

GRANT AGREEMENT

between

THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION

and

[INSERT THE NAME OF THE NGO]

Revised in April 2024
Housing Bureau

THIS AGREEMENT is made on [date].

BETWEEN:

- (1) **THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION** (the “**Government**”) as represented by the Under Secretary for Housing acting for and on behalf of **The Secretary for Housing**; and
- (2) **[INSERT THE NAME OF THE NGO]**, a corporation incorporated [*please insert details*] under xxx Ordinance, Cap. XX and having its registered office at [*please insert the address*] (the “**Operator**”).

RECITALS

- (A) The Government’s transitional housing Funding Scheme (*as defined hereinafter*) aims to support Non-Government Organisations (“NGOs”) to provide not-for-profit transitional housing Units (*as defined hereinafter*) to individual and families living in inadequate conditions or awaiting public rental housing. [A short description of project details, e.g. *The Operator offers to provide about XX Units on the (*Site / Premises) (as defined hereinafter) from [date] onwards. The Units will be leased out to needy families using the (*affordable housing model / converted housing Units), and the operation, management and maintenance cost of the Units will be self-funded from the operation revenue [by the Operator]. [*delete as appropriate]*
- (B) The Operator’s proposal on its Transitional Housing Scheme had been submitted via the Government to the Assessment Committee of the Funding Scheme for consideration. On [date], the Assessment Committee approved the allocation of [approved grant amount HK\$xxx] million out of the Funding Scheme for the implementation of the Project (*as defined hereinafter*).
- (C) The Under Secretary for Housing has been authorised by the Government to enter into this Agreement.

NOW IT IS HEREBY AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement (including the Recitals), any word and expression shall, unless the context otherwise requires or unless defined further below, have the meaning assigned to it:

*[*delete as appropriate]*

“Applicable Laws” means the Ordinances and all other laws, regulations and by-laws applicable to the Project.

“Associate” of any person means:

- (a) a relative or partner of that person; or
- (b) any body of persons (corporate or unincorporated) one or more of whose directors is in common with one or more of the directors of that person.

“relative” means the spouse, parent, child, brother or sister of the relevant person, and in deducing such a relationship, an adopted child shall be deemed to be a child both of the natural parents and the adopting parents and a step child to be a child of both the natural parents and of any step parent.

“director” means any person occupying the position of director by whatever name called and includes without limitation a de facto or shadow director.

“Associated Person” in relation to another person means:

- (a) any person who has control, directly or indirectly over the other; or
- (b) any person who is controlled, directly or indirectly, by another; or
- (c) any person who is controlled by, or has control over, a person at (a) or (b) above.

“control” in relation to another person means holding office as a director or the power of a person to secure:

(i) by means of the holding of shares or interests or the possession of voting power in or in relation to that or any other person; or

(ii) by virtue of powers conferred by any constitution, memorandum or articles of association, partnership, agreement or arrangement (whether legally enforceable or not) affecting that or any other person that the affairs of the first-mentioned person are conducted in accordance with the wishes of that other person.

“Audit” or “Audited”	means auditing by a person who is qualified for appointment as an auditor of a company under section 393 of the Companies Ordinance, Cap. 622.
“Authorized Person”	means an authorized person within the meaning of the Buildings Ordinance, Cap. 123.
“Business Day”	means any day other than a Saturday and a general holiday as the term is defined under the General Holidays Ordinance, Cap. 149.
“Designated Bank Account”	means an interest-bearing HK\$ account established and maintained in the sole name of the Operator with a bank licensed under the Banking Ordinance, Cap. 155 solely and exclusively for the Grant.
“Disclosable Information”	means: (a) this Agreement; (b) the monthly progress report, the final works report and the Final Statement of Account and any information submitted to the Government in accordance with Clause 7 below.
“Final Statement of Account”	means the Final Statement of Account referred to in Clause 7.2(b) below.
“Funding Scheme”	means the Government’s Funding Scheme to

Support Transitional Housing Projects by Non-government Organisations.

