

[NAME OF INCORPORATED OWNERS]

and

[NAME OF CONSULTANT ASSIGNED BY THE URA]

and

URBAN RENEWAL AUTHORITY

**Tripartite Agreement
in relation to the
“Smart Tender”
Building Rehabilitation Facilitating Services**

THIS AGREEMENT is made on the day of

BETWEEN

- (1) **[NAME OF INCORPORATED OWNERS]**, a body corporate established under and by virtue of the Building Management Ordinance (Cap.344 of the Laws of Hong Kong) whose registered office is at [*please fill in address*] (“**OC**”);
- (2) **[NAME OF CONSULTANT ASSIGNED BY THE URA]** of [Address of Consultant] (“**Consultant**”); and
- (3) **URBAN RENEWAL AUTHORITY**, a body corporate established under and by virtue of the Urban Renewal Authority Ordinance (Cap.563 of the Laws of Hong Kong) whose office is situate at 26th Floor, COSCO Tower, 183 Queen’s Road Central, Hong Kong (“**URA**”).

WHEREAS

- (A) URA has introduced the Scheme (as defined below) to provide certain facilitating services to owners’ corporations participating in the Scheme to assist and facilitate such owners’ corporations to handle the tender exercise for their respective building rehabilitation works.
- (B) The OC has joined the Scheme and entered into the Services Agreement (as defined below) with URA under which the OC agreed, inter alia, to engage URA to provide facilitating services under the Scheme on the terms and conditions as more particularly contained therein.
- (C) Pursuant to the Services Agreement, the OC agreed to appoint the Consultant as its consultant to advise on costs and technical matters in connection with the Building Rehabilitation Works (as defined below).
- (D) The parties hereto agreed to enter into this Agreement to effect the appointment of the Consultant by the OC.

NOW IT IS HEREBY AGREED as follows:

1. DEFINITIONS

In this Agreement the following expressions shall have the following meanings except where the context otherwise requires:-

- 1.1 “**AP**” means an authorized person as defined in the Buildings Ordinance (Cap.123 of the Laws of Hong Kong).

| | |
|--|--|
| “Building” | means [Name and address of the building]. |
| “Building Rehabilitation Works” | means rehabilitation works (including but not limited to repairing, renovation, reinstatement, removal, demolition and/or improvement works) proposed to be carried out by the OC to the common areas or parts and the common services and facilities (or any part thereof) of the Building within the scope of the Scheme. |
| “Consultancy Fee” | means the fees payable to the Consultant for the Consultancy Services pursuant to Clause 4 herein. |
| “Consultancy Services” | means the services to be provided by the Consultant to the OC particulars of which are set out in Schedule hereto. |
| “Contractor” | means the contractor for carrying out the Building Rehabilitation Works to be procured and appointed by the OC through tender process. |
| “DIY Tool Kits” | means the “ <i>do-it-yourself tool kits</i> ” compiled and from time to time amended or supplemented by URA which include, among others, guidelines, proforma documents and recommended/mandatory terms and conditions for proper procurement of AP or RI, consultants and contractors and other tips or instructions in relation thereto to guide the OC in organizing the Building Rehabilitation Works. |
| “E-Service Provider” | means a service provider to be appointed by URA as agent for and on behalf of the OC pursuant to this Agreement to provide services relating to the E-Platform. |
| “E-Platform” | means the electronic platform to be established by the E-Service Provider for the purpose of the Scheme, with the objective to create a fair and competitive tendering environment for proper procurement of the Contractor by minimizing potential manipulation of the tendering process, to facilitate receipt of expression of interest, despatch of tender documents, receipt of inquiries from potential tenderers and such inquiries shall be dealt with by the AP/RI. |
| “Hong Kong” | Hong Kong Special Administrative Region. |
| “Intellectual Property Rights” | means any of the following in any part of the world: |

- (a) patent, trade mark, service mark, trade or business name, registered design, copyright, naming right, domain name or design right or any right similar or analogous to any of the foregoing whether registered or not and including any right or any application for registration of the same or interest of any kind arising out of or created in respect of any of the foregoing; and
- (b) any right to bring an action for infringement of the above, passing off or similar or analogous proceeding.

