Council's Representative considers necessary for the smooth operation of the System and the Contractor shall carry out and complete any variation so instructed. No variation instructed by the Welfare Council's Representative shall vitiate or invalidate the Contract.
- 7.2 The Contractor shall notify the Welfare Council's Representative in writing within **14 days** of receipt of any instruction from the Welfare Council's Representative pursuant to Clause 7.1, which the Contractor considers, will result in an increase or decrease in the Contract Price. Such notice shall be accompanied by full particulars of the total additional costs for implementing the variation, and the impact on the implementation progress including any change in the Completion Date.
- 7.3 The Welfare Council's Representative shall within a reasonable time of the issue of an instruction pursuant to Clause 7.1, or where the Contractor serves a notice and particulars pursuant to Clause 7.2, within a reasonable time of receipt of the same, determine the sum, if any, which in the Welfare Council's Representative's opinion should be added to or deducted from the Contract Price as a result of any variation. Any addition to or deduction from the Contract Price shall be calculated by the Welfare Council's Representative by reference to the rates contained in the Schedule of Price so far as the same may be applicable or appropriate and where rates are not contained in the Schedule of Price, such amount shall be sum as is reasonable and fair in the circumstances as determined by the Welfare Council's Representative.
- 7.4 An addition to the Contract Price shall only be made by the Welfare Council's Representative pursuant to Clause 7.3 where an instruction issued pursuant to Clause 7.1 did not arise through any act or omission of the Contractor in the performance of the Services.

8 TESTING AND ACCEPTANCE OF THE SYSTEM

- 8.1 The System, on completion, shall be subject to inspection and certification of acceptance in writing by the Welfare Council's Representative.
- 8.2 The Contractor shall carry out all acceptance tests to demonstrate, objectively, that the System conforms to the Specification and is fully accessible and operable in accordance with the Specification.
- 8.3 If the Contractor fails to successfully complete any of the acceptance tests, such tests shall be repeated by the Contractor at reasonable intervals until the acceptance tests have been passed in full.
- 8.4 The Welfare Council shall not be under any obligation to accept the System until the successful completion of the acceptance tests to the satisfaction of the Welfare Council's Representative.
- 8.5 On the successful completion of the acceptance tests to the satisfaction of the Welfare

Council's Representative, provided that the Welfare Council is satisfied with all of the Materials provided by the Contractor, the Welfare Council's Representative shall issue to the Contractor a System Acceptance Certificate in acknowledgement of the Welfare Council's acceptance of the System.

9 **DELAY**

9.1 The Contractor shall provide the System Ready for Use on or before the Completion Date.

9.2 If the Contractor fails to provide the System Ready for Use **within four (4) weeks** after the Completion Date then notwithstanding anything else contained in the Contract, the Welfare Council's Representative shall be entitled to reject the System and the Welfare Council may terminate the Contract forthwith by giving a written notice to the Contractor and recover from the Contractor the amount of all costs, expenses and losses suffered by the Welfare Council resulting from such failure. Upon such termination, the Contractor shall (without prejudice to the Welfare Council's rights to recover as aforesaid) forthwith refund to the Welfare Council all monies previously paid to the Contractor under the Contract.

10 **DEFECTS LIABILITY PERIOD**

10.1 The Contractor shall provide the Warranty Services during the Defects Liability Period by promptly repairing or, if necessary, replacing the System or any component of the System which is discovered by the Welfare Council's Representative as being defective or not conforming to the Specification.

10.2 If the Contractor does not rectify a defect or non-conformity to the Specification within a reasonable time after having received notification from the Welfare Council, then, without prejudice to any other rights which the Welfare Council may have under the Contract, the Welfare Council may itself or through a third party repair or replace the System or component of the System which is defective or non-conforming to the Specification, at the expense of the Contractor.

11 **SERVICE LEVELS**

11.1 Subject to Clause 11.2, the Contractor shall ensure that the Services are provided in compliance with the service levels and the System operates in accordance with the reliability levels as stated in the Specification.