“Government’s Representative”	means the Under Secretary for Housing.
“Grant”	means a grant of up to a maximum sum of [approved grant amount HK\$xxx] million to be provided from the Funding Scheme for the Project.
“HK\$”	means the Hong Kong dollar, the lawful currency for the time being of Hong Kong.
“Hong Kong”	means the Hong Kong Special Administrative Region of the People’s Republic of China.
“Ordinance”	means the Buildings Ordinance, Cap. 123.
“Premises”*	means the existing [<i>insert the name of the building</i>] situated at [<i>insert the address</i>]. (<i>for use in converted Units</i>)
“Project”*	means the provision of transitional housing on the (* <i>Site / Premises</i>) for the agreed minimum period of time under this Agreement. [<i>*delete as appropriate</i>]
“Quarter”	means every period of three months from the date hereof throughout the Term and Q1, Q2 means the first Quarter, second Quarter, etc. as appropriate.
“Registered Geotechnical Engineer”	means a registered geotechnical engineer within the meaning of the Buildings Ordinance, Cap. 123.
“Registered Structural Engineer”	means a registered structural engineer within the meaning of the Buildings Ordinance, Cap. 123.
“Requisition Forms”	means any one of the following forms for disbursements as set out in Schedule 3 hereto: (a) Requisition Form for costs of Works completed; and

(b) Requisition Form for consultancy fees.

“Site”*	means <i>[insert the full detail address e.g. the area within the boundary of the Short Term Tenancy to be entered into between the Director of Lands for and on behalf of the Government and the Operator (*and the Short Term Waiver to be granted by the Director of Lands to the Operator) which delineates a piece of land xxx]. (for use in converted Units) [*delete as appropriate]</i>
“Term”	means the term as described in Clause 2.1 below.
“Transitional Housing Scheme”	means the Transitional Housing Scheme of the Operator for the purpose of providing transitional housing to the needy families in Hong Kong having the elementary features as set out in Schedule 1 hereto.
“Unit”*	means a transitional housing unit to be built by way of a combination of modular integrated construction (MiC), prefabricated components, in-situ construction and/or other appropriate method# <i>[#edit as appropriate]</i> to be operated, managed and maintained by the Operator and to be rented out to a tenant during the implementation of the Project. <i>(for use in MiC construction Units)</i>
“Unit”*	means a transitional housing unit which is converted and altered from an existing vacant building and to be operated, managed and maintained by the Operator and to be rented out to a tenant during the implementation of the Project. <i>(for use in converted Units)</i>
“Works”*	means and includes the construction of the foundation and superstructure of the Units and all other works to be executed by the Operator under the Project. <i>(for use in MiC construction Units)</i>
“Works”*	means and includes the conversion and alteration of the existing vacant building(s) into the Units and all

other works to be executed by the Operator under the Project. *(for use in converted Units)*

1.2 This Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

- (a) The headings and marginal notes to the Clauses of this Agreement are for ease of reference only and shall not be taken into consideration in the interpretation or construction of this Agreement.
- (b) Except where the context requires otherwise, references to Clauses, paragraphs, parts and schedules are references to Clauses, paragraphs, parts of and schedules to this Agreement.
- (c) All annexes including schedules to this Agreement are an integral part of this Agreement and a reference to this Agreement includes a reference to all its annexes.
- (d) Where the context so requires words importing the singular only also include the plural and vice versa and words importing a gender include the other gender.
- (e) References to any law are construed as references to that law which is for the time being in force and shall include all subsidiary legislation made thereunder.
- (f) References to any person shall include any individual, firm, body corporate or unincorporated (wherever established or incorporated).

2. TERM OF THIS AGREEMENT

2.1 This Agreement shall have a term commencing from the date hereof until the Government's acceptance of the Final Statement of Account submitted under Clause 7.2 below.

3. OPERATOR TO DESIGN (*AND BUILD, / , CONVERT AND ALTER,) ETC.

3.1 The Operator undertakes to:

*[*delete as appropriate]*

- (a) use the Grant exclusively for the purpose of the Project;
- (b) within *[insert the target date e.g. Q2]*, gear up for the commencement of the Works by procuring for the Project one or more building works contractors who

must be properly registered under the Ordinance;

Added in
Jan 2023

*** NOTE:** The contract commencement date under the main works contract shall be within nine months after the date of approval of the project by the Assessment Committee (i.e. on or before dd mmm yyyy), otherwise the approval will be deemed as withdrawn and the funding will no longer be provided under the Funding Scheme. The Operator shall pay back the Government the total amount of any sum the Government has paid the Operator together with the interest at the judgement debt rate prescribed from time to time by the Rules of the High Court (Chapter 4A), Laws of Hong Kong) on the amount;
(for use in projects approved after 1 December 2022)

