

**For Information
in April 2012**

Legislative Council Panel on Health Services

**Invitation to Tender for
the Development of Private Hospitals**

Purpose

This paper informs Members on the launching of the two tender exercises on the development of private hospitals at two identified sites at Wong Chuk Hang and Tai Po.

Background

2. There are currently 39 public and 12 private hospitals in Hong Kong. As at end 2011, public and private hospitals provided 27,041 and 4,098 beds respectively. Our healthcare system is overly reliant on public hospital services that are provided at a highly subsidized rate at 95%, with over 90% of the in-patient services being provided by public hospitals. This has resulted in a significant imbalance between the public and private healthcare sectors and has limited the competition and collaboration between the two sectors. There are also limited choices for patients who may want a greater choice of hospital services and can afford more than public fees.

Promotion of private hospital development

3. Public healthcare services have been and will continue to be the cornerstone of our healthcare system, acting as the healthcare safety net for all and remaining strong and robust through continued investment and commitment from the Government. To complement the public system, it is our policy to facilitate private hospital development to address the imbalance between the public and private sectors in hospital services. It will also help to increase the overall capacity of the healthcare system in Hong Kong, to provide the public with more choices and affordable high quality private hospital services, and to cope with the increasing service demand.

4. Hong Kong is also renowned for the high standard of professional healthcare service as well as its advanced medical technology and equipment. Coupled with our excellent communication facilities and marketing skills, we have the advantages and potential in further developing our medical services, in particular in the provision of highly specialized services that require technology and multi-disciplinary skills.

Sites reserved for private hospital development

5. The Government has reserved four sites at Wong Chuk Hang, Tseung Kwan O, Tai Po and Lantau for private hospital development. They are available at different times of possession depending on the status of each site on planning procedures, site formation works or interface with other infrastructure project.

Launching of tender exercises

6. Further to an Expression of Interest exercise launched in December 2009 to solicit market interest in the four reserved hospital sites, we have now formulated the detailed land disposal arrangement and will first put out the two sites at Wong Chuk Hang and Tai Po for tender on 13 April 2012.

Major tender requirements

7. In promoting the development of private hospitals, we seek to ensure that the services of the new hospitals are of good quality, will cater for the needs of the general public and help develop the medical industry. We have therefore included a set of special requirements for the private hospital development at the two sites, covering the following aspects –

- (a) land use: restriction on land use primarily for hospital service while allowing at most 30% of the total gross floor area of the hospital for non-clinical supporting services or facilities, such as accommodation service for families and carers of patients and staff quarters;
- (b) date of commencement of operation: requirement for the hospital to commence operation within 60 months from the date of

execution of the agreement between the successful tenderer and the Government to ensure timely development of the hospital to meet public needs;

- (c) bed capacity: provision of no less than 300 beds to ensure optimal use of the land;
- (d) service scope: provision of a mix of specialties without slanting towards any particular types of service. Specifically, the hospitals will be required to provide services of general medicine, general surgery, orthopaedics and traumatology, and gynaecology and to cap the number of obstetric beds at no more than 20% of the total number of beds in the hospital;
- (e) packaged charge and price transparency: provision of at least 30% of in-patient bed days taken up in a year for services provided at packaged charge through standard beds, and to make available comprehensive charging information of its services (covering room charges, diagnostic procedures, therapeutic services/procedures, nursing care, medication, consumables and equipment, and other miscellaneous items) for easy reference by the public and patients;
- (f) service target: provision of at least 50% of in-patient bed days taken up in a year for services to local residents with additional score given for a higher percentage commitment up to 70% to ensure that the priority of the hospital is to meet local demand;
- (g) service standard: requirement to attain hospital accreditation on a continuous basis to ensure service standard and quality; and
- (h) reporting: requirement for the hospital to regularly report to the Government on its compliance with the obligations as set out in the tender documents, including those summarized above.

8. In order to encourage bidders to submit service provision proposals that surpass the above requirements and to better serve the needs of the community, we have adopted a two-envelop approach in the tender exercises, with greater emphasis on the quality of the service provision than on land premium. In gist, bidders are required to submit their service provision proposals and land premium offers concurrently under two separate envelopes. The service provision proposal, which will be evaluated against a pre-defined marking scheme by an assessment panel comprising members from relevant

bureaux/departments, carries a weighting of 70%; while the land premium carries a weighting of 30%. Details on the special requirements and the assessment criteria for the tenders are set out in the tender documents. Copy of the tender documents for the Wong Chuk Hang site and Tai Po site are at Enclosures 1 and 2 respectively.