11.2 Prior written consent from the Welfare Council's Representative shall be sought by the Contractor for permission to deviate from Clause 11.1 when, in the Contractor's reasonable opinion, temporary deviation is necessary for the purposes of effecting any improvement, upgrade or repair of the System or any part thereof. The Welfare Council's Representative may (but is not obliged to) give such consent, and if it does so, it will be on such terms and conditions as the Welfare Council's Representative deems fit.

11.3 If at any time, Clause 11.1 or any other requirement or specification set out in the Contract is not complied with, the Contractor shall, without prejudice to the Welfare Council's other rights and claims, immediately do all or any of the following at no additional charge, to the satisfaction of the Welfare Council's Representative:

(a) provide all additional resources and implement all measures necessary to perform the Services in compliance with the service levels;

(b) provide such replacement and/or additional software or customisation of the software

so as to enable the System to operate in accordance with the reliability levels;

- (c) within the time prescribed in the Specification or in the absence of which within one (1) day (or such later date as may be agreed to by the Welfare Council) investigate into, remedy and remove the cause for the non-compliance; and
- (d) re-perform any non-conforming services forthwith at the request of the Welfare Council.

11.4 Without prejudice to the other rights and remedies of the Welfare Council, the Welfare Council reserves the right to, on its own or through a third party, remedy the Contractor's default, and any expenditure incurred by the Welfare Council shall be borne fully by the Contractor.

12 LIABILITY AND INDEMNITY

12.1 Neither the Welfare Council nor any of its employees or agents shall be under any liability whatsoever for or in respect of:

- (a) any loss of or damage to any of the Contractor's property or that of its employees or agents howsoever caused (whether by any negligence of the Welfare Council or any of its employees or agents or otherwise); or
- (b) any injury to or death of the Contractor (in the case where the Contractor is a natural person) or any of its employees or agents, save and except any such injury or death caused by the negligence of the Welfare Council or any of its employees or agents.

12.2 Without prejudice to any other provision of the Contract, the Contractor shall indemnify the Welfare Council or its employees or agents against all costs, claims, charges, loss, damages, expenses, demands, liabilities, causes of action and proceedings (whether civil or criminal) of whatsoever nature (including fees and disbursements of lawyers, agents and expert witness) arising from, or contributed to, by:-

- (a) the performance or breach of any provisions of the Contract by the Contractor, its employees or agents or sub-contractors;
- (b) any negligence or breach of duty on the part of the Contractor, its employees or agents or sub-contractors;
- (c) any claim made against the Welfare Council for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the Contractor's performance of the Services or the Use of the System or the Contractor Supplied Software by the Welfare Council pursuant to the Contract;
- (d) any claim made against the Welfare Council by a third party arising out of or in connection with the Contractor's provision of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of any obligation under the Contract by the Contractor, its employees, agents or subcontractors;
- (e) any breach of a confidentiality obligation by the Contractor, its employees, agents or subcontractors under the Contract or otherwise;
- (f) any Security Breach as defined in Clause 24 by the Contractor, its employees, agents or sub-contractors; or

- (g) the non-compliance by the Contractor, its employees, agents or sub-contractors of any applicable law, or regulation, order or requirement of any government agency or authority;

provided that the Contractor's obligations to indemnify the Welfare Council or its employees or agents aforesaid shall be reduced to the extent that the same was caused by or contributed to by any negligence of the Welfare Council, its employees or agents.

- 12.3 The Welfare Council shall not be liable to the Contractor by reason of any representation or any implied warranty, condition or other term, or any duty at common law for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence or omission of the Welfare Council and/or other contractors and their respective employees or agents or otherwise) which arises out of or in connection with the Contract.
- 12.4 For the purposes of this Clause, "negligence" shall have the same meaning as that assigned to it in section 2(1) of the Control of Exemption Clauses Ordinance, Cap.71 of the Laws of the HKSAR.
- 12.5 This Clause 12 shall survive the expiry or sooner termination of the Contract.