“RI” means a registered inspector as defined in the Buildings Ordinance (Cap.123 of the Laws of Hong Kong) who is qualified to perform the duties and functions of inspectors in accordance with the said Ordinance.

“Scheme” means “Smart Tender” Building Rehabilitation Facilitating Services

“Services Agreement” means the Services Agreement for the Scheme dated [xx / xx /xxxx] and entered into between the OC and URA.

“Term” means the period of 18 months commencing on [xx / xx /xxxx] and expiring on [xx / xx /xxxx] (both days inclusive), unless extended by the mutual consent of all parties hereto in writing.

- 1.2 In this Agreement, words denoting the singular include the plural and words denoting persons include bodies corporate and unincorporated; and (in each case) vice versa.
- 1.3 References to Clauses, Sub-clauses, Schedules and Annexes are to the clauses and sub-clauses of, and schedules and annexes to this Agreement. Reference to parties are references to the parties to this Agreement.
- 1.4 Headings are for ease of reference only and do not form part of this Agreement nor shall any of the provisions herein be construed or interpreted by reference thereto or be in any way affected or limited thereby.
- 1.5 Any reference to documents however described shall include references to such documents as amended, supplemented, novated or substituted from time to time.
- 1.6 Any reference in this Agreement to any ordinance, regulation, by-law or order of any governmental department or relevant authority shall be construed as a reference to that ordinance, regulation, by-law or order as from time to time

enacted, amended, modified, consolidated, re-enacted, extended or replaced.

2. APPOINTMENT

- 2.1 The OC hereby appoints the Consultant to provide the Consultancy Services and the Consultant hereby agrees to provide the Consultancy Services for the Term in accordance with the terms and conditions of this Agreement.

3. URA AS COORDINATOR

- 3.1 The OC agrees and confirms that URA shall have full and irrevocable power from the OC as its agent to instruct, liaise or co-ordinate (as URA deems fit) with the Consultant in provision of his services to the OC. URA shall in no event be held liable to the Consultant for any instructions, directions or guidelines given by URA to the Consultant herein.
- 3.2 The Consultant shall not be treated as agent or sub-contractor of URA. URA shall in no event be held liable for the works or services to be rendered by the Consultant.

4. FEES

- 4.1 In consideration of the Consultant providing the Consultancy Services to the OC, the OC shall pay the Consultancy Fee, which is included in the amount as stated in Clause 3.1 of the Service Agreement, to the Consultant via URA.
- 4.2 The payment of the Consultancy Fee shall be in full and final settlement of the remuneration payable to the Consultant for its providing services pursuant to this Agreement and the Consultant shall have no further claim whatsoever against URA or the OC.

5. OBLIGATIONS OF OC

- 5.1 The OC shall, during the Term, observe and comply with all terms and conditions in the Services Agreement. The OC shall also during the Term (i) co-operate and work with the Consultant diligently and efficiently, allow the Consultant access to the Building for inspection or for any other purposes in connection with provision of the Consultancy Services and provide the Consultant with documents, information, record, materials and/or decision as the Consultant may require from time to time which are necessary for purpose of the carrying out of the Consultancy Services; and (ii) follow and comply with the requirements under the DIY Tool Kits and provide to URA promptly upon demand by URA all

documents, information and records, whether in electronic forms or otherwise in relation to the provision of the Consultancy Services and compliance with the terms and conditions of this Agreement.

- 5.2 The OC shall appoint an AP or a RI for purpose of the Building Rehabilitation Works in accordance with the DIY Tool Kits or any other guidelines (if any) issued by URA. The OC shall procure the AP or RI to co-operate and work with URA and the Consultant and comply with the advices and directions given by URA in relation to the Building Rehabilitation Works diligently and efficiently.
- 5.3 The OC shall promptly disclose to URA and the Consultant in writing any event or occurrence, actual or threatened, during the Term which may affect the Consultant's ability to perform all or any of their services including but not limited to any litigation or proceeding whatsoever against the OC, or any breach or default of any agreement, order or award binding on the OC.
- 5.4 The OC shall not voluntarily commence, make, pass or take any proceeding, effective resolution or other step for dissolution of the OC.
- 5.5 The OC shall execute and deliver any other documents and to take any further action which may be necessary to give effect to this Agreement.