- (c) within *[insert the target date e.g. Q6]*, for the completion of the provision of the Units;
- (d) for the purpose of this Agreement and in accordance with the Ordinance, appoint:
 - (i) an Authorized Person as coordinator for the carrying out of all Works;
 - (ii) a Registered Structural Engineer for the structural elements of the Works; and
 - (iii) where necessary a Registered Geotechnical Engineer for the geotechnical elements of the Works;
- (e)* design and build all Units and carry out all Works in compliance with the Applicable Laws; *(for use in MiC construction Units)*
- (e)* design, convert and alter the existing building(s) into the Units and carry out all Works in compliance with the Applicable Laws; *(for use in converted Units)*
- (f) comply with all reasonable instructions and directions on all matters relating to the Agreement as the Government's Representative may from time to time issue to the Operator;
- (g) comply with the requirements set out in the Guide to Application and Guidelines for Delivery of Projects for the Funding Scheme to Support Transitional Housing Projects by Non-government Organisations published by the Housing Bureau;
- (h) ensure that all Units are operated, managed and maintained for the purpose of and in compliance with the objectives of the Transitional Housing Scheme; and
- (i) the Operator shall submit by the end of each calendar year of the Term an annual report in respect of such calendar year with statements of the Designated Bank Account for Government's approval, such annual report shall include but not limited to the following:

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- (i) Cost of income;
- (ii) Operating Expense, Administrative Expense;
- (iii) Asset & Liability;
- (iv) Capital & Reserve; and
- (v) Any information requested by the Government.

4. DISBURSEMENT OF THE GRANT, ETC

- 4.1 Unless otherwise agreed with the Government, the Operator shall before the 10th day of the third month of Q1 and of each Quarter thereafter submit to the Government's Representative a cash flow forecast in the form as shown in Schedule 2 hereto.
- 4.2 The Operator may within 10 days *[note: this day is expected to be aligned with the monthly report date in Clause 7.1 for ease of cross reference and checking]* after each month throughout the Term, submit in respect of the preceding month one or more Requisition Forms as appropriate in the respective forms as shown in Schedule 3 hereto and any supporting document therein required, subject to the achievement of any milestones that may be set out in the Schedules of this Agreement.
- 4.3 Subject to Government's satisfaction with the correctness of the Requisition Forms submitted under Clause 4.2 above, the Government shall, within 30 days from the receipt of the said Requisition Forms, pay the Operator by way of disbursement of the Grant the amounts comprised in such Requisition Forms.
- 4.4 Notwithstanding anything herein to the contrary, the Operator may apply for advance payment from the Government, with justifications and supporting documents as deemed necessary by the Government. The Government may approve (with or without conditions) or reject such application at its absolute discretion.
- 4.5 Any unutilised funds and bank interest in the Designated Bank Account, surplus in the operation of the transitional housing, and proceeds received from the resale of items at the end of the Term shall be paid back to the Government, unless otherwise instructed or approved by the Government.
- 4.6 Under no circumstances shall the Government be liable for any payment in excess of the Grant.
- 4.7 Subject to Clauses 3.1(b) and 4.5 above, the Operator shall not be liable to the Government or be obliged to refund or repay the Grant, or any part thereof contributed under this Agreement.

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5. DESIGNATED BANK ACCOUNT

- 5.1 The Operator shall open and maintain a Designated Bank Account and keep separate the Grant from other monies belonging to the Operator. The Operator shall ensure

that the Grant is paid into and kept in the Designated Bank Account, and ensure that all receipts into and payments out of the Grant are properly and timely recorded. The Operator shall keep all unspent balance of the Grant at all times in the Designated Bank Account.