13 INSURANCE

- 13.1 The Contractor shall effect and maintain with an insurance company a policy of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor in connection with the performance or attempted performance of its obligations under the Contract, including death, personal injury, loss of or damage to property or any other loss.
- 13.2 Without prejudice to Clause 13.1, the Contractor shall effect and maintain employer's liability insurance in respect of all its employees and other staff in accordance with all applicable legal requirements.
- 13.3 If required by the Welfare Council, the Contractor shall deliver to the Welfare Council copies of all insurance policies referred to in the Contract together with receipts or other evidence of payment of the latest premium due under the policies.
- 13.4 If the Contractor fails to give effect to or maintain any insurance required under the Contract, the Welfare Council may make such alternative arrangements as it considers appropriate to protect its interests and may recover from the Contractor the costs of putting such in place and maintaining such arrangements.
- 13.5 No provision in any insurance and no amount of insurance covered shall relieve the Contractor of any liability under the Contract. It is the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability under the Contract.

14 SUSPENSION, ABANDONMENT AND TERMINATION

- 14.1 If at any time the Welfare Council decides to suspend or abandon the Services, it may, through the Welfare Council's Representative, on giving the Contractor 14 days' written notice, forthwith terminate the Contractor's appointment under the Contract, or suspend the carrying out of the Services for the time being.
- 14.2 If the Welfare Council's Representative does not require the Contractor to resume the performance of the Services suspended under Clause 14.1 within a period of 12 months from the date of the

Welfare Council's Representative's notice, the Contract shall, unless otherwise agreed between the parties, forthwith automatically terminate.

- 14.3 If the Contractor fails to act in accordance with the Contract, and the Welfare Council has given the Contractor seven days' written notice of such failure, and such default is not remedied within those seven days, or is repeated at any time thereafter, or if the Contractor shall at any time be adjudged bankrupt, or shall pass a resolution or the court shall make an order for the liquidation of its assets, or a receiver or manager be appointed, or suffers any similar or analogous action in consequence of insolvency in any jurisdiction, the Welfare Council may immediately terminate the Contractor's appointment under the Contract by notice in writing to the Contractor.
- 14.4 In the event of the failure of the Welfare Council to comply with any of its obligations under the Contract, or upon the occurrence of any circumstances beyond the control of the Contractor which are such as to wholly prevent for a period of three months the carrying out by the Contractor of the Services, the Contractor may upon not less than 30 days' notice in writing to the Welfare Council's Representative, and provided such failure of the Welfare Council or the occurrence continues during this period, terminate its appointment under the Contract.
- 14.5 Any termination of the Contractor's appointment under the Contract shall not prejudice or affect the accrued rights or claims of either the Welfare Council or the Contractor.

15 PAYMENT FOLLOWING SUSPENSION, ABANDONMENT OR TERMINATION

- 15.1 The Welfare Council shall pay to the Contractor the sums specified in sub-clauses (a) and (b) below less the amount of payments previously made to the Contractor upon the termination of the Contractor's appointment under the Contract pursuant to Clause 14.1 or the termination of the Contract pursuant to Clause 14.2, or, the sums specified in sub-clauses (a), (b) and (c) below in respect of suspension under Clause 14.1:
- (a) any proportion of the Contract Price which has accrued prior to the date of termination or suspension together with a fair and reasonable proportion of any other sum which would have accrued but for the termination or suspension, commensurate with the Services performed up to the date of such termination or suspension which relate to such sum, but without prejudice to any rights or remedies of the Welfare Council in relation to any negligence, omission or default of the Contractor prior to such termination or suspension;
 - (b) any amounts due to the Contractor under any other provision of the Contract; and
 - (c) reasonable costs incurred by the Contractor consequent upon such suspension provided that the suspension of the Services does not result from the Contractor's failure to act in accordance with the Contract and that the Contractor has used its reasonable endeavours to avoid or mitigate such loss, and that such loss was not incurred as a result of the Contractor's failure to act in accordance with the Contract and such costs do not include loss of profit or loss of contracts.
- 15.2 In any case in which the Welfare Council has required the Contractor to suspend the Services pursuant to Clause 14.1, and the Welfare Council's Representative has within the period of 12 months from the date of such notice required the Contractor to resume the performance of the Services, then:
- (a) the Contractor shall within 28 days of receipt by it of the Welfare Council's Representative's notice, resume the performance of the Services in accordance with the Contract, and the payments made under Clause 15.1 shall rank as payment on account towards the total sum payable to the Contractor under the Contract; and

- (b) the Contractor shall be entitled to receive a fair and reasonable payment for additional costs incurred by the Contractor, in relation to such resumption. The Contractor shall provide particulars to the Welfare Council's Representative of such additional costs and the Welfare Council's Representative shall determine the amount which it considers to be fair and reasonable.