6. WARRANTIES AND REPRESENTATIONS BY OC

- 6.1 The OC hereby warrants and represents to the Consultant and URA that each of the following statements is at the date of this Agreement, and will at all time during the subsistence of this Agreement be true and accurate:
 - (a) The OC is validly incorporated as an owners' corporation under and by virtue of the Building Management Ordinance (Cap.344 of the Laws of Hong Kong). The OC is and will remain subsisting throughout the Term.
 - (b) The OC has the proper legal capacity and power to (i) carry out the Building Rehabilitation Works, (ii) appoint the Consultant and any other consultants, contractors and professionals necessary for carrying out the Building Rehabilitation Works; and (iii) enter into this Agreement and any documents pursuant thereto.
 - (c) The execution, delivery and performance of this Agreement and all documents pursuant thereto has been duly and validly authorized by all necessary corporate action.
 - (d) Neither the execution of this Agreement nor the OC's performance of its obligations thereunder will violate or breach, or otherwise constitute or give rise to a default under the terms or provisions of (if applicable) the OC's constitutional documents or of any material contract, commitment, or other obligation to which the OC is a party or by which it is bound.
 - (e) All decisions, resolutions or instructions made or to be made by the OC

to URA or the Consultant in relation to the Building Rehabilitation Works are or will be validly made.

- (f) The OC has not entered into and shall not enter into any arrangement which may conflict with this Agreement.

6.2 Each of the warranties above shall be separate and independent and shall not be limited by reference to or inference from any other warranty.

6.3 The OC acknowledges that URA and the Consultant enter into this Agreement on the basis of and in reliance on the warranties given above.

7. OBLIGATIONS OF THE CONSULTANT

7.1 The Consultant undertakes to the OC and URA that:-

- (a) it will fully comply with the requirements set by URA and applicable to the implementation of the Scheme;
- (b) it will promptly perform the duties imposed on the Consultant under this Agreement to the satisfaction of the URA and the OC;
- (c) it will execute and deliver any other document and to take any further action which may be necessary to give effect to this Agreement;
- (d) it will indemnify the OC and URA against all losses, damages and liabilities which either of them may suffer by reason of or arising out of, whether directly or indirectly, and/or in connection with breach of any warranties, representations, obligations, terms and/or conditions of this Agreement by the Consultant;
- (e) it will follow and comply with the requirements under the DIY Tool Kits and provide to URA promptly upon demand by URA all documents, information and records, whether in electronic forms or otherwise in relation to the provision of the Consultancy Services and compliance with the terms and conditions of this Agreement;
- (f) it will complete the Consultancy Services or any part thereof within such period of time as directed by URA;
- (g) it will not sub-contract the Consultancy Services or any part thereof to any party unless with the prior written approval of both the OC and URA; and
- (h) it will maintain and effect adequate insurance with reputable insurers covering the liability of the Consultant arising out of any act, omission, default or negligence of the Consultant in respect of the Consultancy Services or any part thereof provided by the Consultant.

