

## 1 ANNEX A – T&C OF BUSINESS – 1 JANUARY 2024

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### DEFINITIONS

- 1.1 In these terms and conditions ('the Conditions') the following words and phrases shall have the meaning or meanings set out below:
  - (a) '**Client**' means the contracting party for whom Services are performed by Pacific Risk Advisors Ltd (PRA);
  - (b) '**Contract**' means the contract between PRA and the Client for the performance of Services and incorporating the Conditions;
  - (c) '**Proposal**' means the document in writing in which PRA offers to carry out Services for the Client;
  - (d) '**Services**' means any activity or service provided by PRA.
- 1.2 Headings have been included for convenience only and shall not affect the construction or interpretation of the Conditions.

### 2. PRA'S ASSURANCE

- 2.1 PRA shall exercise all reasonable skill, care and diligence in the performance of the Services in accordance with the Proposal.
- 2.2 PRA intends to employ the methods, procedures, techniques, personnel and sources of information set out in the Proposal but reserves the right to vary these at its discretion. Any significant variations will be undertaken in consultation with the Client.
- 2.3 Except as provided in Condition 9, the scope of the Services will not be materially altered by PRA without the Client's consent. In respect of some Services, it may be difficult to specify the precise nature of the activities required to perform the Services prior to the commencement of the work. In the event that PRA considers during the provision of the Services that a material change or addition will be required in order for it to perform the Contract, it shall notify the Client of such change and enter into negotiations with the Client in good faith concerning any changes to the terms of the Proposal or Contract.

### 3. CONFIDENTIALITY

- 3.1 The existence and terms of this engagement and all reports, surveys, opinions and other documents produced or commissioned by PRA will be treated by PRA as confidential to the Client for whom they were prepared and will not be disclosed or passed to any third party without the prior consent of the Client, unless the same shall have already been made public by the Client or otherwise shall have entered the public domain otherwise than through a breach by PRA of this Condition.
- 3.2 All such reports, surveys, etc referred to in Condition 3.1 will be prepared and made exclusively for the Client and PRA will accept no liability of whatsoever nature for claims from third parties to whom the contents of such reports, surveys, etc are made known directly or indirectly by the Client, in respect of which claims the client shall indemnify PRA against any loss, damage, costs or expenses of whatsoever nature suffered by PRA.
- 3.3 Subject to the client's prior written consent, PRA retains the right to include references to the Services in its promotional material. Such references shall not include confidential material.
- 3.4 Permission shall be sought from PRA in all cases in which a company which is party to a contract with PRA wishes to use the name of PRA in any type of publicity material.
- 3.5 All proposals and associated materials are considered proprietary property of PRA. No assignments either implied or expressed, of intellectual property rights, data, know-how, trade secrets or licenses of use thereof are given. All information is provided exclusively to the addressee for the purposes of evaluation and is not to be reproduced or divulged to other parties without explicit written consent of PRA.

### 4. APPLICATION OF CONDITIONS

- 4.1 Save as otherwise expressly agreed in writing signed by PRA, the Conditions shall be deemed to be incorporated in the Contract and shall apply to the total exclusion of any terms and conditions of the Client.
- 4.2 In the event that the Conditions are not expressly accepted by the Client they shall be deemed to have been accepted by the Client upon the making of any application to PRA for the provision of Services.
- 4.3 In the event of any conflict between the Conditions and any special conditions referred to in the Proposal, the terms of the Proposal shall apply.

### 5. FINANCIAL ARRANGEMENTS

- 5.1 Unless the Proposal provides otherwise, the fees referred to constitute PRA's fixed cap of the charges required for completion of the Services.
- 5.2 Invoices are payable upon their receipt by the Client. PRA shall charge compounded daily interest (invoiced on a weekly basis) on any amounts due to it at the rate of ten per cent over the HSBC HK plc base rate for the first ten weeks. Thereafter the interest rate will increase to 50% above base rate. The fee structure assumes prompt payment of invoices and, in addition to any other rights which PRA may have in respect of late payment, PRA may, upon giving 7 days' notice to the Client at any time after any amount shall become due to it, suspend the provision of any Services and Deliverables (and any activities relating thereto) without incurring any liability to the Client until such time as PRA receives all amounts (and any interest therein) due to it from the Client.
- 5.3 The following Conditions relate only to projects where time and/or expenses are charged separately:
  - (a) Standard fee rates will be reviewed on 1st January in each year.
  - (b) Expenses properly chargeable to the provision of the Services shall include (but not be limited to): travel accommodation and living expenses of PRA and PRA contracted personnel when away from their normal place of work; secretarial, printing and reproduction costs; couriers and postage professional and technical sub-contractors; graphic design, typesetting and artwork; attributable drafting and stenographic supplies; and expendable materials and supplies specifically purchased specifically for the Services.
  - (c) Travelling time will be charged at full rates.
  - (d) All types of public travel over four hours (door to door) will be business class unless specifically stated otherwise in the proposal.