15.3 Upon termination of the Contractor's appointment by the Welfare Council pursuant to Clause 14.3, the Welfare Council shall pay to the Contractor a sum calculated on the basis of Clauses 15.1(a) and 15.1(b), less any amounts already paid under the Contract but shall have the right to deduct and set off all costs and losses incurred by the Welfare Council as a result of such termination. The provisions of this Clause are without prejudice to any other rights or remedies which the Welfare Council may possess.

15.4 Upon termination by the Contractor pursuant to Clause 14.4, the Welfare Council shall pay to the Contractor sums calculated in accordance with Clauses 15.1(a) and 15.1(b), less the amount of payments previously made to the Contractor under the terms of the Contract. The provisions of this Clause are without prejudice to any other rights or remedies, which the Welfare Council may possess.

15.5 It shall be a condition precedent to any payment under Clause 15.1 that the Contractor delivers to the Welfare Council's Representative all Materials whether in the course of preparation or completed by the Contractor at the date of such termination and that the Contractor also complies with and follows to the satisfaction of the Welfare Council's Representative the post-termination obligations referred to in Clause 16.

16 POST-TERMINATION OBLIGATIONS OF THE CONTRACTOR

16.1 Upon the expiry or sooner termination of the Contract, the Contractor shall: -

- (a) assist the Welfare Council in the handover of the System from the Contractor to the Welfare Council or any new contractor designated by the Welfare Council so as to eliminate or minimise any disruption or deterioration of the System;
- (b) submit an exit plan on disengagement arrangements to the Welfare Council's Representative for approval detailing, without limitation, the Contractor's personnel and other resources that will provide assistance to the Welfare Council or the new contractor during the handover, major technical issues, the disengagement timetable and a detailed exit procedure;
- (c) terminate any computer links (if applicable) with the Welfare Council and allow the Welfare Council to have access to the Contractor's premises to ensure compliance with the termination requirements in the Contract;
- (d) provide to the Welfare Council's Representative a comprehensive written list of all up-to-date Materials used by the Contractor in connection with the Services at the date of termination; and
- (e) deliver to the Welfare Council's Representative all Materials in its possession and a fully readable archive of all Materials (including a locally hosted version of the System, software with source codes, object codes and command codes, the data and associated metadata) on any removable storage media for reloading into the Welfare Council's server facilities, free of charge for on-going access to all historical data. This provision shall inure regardless of any dispute which may be in existence between the Welfare Council and the Contractor. The Contractor hereby waives any right of lien which might otherwise attach to the Materials.

The Contractor shall certify to the Welfare Council that no copies of such Materials have been retained.

17 INTELLECTUAL PROPERTY RIGHTS

- 17.1 Without prejudice to any other provisions herein, the copyright and all other Intellectual Property Rights of whatever nature in the System and the Custom Programs, operating manual(s) together with all other Materials or Documentation relating to the System shall pass to and be vested in the Welfare Council on the Completion Date.
- 17.2 The Contractor shall treat as Confidential Information all information contained or embodied in the System (and in any documentation relating thereto, including source code) and shall not disclose the whole or any part of such information to any third party without the prior written consent of the Welfare Council. The Contractor shall ensure that its employees or sub-contractors (if applicable) comply with the provisions of this sub-clause. The foregoing obligations shall survive any termination of this Contract.
- 17.3 The Contractor shall deliver to the Welfare Council on the Completion Date or at any time thereafter upon demand by the Welfare Council:-
- (a) the source code of the Custom Programs relating to the System in softcopy format ;
 - (b) any operating manual(s);
 - (c) all other materials necessary to enable a reasonable skilled programmer to correct, modify and enhance the Custom Programs without reference to any other person or document.
- 17.4 Copyright in the Documentation and Materials produced by the Contractor in connection with the performance of its obligations under the Contract shall belong to the Welfare Council and vest upon the Welfare Council at the time they are created.
- 17.5 The Contractor warrants that:
- (a) the Intellectual Property Rights under Clauses 17.1, 17.2, 17.3 and 17.4, save in respect of any Intellectual Property Rights procured from any third party, are the absolute property of, and legally and beneficially owned by, the Contractor with full title guarantee and free from any rights of third parties (save for rights of third parties under non-exclusive licences), and are valid, subsisting and enforceable;
 - (b) in respect of any Intellectual Property Rights procured from any third party, it has or shall have a valid and continuing licence and right under which it is entitled to use or sub-licence any third party Intellectual Property Rights for itself and for the Welfare Council and its authorised users to use such third party Intellectual Property Rights in accordance with the provisions of the Contract;
 - (c) the provision of the Services by the Contractor and the Use or possession by the Welfare Council and its authorised users of the System or the exercise of any of the rights granted under the Contract by the Welfare Council or its authorised users for any of the purposes contemplated by the Contract does not and will not infringe any Intellectual Property Rights of any person;
 - (d) in the event of any infringement of any Intellectual Property Right, it will, if so requested by the Welfare Council, forthwith and without charge to the Welfare Council : -
 - (i) procure for the Welfare Council the right to continue operating or using the System