6. PROCUREMENT MANAGEMENT

6.1 Subject to Clause 3.1(g) above, the Operator shall,

- (a) in respect of each procurement for the purpose of the Works, such as procurement of consultancy services or provision of services other than consultancy:
 - (i) submit for approval the assessment of eligibility of the tenderers' experience in (**modular integrated construction (MiC) / conversion and alteration works*) under the Practice Note ADV-36 of the Buildings Department, if applicable; [**delete as appropriate*]
 - (ii) invite at least five (5) tenderers in each procurement exercise;
 - (iii) submit to the Government proposals of the three (3) tenderers who have achieved the highest combined scores if two-envelope tender is adopted, or the three (3) lowest tenders fully meeting the tender requirements;
 - (iv) submit the Operator's recommendation of award of the relevant contract upon evaluation; and
 - (v) submit a report on each procurement exercise with details and the submission deadlines will be decided by the Government.
- (b) administer, manage, supervise and coordinate all studies, assessments, surveys, investigations and tests necessary for the completion of the Works;
- (c) be conscious of the upper limit of the Grant as set out and is required to exercise its professional expertise to ensure the budgetary limit is maintained throughout the implementation of the Works;
- (d) adopt value for money design approach avoiding inclusion of non-essential works and facilities or using materials of excessively high standard, and to ensure the design and materials used will not incur high recurrent cost in operation and maintenance;
- (e) avoid specifying materials by brand names or designs/specifications that can be satisfied by only one product in the market unless with justified reasons acceptable to the Government. Reference should also be made to paragraph 2.6.1 of the Corruption Prevention Guide on Works Supervision published by the Independent Commission Against Corruption (ICAC); and

- (f) seek the written approval from the Government to dispose the fixed asset procured and subsidised by any fund under the Grant. An asset may become unserviceable if it is damaged, broken, or beyond economical repair.

7. REPORTS & RECORDS

- 7.1 The Operator shall before the 10th day *[note: this may be adjusted together with the date in Clause 4.2 above to suit project needs]* after the first month from the commencement of Works and each month thereafter submit to the Government a monthly progress report which shall cover the progress and financial position of the project in the preceding month. Slippage to the programme, if any, together with the causes and the mitigation measures should be reflected in the progress reports. The monthly progress reports should also include up-to-date status of the spending, and variation orders and claims from the contractor(s) of the project. At half-yearly intervals or otherwise required by the Government, the monthly progress report should also include a cashflow forecast of the project, the actual timing of the forecasts to be confirmed by the Government.

Revised in
Aug 2021

- 7.2 The Operator shall, within the time frames specified below or such later date as may be agreed with the Government's Representative, submit to the Government in respect of all the Units (**built / converted from the existing building(s)*) and all the Works completed: *[*delete as appropriate]*

Revised in
Aug 2021

- (a) within four (4) months after issuance of the occupation permit under the Ordinance (OP), or the completion date of works if OP is not required – a final works report containing (i) an overview of the Project; (ii) copy of any as-built record plans and certificate of the completion of the Works submitted by the Operator to the Buildings Department; and (iii) copy of the OP; and
- (b) within six months after the expiry of the defects liability period of the works – an Audited Final Statement of Account which shall include balance sheet, Grant disbursement statement, cash flow statement, accounting policies and explanatory notes; and which shall indicate the balance (if any) and deployment of the Grant. (The Operator should also take note of its duty to submit a draft final project account within four months after the expiry of the defect liability period of the Works as detailed in the Guidelines for Delivery of Projects referred to in section 3.1(g) above.)

- 7.3 The Operator shall keep all financial statements and records (including invoices and receipts) relating to the Project for seven (7) years after the expiry of the Term and shall at all reasonable times give the Government unhindered access to such financial statements and records. This Clause shall survive before and after the termination or expiry of the Agreement.

8. INSURANCE

- 8.1 The Operator shall, throughout the Term, effect and maintain, or cause to be effected and maintained at its own cost and expense with a reputable insurer an all risks insurance (which shall include, without limitation, contract works and property damage, third party liability insurance, and such other insurances as may be required by law from time to time) in respect of the Project.
- 8.2 The Operator shall at no cost to the Government use all reasonable endeavours to ensure that contractors and sub-contractors which have a significant design responsibility in the execution of their relevant construction contracts and all design consultants employed or engaged in connection with the design of any significant part of the Works, effect and maintain with a reputable insurer professional indemnity insurance from the commencement of the Works to a period of not less than two (2) years after completion of the Works.
- 8.3 The Operator shall use all reasonable endeavours to ensure that no actions shall be taken or omitted nor shall it tolerate anything to be done or omitted by it or its contractors, sub-contractors or agents as a result of which any insurance policy or part thereof effected in accordance with this Clause 8 may be voided, forfeited, revoked or withdrawn.