8. WARRANTIES AND REPRESENTATIONS BY THE CONSULTANT

- 8.1 The Consultant hereby represents and warrants and undertakes to the OC and URA that each of the following statements is at the date of this Agreement, and will at all time during the subsistence of this Agreement be true and accurate:
- (a) The Consultant has the full power and authority to enter into, sign, execute, deliver, and perform this Agreement. Where the Consultant is a corporation, the Consultant has full power and authority under its constitutive documents and under applicable laws to execute, deliver, and perform this Agreement, and that the execution, delivery, and performance by the Consultant of this Agreement have been duly authorized by all requisite corporate actions.
 - (b) This Agreement constitutes a valid, binding, and enforceable legal obligation of the Consultant.
 - (c) Neither the execution of this Agreement nor the Consultant's performance of its obligations thereunder will violate or breach, or otherwise constitute or give rise to a default under the terms or provisions of (if applicable) the Consultant's constitutional documents or of any material contract, commitment, or other obligation to which the Consultant is a party or by which it is bound.
 - (d) No consent, approval, license, permit, order or authorization of, or notice to, or registration, declaration or filing with, any other Governmental Authority or any third party is required to be obtained or made by or with respect to the Consultant in connection with the execution or performance of this Agreement by the Consultant.
 - (e) No petition, proceeding, effective resolution or other step has been presented, commenced, made, passed or taken by any person for the winding-up, insolvency, administration, reorganization, reconstruction, dissolution or bankruptcy of the Consultant or for the appointment of a liquidator, receiver, administrator, trustee or similar officer of the Consultant for all or any part of its business or assets.
 - (f) The Consultant is not engaged in any ongoing legal proceedings, whether as claimant, defendant or otherwise. There are no legal proceedings pending against the Consultant and there are no circumstances which may reasonably be expected to result in any legal proceedings which could materially affect the ability of the Consultant to perform its obligations under this Agreement.
 - (g) The Consultant has not entered into and shall not enter into any arrangement which may conflict with this Agreement.
 - (h) No conflict of interest exists or is likely to arise in the performance of its obligations under this Agreement.

- (i) The Consultant shall in performing the Consultancy Services, use skills, care and diligence to be expected of a properly qualified and competent consultant experienced in carrying out work of a similar size, scope and complexity to the Building Rehabilitation Works.
- (j) The Consultant shall carry out and complete the Consultancy Services in accordance with the provisions of this Agreement and shall perform its obligations promptly and in a proper and efficient manner in accordance with the highest professional standards and all applicable laws of Hong Kong from time to time in force.
- (k) The provision and performance of the Consultancy Services in accordance with this Agreement do not infringe any Intellectual Property Rights of any third party.

8.2 Each of the warranties above shall be separate and independent and shall not be limited by reference to or inference from any other warranty.

8.3 The Consultant acknowledges that the OC and URA enters into this Agreement on the basis of and in reliance upon the warranties given above.

9. TERMINATION

9.1 Subject to other provisions in this Clause below, this Agreement shall cease and terminate upon occurrence of the following events:

- (a) expiration of the Term (unless all parties hereto agree to extend or renew the Term of this Agreement); or
- (b) completion of the Consultancy Services by the Consultant to the satisfaction of URA and OC; or
- (c) termination of the Services Agreement.

9.2 If there is any breach of the warranties, representations, obligations, terms and/or conditions of this Agreement on the part of the OC who shall fail to remedy such breach (if it is remediable) within 30 days after receipt of written notice from URA, only URA shall be entitled to terminate this Agreement forthwith by giving written notice of termination to the OC without prejudice to any other rights or remedies available to URA.

9.3 If there is any breach of the warranties, representations, obligations, terms and/or conditions of this Agreement on the part of the Consultant who shall fail to remedy such breach (if it is remediable) within 30 days after receipt of written notice from URA, only URA shall be entitled to terminate this Agreement forthwith by giving written notice of termination to the Consultant without prejudice to any other rights or remedies available to URA and the

OC. Upon such termination, URA may (but shall not be obliged to) designate a consultant as URA deems fit or appropriate to continue any outstanding services of the Consultancy Services or provide any other necessary services and the OC shall engage such consultant and shall be required to enter into a new tripartite agreement and/or such other documents with URA and that consultant on such terms as URA deems fit to give effect to such engagement.

9.4 In the event of termination of this Agreement, the Consultant shall upon demand deliver to URA all documents, records, materials and data in relation to the Consultancy Services within seven (7) days from the date of such termination and the Consultant shall not make or keep any copies of any of them by any means whatsoever.

9.5 In the event of termination of this Agreement under this Clause, the Consultant shall not be required to provide the Consultancy Services after the date of termination but without prejudice to any rights or remedies available to URA and the OC in respect of any breach on the part of the Consultant prior to such termination.