and the Contractor Supplied Software for those purposes; or

- (ii) execute such modification or adjustment to any Custom Program, document or thing without detracting from the overall performance of the System to make it or them non-infringing; and
- (iii) at the Welfare Council's request, and in accordance with the Welfare Council's requirements, defend any claim or proceeding against the Welfare Council in connection with any alleged infringement referred to in this Clause.

17.6 The Contractor shall, at its own cost, execute or procure the execution of any further assignments, deeds, licence, documents and instruments and do or procure the doing of any further things as may be necessary to give full effect to this Clause.

17.7 The provisions of this Clause shall survive the expiry or sooner termination of the Contract and shall continue in full force and effect notwithstanding such expiry or termination.

18. DELIVERY OF CONTRACTOR SUPPLIED HARDWARE

The Contractor shall deliver the Contractor Supplied Hardware on the delivery date to be agreed with the Welfare Council's Representative to the locations specified by the Welfare Council and where necessary, relocate the Welfare Council's existing systems at its own cost and expense to the specified locations. All items delivered shall be procured directly from the manufacturer/distributor, and at the time of delivery to the locations, they shall remain unopened, and be kept in their original packaging when leaving the manufacturer/distributor. Upon delivery, the Contractor shall provide such assistance, instruments, machines, expertise, labour and other facilities as may be necessary to enable the Welfare Council to inspect and test any items delivered.

19. TITLE AND RISK OF THE SYSTEM

19.1 Title in the Contractor Supplied Hardware or any of its components shall pass to and vest in and become the property of the Welfare Council upon their delivery to the locations specified by the Welfare Council, free and clear of all liens, claims, mortgages, charges, any other form of encumbrances, contractual rights, or third party right or interest of whatsoever nature.

19.2 Notwithstanding anything herein contained, all risks in the Contractor Supplied Hardware shall remain with the Contractor who shall have and/or be deemed to have the exclusive care, custody, and control of the same until the issuance of the System Acceptance Certificate, whereupon the responsibility for the care of the System shall pass to the Welfare Council.

19.3 If any loss or damage occurs to the Contractor Supplied Hardware while the Contractor is responsible for the care thereof, the Contractor shall, as soon as practicable, rectify the loss or damage so that the Contractor Supplied Hardware is supplied in accordance with the Contract. Notwithstanding that responsibility for the care of the System shall have passed to the Welfare Council pursuant to Clause 19.2, the Contractor shall be responsible for any loss or damage to the System occasioned by the Contractor in the course of any operation carried out by the Contractor for the purpose of carrying out the Warranty Services or the Ongoing Maintenance and Support Services.