- (e) A 100 USD charge will be levied on each invoice for each international bank remittance unless the Client confirms in writing that it will pay all international bank charges.
- 5.4 Unless otherwise agreed, the fee rates will be one hundred per cent increase of standard fee rates for Expert Evidence, Support to Litigation, Arbitration and Public Inquiry preparation, meetings, procedures and all related consultations. The same shall apply if a Client shall require that PRA or any contracted employee or subcontractor be an expert or investigation witness and be available during any particular period.
- 5.5 Value Added Tax (VAT), withholding tax and all governmental related charges will be chargeable to the client when applicable and incurred.
- 6. LIMITATION OF PRA'S LIABILITY**
- 6.1 In the event that any of the Services are materially deficient as a result of PRA failing to provide the same in accordance with its assurance contained in Condition 2.1, the extent of PRA's liability shall be limited to the re-performance of the Services at its own cost using standard fee rates up to the amount already paid by the Client under the Contract.
- 6.2 Save as provided otherwise in these Conditions, PRA shall not be liable for any loss (including indirect and consequential loss), damage, delay, loss of market, costs or expenses of whatsoever nature or kind and howsoever sustained or occasioned.
- 6.3 All liabilities and responsibilities arising directly or indirectly out of or resulting from or in consequence of, or in any way when involving advice or projects related to or involving seepage, pollution, contamination, asbestos, mould, fungi, spores, mycotoxins of any kind, communicable diseases, social and human resource issues remains and lies with the client at all times.
- 6.4 PRA's liability to the Client under a Contract shall cease upon the expiry of one month from the completion of the Contract save in respect of any claims notified in detail to PRA in writing, not electronically, prior to the expiry of such period. Contract completion shall be deemed as the time of submittal of the Final Report (electronic or hard copy) to the Client.
- 7. INSURANCES**
- PRA undertakes to maintain adequate and appropriate insurance during the course of the Services.
- 8. TERMINATION OF CONTRACTS**
- 8.1 The Contract may be terminated in whole or in part in writing by PRA or the Client in the event of substantial or material failure by the other party to fulfil its obligations under the Contract providing that no such termination may be effective unless the other party is given not less than 30 calendar days written notice of intention to terminate.
- 8.2 A final invoice will be calculated on the 1st of the month following the expiry of the notice to terminate ('the effective date of termination'). Where termination of contract occurs before the planned date (as previously agreed between PRA and the Client), an additional charge will be levied on the final invoice. This additional charge is designed as compensation to PRA for the recovery of costs for the demobilization and re-assignment of personnel and equipment on short notice.
- (a) Where the method of payment is based on a 'lump sum' the final invoice will be based on the percentage of work completed to the effective date of termination.
- (b) Where the method of payment is based on time and materials, the final invoice will be based on reimbursement for all Services and expenses associated with the Contract
- 9. FORCE MAJEURE, ETC**
- 9.1 PRA shall not be liable to the Client if the provision of the Services is delayed or prevented by any one or more of the following circumstances:
- (a) The Client's failure to provide facilities, access or information;
- (b) Fire or storm or tempest;
- (c) Unavailability of labour, materials or services;
- (d) Process shutdown;
- (e) Acts of God or the public enemy;
- (f) Riot or civil commotion or war;
- (g) Strikes or labour disputes or industrial action;
- (h) Act or regulations of any governmental or other agency.
- 9.2 In any of those events PRA and the Client shall enter into negotiations in good faith with a view to agreeing such amendments or variations to the Contract as shall be acceptable to them.
- 10. DISPUTES**
- If any dispute or difference shall arise between PRA and the Client concerning the meaning or effect of these Conditions or of any Contract between them to which the Conditions apply then if the same cannot be settled amicably within 30 days of the dispute or difference arising it shall be referred first to mediation and then if not successful to the Arbitration of a single arbitrator to be agreed by the parties within 15 days of the expiry of the 30 day period referred to or in default of agreement within that period to be appointed by the President for the time being of the Law Society of Hong Kong, such mediation/arbitration to be conducted as a domestic mediation/arbitration as that term is used in the Arbitration Ordinance (Cap. 341). The costs of any such mediation/arbitration shall be split evenly and the costs of any such arbitration shall be in the discretion of the Arbitrator whose award shall be considered and taken by PRA and the Client as final and binding.
- 11. NOTICES**
- Any notice to be given under the Contract or the Conditions shall be in writing and sent by certified and signed electronic mail (except where stated otherwise), facsimile transmission or forwarded by first class prepaid post to the receiving party at its business address as last notified in writing to the other party and shall be deemed to have been given on the date of the electronic mail or facsimile transmission or on the day following that on which the notice was posted.
- 12. GOVERNING LAW**
- The Contract and these Conditions shall be governed by Hong Kong Law and the Client consents to the exclusive jurisdiction of the Hong Kong Courts in all matters regarding the Contract or the Conditions.