10. INTELLECTUAL PROPERTY RIGHTS AND SOFTWARE

10.1 All Intellectual Property Rights of and in all agreements, forms, guides, notes, records, reports, plans, instructions, manuals and any other documents and data in whatever form relating to the Consultancy Services or any part thereof prepared, consolidated, compiled or otherwise produced by the Consultant, whether in the custody or possession of the Consultant or its agents, officers, employees, servants, staff or contractors, shall be the exclusive property and rights of URA.

11. CONFIDENTIALITY

11.1 Each party shall ensure that none of its agents, officers, employees, servants, staff and contractors:

- (a) discloses any term of this Agreement; or
- (b) discloses or uses any confidential information which it acquires in connection with this Agreement or the Consultancy Services;

except for the performance of that party's obligations under this Agreement.

11.2 Clause 11.1 does not prevent a disclosure which is made for a proper purpose:

- (a) to a public authority under compulsion of law; or

- (b) to a court of law in Hong Kong or elsewhere or otherwise in any legal proceeding; or
- (c) to the auditors of, or any lawyer or professional person being under a duty of confidentiality to the party acting for, a party in the performance of its obligations under this Agreement; or
- (d) pursuant to any regulatory authority to which that party is subject.

11.3 The restriction in this Clause 11 shall continue to apply after the termination of this Agreement.

12. NO PARTNERSHIP OR JOINT VENTURES

12.1 Nothing contained herein shall constitute or be construed as constituting any partnership or joint ventures between URA, the Consultant and the OC.

13. CONTRACTS (RIGHTS OF THIRD PARTIES) ORDINANCE CAP.623

13.1 Notwithstanding that a term of this Agreement purports to confer a benefit on any person who is not a party to this Agreement, a person who is not a party to this Agreement shall have no rights under the Contracts (Rights of Third Parties) Ordinance (Cap.623 of the Laws of Hong Kong) to enforce or enjoy the benefit of any provision of this Agreement.

14. NO ASSIGNMENT

14.1 Neither the OC nor the Consultant shall assign or transfer any of its rights, benefits and/or obligations under this Agreement.

15. ENTIRE AGREEMENT

15.1 This Agreement constitutes the entire agreement and understanding of the parties hereto in relation to the subject matter of this Agreement and supersedes all prior oral and written agreements, understandings or arrangements in relation to the subject matter of this Agreement (save and except those agreements, understandings or arrangements set out in or contemplated under the Services Agreement).

16. AMENDMENTS

16.1 This Agreement shall not be amended, modified, varied or supplemented except in writing signed by the duly authorized representatives of the parties hereto.

17. WAIVER

17.1 No failure or delay on the part of either party to exercise or in exercising any right or remedy under this Agreement shall be construed or deemed as a waiver thereof nor shall any single or partial exercise of any right or remedy under this Agreement preclude the exercise of any other right or remedy or preclude the further exercise of such right or remedy as the case may be. The rights and remedies provided in this Agreement are cumulative and are not exclusive of any right or remedy provided by law or in equity.

18. SEVERABILITY

18.1 If any provision of this Agreement shall become or be held or declared illegal, invalid or unenforceable for any reason whatsoever, such provision shall be deemed to be deleted from this Agreement and the legality, validity or enforceability of other provisions of this Agreement shall not be affected.

19. NOTICES

19.1 Any notice or other communications to be given or served pursuant to any provisions of this Agreement shall be in writing and by means of any one of the following:

- (a) by hand delivery or registered post to the respective addresses of the parties hereto as set out below or to such other addresses as either party may notify the other party in accordance with Clause 19.3 hereof:

Consultant

Address:
Telephone:
Facsimile:
Attention:

OC

Address:
Telephone:
Facsimile:

Attention:

URA

Address:

Telephone:

Facsimile:

Attention:

- (b) by facsimile to the other party's facsimile number as set out in Clause 19.1(a) above.

19.2 A notice shall be deemed to be given or served:

- (a) on the date of delivery if it is delivered by hand;
- (b) on the second business day ("business day" means a day on which The Hongkong and Shanghai Banking Corporation Limited is open for business in Hong Kong but excluding Saturday, Sunday, public holiday and any day on which typhoon signal no.8 or above or black rainstorm signal is hoisted) after the date of posting if it is sent by registered post; or
- (c) on receipt by the sender of the delivery confirmation report if it is sent by facsimile.