20 SYSTEM WARRANTIES

20.1 The Contractor warrants that the System including the Contractor Supplied Hardware, as the case may be:

- (a) are newly manufactured and procured directly from the manufacturers or distributors;
- (b) are free from defects in design, materials, workmanship and installation;
- (c) conforms to the Specification and will provide all the facilities and functions set out in the Specification;
- (d) are of merchantable quality and will be fit and suitable for the purposes for which they were requested by the Welfare Council;
- (e) will, throughout the Defects Liability Period, continue to perform at a level consistent with the reliability levels specified in the Specification;
- (f) will not cause any damage, corruption or virus to the existing systems of the Welfare Council;
- (g) property and title of which are vested in the Welfare Council pursuant to the Contract are free and clear of all liens, claims, mortgages, charges, or any other form of encumbrance, contractual right or third party right or interest of whatsoever nature.

20.2 The Contractor shall procure for the Welfare Council the benefit of:

- (a) any manufacturers' warranties relevant to the System; and
- (b) any third party licensors' warranties relevant to third party software.

21. CONFLICT OF INTEREST

The Contractor shall prohibit its personnel from engaging in any work, services or employment other than in the performance of the Services, with or without remuneration, which could give rise to any actual, apparent, potential or perceived conflict between their personal or financial interests and their duties in connection with the Contract.

22 CONFIDENTIALITY

22.1 At any time during the performance of the Services, or after the termination of the Contract, the Contractor shall: -

- (a) treat as propriety and confidential the Confidential Information except to the extent that any such information which was rightfully in the possession of the Contractor prior to the commencement of the negotiations leading to the Contract or which is already in the public knowledge or becomes so at a future date (otherwise than as a result of a breach of this Clause);
- (b) not disclose to any person any of the Confidential Information except to such of the Contractor's employees, agents or sub-contractors who need to know the same for the purposes of the Contract;
- (c) use or reproduce any of the Confidential Information only for the sole purposes of the Contract and shall not use or reproduce or allow to be used or reproduced, directly or indirectly, any of the Confidential Information for any other purposes without the prior written consent of the Welfare Council's Representative;
- (d) comply with any disclosure restrictions and conditions of use of the Confidential Information as may be stipulated by the Welfare Council's Representative from time to time; and
- (e) under no circumstances whatsoever, discuss in any manner or otherwise communicate with any person, make any statement, express any views or opinions regarding any matter related to or in connection with the Services except for the purposes of performing its obligations in accordance with the Contract.

- 22.2 The Contractor shall ensure that each of its employees, agents, sub-contractors, and any other persons involved in the performance of the Contract are aware of and comply with the provisions of this Clause 22. The Contractor shall provide for the same obligation of confidentiality as one of the conditions of any sub-contracts with any sub-contractors.
- 22.3 The Welfare Council shall not owe any obligation of confidence to the Contractor under and in relation to the Contract and may disclose at any time and for any purpose any details relating to the Services or any Materials without prior notice to or consent from the Contractor.
- 22.4 The Contractor shall not publish or use any advertising or other publicity materials without the prior written consent of the Welfare Council's Representative wherein names of "Hong Kong Sheng Kung Hui Welfare Council Limited", "Welfare Council" or their Chinese equivalents or other marks or logos or venue of the Welfare Council are mentioned or language used from which a connection with the aforesaid names, marks or logos can reasonably be inferred or implied.
- 22.5 The provisions of this Clause 22 shall survive the expiry or sooner termination of the Contract and shall continue in full force and effect notwithstanding such expiry or sooner termination.

23 ASSIGNMENT AND SUB-CONTRACTING

- 23.1 Unless otherwise provided for in the Contract, the Contractor shall not, without the prior written consent of the Welfare Council, assign, novate, sub-contract or otherwise dispose of any of its interests, rights, benefits or obligations under the Contract. The performance of the Contract by the Contractor shall be personal to it.
- 23.2 The Contractor shall ensure that the terms of any sub-contract impose on the sub-contractor such of the terms of the Contract as are applicable and appropriate to the part of the Services to be sub-contracted, so as to enable the Contractor to comply with its obligations under the Contract in respect of such part. Upon request by the Welfare Council's Representative, the Contractor shall provide to the Welfare Council's Representative a copy of any sub-contract between the Contractor and the sub-contractor and in the absence of any written contract between the Contractor and the sub-contractor, the Welfare Council's Representative may instruct the Contractor to enter into a written sub-contract with the sub-contractor which complies with the provisions of this Clause.
- 23.3 If required by the Welfare Council, the terms of any such sub-contract shall place an obligation on the sub-contractor to provide a warranty to the Welfare Council within 14 days of the Contractor's appointment.
- 23.4 The Contractor shall remain fully liable and shall not be relieved from any of its obligations hereunder by entering into any sub-contract for the performance of any part of the Contract and the Contractor shall be responsible for the acts, defaults or neglect of any sub-contractor, its employees and agents.