9.* OWNERSHIP OF THE UNITS

*[note: *replace “OWNERSHIP OF THE UNITS” with “NOT USED” if MiC units are not used for the project]*

- (a) The ownership of the Units shall be vested in and remain with the Operator upon their construction.
- (b) The Operator shall ensure the Units are managed and maintained upon their construction and until the assignment, transfer and/or disposal of the same.
- (c) The Operator shall only assign, transfer and/or dispose of the Units upon the written instruction of the Government at the Operator’s cost.
- (d) This Clause 9 shall survive upon the expiry or termination of the Agreement.

10. WARRANTIES

- 10.1 The Operator warrants and represents to the Government that:
- (a) the Operator, its directors, employees, agents and sub-contractors who are engaged to carry out or otherwise involved in the Project shall use their necessary experience, skill, care, diligence and expertise such that the Project will be carried out in a professional, timely and diligent manner.

- (b) the Operator shall promptly inform the Government upon it or any of its directors becoming aware of the occurrence of any event adversely affecting the Project.

11. TERMINATION

11.1 The Government may terminate the Agreement forthwith upon the occurrence of any of the following events or circumstances:

- (a) (i) a petition is presented or a proceeding is commenced or an order is made or an effective resolution is passed for the winding-up, insolvency, administration, reorganisation, reconstruction (save for a solvent reconstruction or a reorganisation which the Government has approved in advance prior to its implementation), dissolution, or bankruptcy of the Operator or for the appointment of a liquidator, receiver, administrator, trustee, similar officer of the Operator or of all or any part of its business or assets; or
- (ii) the Operator stops or suspends payment to its creditors generally or is unable or admits its inability to pay debts as they fall due or seeks to enter into any composition or other arrangement with its creditors or is declared or becomes bankrupt or insolvent; or
- (b) the Operator commits a material breach of any provision of this Agreement which is not remediable or, if remediable, is not remedied within 30 days (or such longer period as the Government may approve) after receipt of a written notice from the Government requiring it to do so; or
- (c) the Operator subcontracts or assigns or transfers the whole or any part of the Agreement without the prior written consent of the Government; or
- Added in
Apr 2024

(d) the Operator has engaged or is engaging in acts or activities that are likely to constitute or cause the occurrence of offences endangering national security or which would otherwise be contrary to the interest of national security; or
- Added in
Apr 2024

(e) the continued engagement of the Operator or the continued performance of this Agreement is contrary to the interest of national security; or
- Added in
Apr 2024

(f) the Government reasonably believes that any of the events mentioned in sub-clause (d) or (e) above is about to occur.

11.2 Without prejudice to Clause 11.1 above, and after repeated written notices without remedy, the Government may by serving a one (1) month's prior written notice terminate the Agreement.

11.3 Termination of this Agreement shall be without prejudice to any antecedent rights or

obligations of either party hereto.

- 11.4 Notwithstanding anything to the contrary in this Agreement, the Operator shall compensate the Government for all losses, damage, costs and expense arising from or in connection with the termination under Clause 11.1 or Clause 11.2.

Added in
Apr 2024

- 11.5 The payments referred to Clause 4.2 and 4.3 shall be deemed in full and final payment to the Operator by way of disbursement of the Grant up to the date of suspension or termination. The Government shall not be responsible for any claim, legal proceeding, liability, loss (including any direct or indirect loss, any loss of revenue, profit, business, contract or anticipated saving), damages (including any direct, special, indirect or consequential damages of whatsoever nature) or any cost or expense, suffered or incurred by the Operator arising out of or in relation to the termination.

Added in
Apr 2024

12. VARIATIONS

- 12.1 This Agreement will not be varied except by a supplementary agreement duly signed by the Government and the Operator.

13. CONSENT TO DISCLOSURE

- 13.1 The Government shall have the right to disclose whenever it considers appropriate or upon request by any third party (written or otherwise) any information on this Agreement, without any further reference to the Operator.