19.3 Each party shall notify the other party in writing of any change of the contact details as set out in Clause 19.1(a) above.

20. OFFERS OF GRATUITIES

20.1 The OC and the Consultant shall not and shall procure all its employees and personnel not to offer, solicit or accept any advantage as defined in the Prevention of Bribery Ordinance (Cap.201 of the Laws of Hong Kong) in connection with the procurement or performance of the Consultancy Services.

21. GOVERNING LAW AND JURISDICTION

21.1 This Agreement shall be governed by and construed in accordance with the laws of Hong Kong and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of Hong Kong in respect of this Agreement and all matters in connection with or arising out of this Agreement.

N WITNESS whereof the parties hereto have duly signed this Agreement the day and year

first above written.

SIGNED by)
)
the Chairman and secretary of the)
Management Committee for and on behalf)
of the OC in the presence of /)
whose signature(s) is/are verified by:)
)
)
)

SIGNED by)
)
for and on behalf of)
URBAN RENEWAL AUTHORITY)
in the presence of /)
whose signature(s) is/are verified by:)
)
)
)

SIGNED by)
)
for and on behalf of the Consultant in the)
presence of / whose signature(s) is/are)
verified by:)
)
)
)

SCHEDULE

A. Initial Stage

- (a) To obtain the necessary building plans from government departments, including general building plans, structural plans, drainage plans, etc.;
- (b) To carry out independent preliminary site inspections and surveys of communal facilities and common areas of building blocks described in each OC's application, and record their general conditions, identify the repair needs and basic repair works on preliminary basis;
- (c) To prepare and submit an initial assessment report with estimated fee of the works (See Annex A for a sample of the initial assessment report) to the OC via URA on the findings and recommendations of the basic repair works and ballpark budget estimate and relevant technical matters in relation thereto; and
- (d) To attend a meeting with OC¹ to brief the findings and recommendations.

B. Pre-tendering Stage

- a) To review the condition survey report, draft tender document and cost estimate prepared by the AP/RI and identify any discrepancies, omissions and technical inadequacies and highlight any mandatory items;
- b) To prepare and submit a pre-tendering assessment report (See Annex B for a sample of the pre-tendering assessment report) with independent cost estimate (See Annex C for a sample of the independent cost estimate) to the OC via URA on the findings and recommendations of the draft tender document and cost estimate;
- c) To review the finalized tender document for tendering out through the E-Platform;
- d) To submit to the OC via URA a pre-tender estimate (based on the finalized tender document) in a sealed envelope, which will be opened on the day of opening the tender box immediately after opening all the returned tenders by the Independent Professional in the presence of representatives from OC; and
- e) To attend a meeting with OC¹ to brief the findings and recommendations.

¹ Unless otherwise instructed by URA, the total number of meetings under the Consultancy Services (including the Initial Stage, Pre-tendering Stage and Tender Assessment Stage) to be attended by the Consultant is limited to four (4) and the Consultant will be paid an extra fee of (HK\$XXXX) by the OC for attendance of each additional meeting. For the avoidance of doubt, such extra fees are not inclusive in the URA Fee in the Services Agreement.

C. Tender Assessment Stage

- a) To review the tender analysis report and identify any omissions and inadequacies in respect of technical review and price analysis of the returned tenders;
- b) To compare the price of the lowest returned tender with the pre-tender estimate;
- c) To submit a tender assessment report (See Annex D for a sample of the tender assessment report) to the OC via URA for comment on the findings and recommendations of the tender analysis report prepared by the AP or RI; and
- d) To attend a meeting with OC¹ to brief the findings and recommendations.

Remarks:

The number of tender for procuring the Contractor is limited to one (1) tender. If more than one (1) tender for procurement of the Contractor is required for any reason whatsoever, the Consultant will be paid an extra sum by the OC (in such amount and within such time as URA as co-ordinator may in its absolute discretion determine) for the Consultant's additional work and assistance to be rendered to the OC for procuring the appointment of the Contractor under any of such additional tenders. For the avoidance of doubt, such extra fees are not inclusive in the URA Fee in the Services Agreement.