24 PERSONAL DATA

- 24.1 The Contractor shall, and shall procure its employees and sub-contractors to:
- (a) comply with the obligations of a data user under the Personal Data (Privacy) Ordinance (Chapter 486 of the Laws of the HKSAR) ("PDPO") and all applicable guidelines and codes of practices issued by the Privacy Commissioner for Personal Data and other

relevant regulatory or professional bodies in performing the Services or the Works under the Contract;

- (b) use the personal data (as defined in the PDPO) only for the purpose of providing the Services;
- (c) return, safely erase and or destroy all personal data immediately at the earlier of (i) the personal data no longer being required for the Services; (ii) the completion of the Services; or (iii) immediately upon the Welfare Council's request, and shall provide an independent third party's verification on the safe erasure and destruction of personal data in accordance with the Privacy Commissioner's guidelines;
- (d) implement and maintain all security procedures and practices in accordance with the Specification and the PDPO to protect any personal data from loss, unauthorised access, destruction, use, modification or disclosure; and
- (e) promptly inform the Welfare Council's Representative of any loss, misuse, or unauthorised access, destruction, deletion or modification that it knows or reasonably believes to have occurred with respect to any personal data (collectively, "Security Breach") or any abnormalities or unusual activity which may be indicative of a Security Breach and shall assist and cooperate with the Welfare Council in the investigation and remediation of any such occurrence (such remediation to include, without limitation, the provision of notice concerning such occurrence to any person affected or potentially affected thereby and applicable regulatory bodies or authorities).

24.2 This Clause 24 shall survive the expiry or sooner termination of the Contract.

25 WAIVER

Failure, delay, forbearance or indulgence by the Welfare Council at any time to enforce any of the provisions of the Contract shall not be construed as a waiver by the Welfare Council of such provision or in any way affect the validity of the Contract or any part thereof.

26 NOTICES

Any notice, request, consent, or approval required by the Contract to be served by either party on the other shall be sent by prepaid registered post or by facsimile message and shall be deemed to have been received by the addressee within 2 clear days of posting or within 24 hours if sent by facsimile message to the correct facsimile number of the addressee.

27 RELATIONSHIP OF THE PARTIES

The Contractor enters into the Contract with the Welfare Council as an independent contractor only and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership, or a joint venture between the Welfare Council and the Contractor.

28 VICARIOUS LIABILITY

Any act, default, neglect or omission of any officer, employee, agent or sub-contractor of the Contractor shall be deemed to be the act, default, neglect or omission of the Contractor.

29 THIRD PARTIES

The Contract is not intended to, and does not give any person who is not a party to it any right under the Contracts (Rights of Third Parties) Ordinance, Cap.623 to enforce any of its provisions.

30 NON-EXCLUSIVE CONTRACT

Nothing in the Contract shall preclude the Welfare Council from procuring any services or works or items of system from any other person.

31 SEVERABILITY

If any provision of the Contract is found by any authority or court of competent jurisdiction to be void or unenforceable in whole or in part, the other provisions of the Contract shall continue to be valid.

32 ENTIRE AGREEMENT

The Contract constitutes the whole agreement between the parties thereto and supersedes any previous agreements or arrangements between them relating to the subject matter hereof. The Contractor acknowledges that in entering into the Contract, it has not relied on any statement, warranty or representation given or made by the Welfare Council.

33 AMENDMENTS

The Contract may only be amended in writing signed by duly authorised representatives of the Welfare Council and the Contractor.

34 GOVERNING LAW

The Contract and all disputes and differences hereunder shall be governed by and construed in accordance with the laws of the HKSAR and the parties hereby agree to submit to the non-exclusive jurisdiction of the courts of the HKSAR in relation to any matters arising out of the Contract.