14. NOTICES

- 14.1 All notices under this Agreement shall be in writing and all certificates, notices or written instructions to be given under the terms of this Agreement shall be served by sending the same by registered post, facsimile or by hand, leaving the same at:

If to the Government:

Address: Housing Bureau
Room 1202, 12/F, Fairmont House,
8 Cotton Tree Drive, Central, Hong Kong

Facsimile No.: 3579 5775

Attention: *[insert the name of the post holder]*, Under Secretary for Housing

If to the Operator:

Address: *[please fill in]*
 [please fill in]

Facsimile No.: *[please fill in]*

Attention: *[please fill in]*

- 14.2 Either party may change its nominated address or facsimile number or recipient by prior notice to the other party.
- 14.3 Notice given by post shall be effective upon the earlier of:
- (a) actual receipt; and
 - (b) five (5) Business Days after mailing.
- 14.4 Notices delivered by hand shall be effective upon delivery.
- 14.5 Notices given by facsimile shall be deemed to have been received where there is confirmation of uninterrupted transmission by a transmission report and where there has been no telephonic communication by the recipient to the senders (to be confirmed in writing) that the facsimile has not been received in legible form:
- (a) within two (2) hours after sending, if sent on a Business Day between the hours of 9:00 am and 4:00 pm; or
 - (b) by 11:00 am on the next following Business Day, if sent after 4:00 pm, on a Business Day but before 9:00 am on that next following Business Day.

15. CONFIDENTIALITY

- 15.1 Except as necessary for the provision of transitional housing, the Operator shall not (except with the prior written consent or as instructed by the Government) disclose the terms and conditions of this Agreement or any report, document, specification, drawing, plan, software, data or other particulars furnished by or on behalf of the Government in connection therewith, or any such or similar information generated or produced by the Operator pursuant to this Agreement, to any person other than persons employed or engaged by the Operator in carrying out this Agreement, directors of the Operator, agents of the Operator, any Approved contractors, or the Operator's consultants, accountants, insurers and legal advisers.
- 15.2 Any disclosure to any person, agent, contractor, consultant, accountant, insurer, legal adviser permitted under Clause 15.1 shall be in strict confidence and shall be on a "need to know" basis and extend only so far as may be necessary for the purpose of

this Agreement.

- 15.3 The Operator shall take all necessary measures (including by way of contractual provisions where appropriate) to ensure that its directors, employees, agents, contractors, consultants, accountants, insurers and legal advisers as mentioned in Clause 15.1 are aware of and shall comply with the confidentiality and non-disclosure provisions contained in this Agreement. If required by the Government, the Operator undertakes to procure for and on behalf of the Government a confidentiality agreement in a form to be prescribed by the Government from any director, employee, agent, contractor, consultant, accountant, insurer and legal adviser to whom any confidential information is to be disclosed.
- 15.4 The Operator shall not without the prior written consent of the Government publish, either alone or in conjunction with any other person, in any newspaper, magazine, periodical or through any electronic medium, any article, photograph or illustration relating to this Agreement.
- 15.5 If the Operator has provided the Government with documents and information which he has declared in writing to be confidential and stamped accordingly whether in relation to his practice or special circumstances or for other good causes, unless the Government within two (2) months of receipt of such information by notice in writing disagrees, then that information will be treated as confidential.
- 15.6 The Operator shall indemnify and keep indemnified the Government against all loss, liabilities, damages, costs, legal costs, professional and other expenses of any nature whatsoever the Government may suffer, sustain or incur, whether direct or consequential, arising out of or in connection with any breach by the Operator or its directors, employees, agents, contractors, consultants, accountants, insurers or legal advisers of this Clause.
- 15.7 The provision of this Clause shall survive upon the termination of this Agreement (however occasioned) and shall continue in full force and effect notwithstanding such termination.

16. ASSIGNMENT

- 16.1 The Operator may not assign or otherwise dispose of any or all of its rights and obligations under this Agreement without the prior written consent of the Government.

17. RELEASES AND WAIVERS

- 17.1 The rights, powers and remedies conferred on either party by this Agreement and remedies available to either party are cumulative and are additional to any right, power or remedy which it may have under general law or otherwise.

17.2 Either party may, in whole or in part, release, compound, compromise, waive or postpone, in its absolute discretion, any liability owed to it or right granted to it under this Agreement by the other party without it in any way prejudicing or affecting its rights in respect of that or any other liability or right not so released, compounded, compromised, waived or postponed.

17.3 Any relaxation, forbearance, indulgence or delay (together "indulgence") of either party in exercising any right shall not be construed as a waiver of the right and shall not affect the ability of that party subsequently to exercise that right or to pursue any remedy, nor shall any indulgence constitute a waiver of any other right (whether against that party or any other person).

18. NO AGENCY

18.1 Nothing in this Agreement shall be construed as creating a partnership or as a contract of employment between the Government and the Operator.

18.2 Save as expressly provided otherwise in this Agreement, the Operator shall not be, or be deemed to be, an agent of the Government and the Operator shall not hold itself out as having the power to bind the Government in any way.

19. ENTIRE AGREEMENT

19.1 This Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Agreement.

20. SEVERABILITY

20.1 If any provision of this Agreement shall be declared invalid, unenforceable or illegal by the courts of any competent jurisdiction to which it is subject, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Agreement in that jurisdiction or in Hong Kong (as the case may be), but it shall not affect the validity, enforceability or legality of that provision in another jurisdiction.

21. PROBITY REQUIREMENTS

21.1 The Operator shall prohibit its directors, employees, agents and sub-contractors who are involved in this Agreement from offering, soliciting or accepting any advantage as defined in the Prevention of Bribery Ordinance, Cap. 201. The Operator shall also caution its directors, employees, agents and sub-contractors against soliciting or accepting any excessive hospitality, entertainment or inducements which would impair their impartiality in relation to this Agreement.

- 21.2 If the Operator or any of its directors, employees, agents or sub-contractors is found to have committed an offence under the Prevention of Bribery Ordinance, Cap. 201 or any subsidiary legislation made thereunder or under any law of a similar nature in relation to this Agreement or any other Government contracts, the Government may immediately terminate this Agreement.

22. CONFLICT OF INTEREST

- 22.1 The Operator shall during the Term:

- (a) take appropriate steps to ensure that it (including its Associates and Associated Persons), each of their respective directors, partners, employees, volunteers, advisers, agents, sub-contractors and their Associates and Associated persons, shall not undertake any service, task or job or do anything whatsoever for or on behalf of third party (other than in the proper performance of this Agreement) which conflicts with, or which may be seen to conflict with the Operator's obligations to the Government under this Agreement; and
- (b) forthwith notify the Government in writing of all or any facts which may reasonably be considered to give rise to a situation where the financial, professional, commercial, personal or other interests of the Operator or its Associates or Associated Persons, or any one of their respective directors, partners, employees, volunteers, advisers, agents, sub-contractors and their Associates and Associated Persons, conflict with or may conflict with Operator's obligations to the Government under this Agreement.

23. GOVERNING LAW

- 23.1 The Agreement shall be governed by and construed in accordance with the laws of Hong Kong and the parties hereby submit to the exclusive jurisdiction of Hong Kong courts.

24. FURTHER ASSURANCE

- 24.1 Each party shall do all things and execute all further documents necessary to give full effect to this Agreement.

25. CONTRACTS (RIGHTS OF THIRD PARTIES) ORDINANCE

- 25.1 The parties hereby declare that nothing in this Agreement confers or purports to confer on any third party any benefit or any right to enforce any term of this Agreement pursuant to the Contracts (Rights of Third Parties) Ordinance, Cap. 623.

AS WITNESS whereof the parties have executed this Agreement the day, month and year first above written:

SIGNED by *[insert the name of the post holder]*,)
Under Secretary for Housing, for and on behalf of)
THE GOVERNMENT OF THE HONG KONG)
SPECIAL ADMINISTRATIVE REGION acting for)
and on behalf of the Secretary for Housing)
)

in the presence of:

.....

Name : [*please fill in*]
Occupation : Project Director of Task Force on Transitional Housing
Address : Room 1202, 12/F, Fairmont House,
8 Cotton Tree Drive, Central, Hong Kong.

SIGNED by [please fill in], for and on behalf of)
[please fill in])
)
)
)
)

in the presence of:

.....

Name : *[please fill in]*

Occupation : *[please fill in]*

Address : *[please fill in]*

List of Schedules

Schedule 1

Elementary Features

Schedule 2

Cash flow & Payment Forecast Form

Schedule 3

Requisition Forms [i.e. Annex B in the Guidelines for Project Delivery]