9. To facilitate monitoring of the operations of the new private hospitals, the successful tenderer will be required to enter into, in addition to the land lease, a service deed with the Government. The service deed, which will be co-terminus with the land lease, will incorporate the successful tenderer's proposals for the operation of the private hospitals. A number of measures are available to the Government if the successful tenderer breaches any of its obligations. Such measures include the right to require the successful tenderer to implement a cure plan and pay liquidated damages, the right to exercise step-in rights to temporarily take partial or total control of the hospital and the right to terminate the service deed. The Government may also have resort to the performance guarantee and bank bond provided by the successful bidder.

Way forward

10. The invitation of tenders opens on 13 April 2012 and will end on 27 July 2012. We will proceed to evaluate the tender submissions upon the closure of the tender invitation with a view to identifying the best bidders to provide quality private hospital services for the public at the two sites. Having regard to the responses and experience of these two tender exercises, we will also dispose of the other two reserved hospital sites at Tseung Kwan O and Lantau at a later stage.

Advice sought

11. Members are invited to note the content of the paper.

Food and Health Bureau
April 2012

Aberdeen Inland Lot No. 458

Explanatory Statement For Private Hospital Development at Nam Fung Path, Hong Kong

This Explanatory Statement is issued for information only and is not intended to have any legal effect. The purpose of this Explanatory Statement is to facilitate tenderers in preparing tenders for the grant of Aberdeen Inland Lot No. 458 (herein referred to as “the Lot”) at Nam Fung Path, Hong Kong. It shall not form part of the Tender Notice including its annexes and appendices, Service Deed or Conditions of Sale by Public Tender for the Lot (which Conditions of Sale are herein referred to as “the Conditions of Sale), nor shall it be taken into consideration in the interpretation and construction thereof.

This Explanatory Statement does not claim to be comprehensive or to have been independently verified. Neither the Government, nor any of its officers, agents or advisors accepts any liability or responsibility as to, or in relation to the adequacy, accuracy or completeness of the information contained in the Explanatory Statement; nor do they make any representation, statement or warranty, express or implied, with respect to such information or to the information on which the Explanatory Statement is based. Any liability in respect of any such information or any inaccuracy in the Explanatory Statement or omission from the Explanatory Statement is expressly disclaimed. In particular, but without prejudice to the generality of the foregoing, no representation or warranty is given as to the information contained in the Explanatory Statement. Nothing in the Explanatory Statement should be relied on as a representation, statement or warranty as to the intention, policy or action in future of the Government, its officers or agents.

Promotion of private hospital development in Hong Kong

The healthcare system of Hong Kong is overly reliant on public hospital services, which are provided at a highly subsidized rate of 95%. The significant imbalance between the public and private healthcare sectors has resulted in limited competition and collaboration between the two sectors and limited choice for patients, especially those who want a choice of hospital services and can afford more than public fees. This situation is not conducive to the long-term sustainability of our healthcare system with the rising demand for healthcare services as a result of the aging population, advancement in medical technology and increased public expectation for better quality of services.

The development of private healthcare services is one of the major Government policies announced by the Chief Executive in his 2009-10 Policy Address and a key initiative under the healthcare reform to increase the overall capacity of the healthcare system in Hong Kong and address the imbalance between the public and private sectors in hospital services.

Hong Kong is renowned for the high professional standards of our healthcare personnel as well as our advancement in medical technology and equipment. We have the advantages and potential in further developing our medical services, in particular in the provision of highly specialized services that require the inputs of technology and skills across different disciplines. In this connection, the Government's Task Force on Economic Challenges (TFEC) has recommended the development of medical services as one of the six industries crucial to the development of Hong Kong's economy.

To achieve the above policy objective, the Government has set aside the four sites at Wong Chuk Hang, Tai Po, Tseung Kwan O and Lantau respectively (herein referred as "the Reserved Sites") for private hospital development. The Government is inviting tenders for the two sites at Wong Chuk Hang and Tai Po from 13 April 2012 to 27 July 2012. The other two sites will be disposed of later in phases.

In promoting the development of private hospitals, the Government seeks to ensure that the services provided by the new hospitals would be of good quality and can enhance the medical professional standards of Hong Kong. In submitting their tenders, tenderers must submit service proposals that comply with a set of requirements for the development of the Reserved Sites, covering the scope of service (such as the types of specialty), the standard of service (such as the number of beds and hospital accreditation) and price transparency, etc. The tenderers are also encouraged to submit service proposals that surpass these requirements to better serve the community.

Issues relating to AIL 458

Tenderers should note the presence of 657 numbers of H-piles or such other numbers as found on the site, which had previously been installed in the Lot but the concerned foundation plans are not available for inspection.

Tenderers should note that a section of the South Island Line (East) (SIL(E)) of the Mass Transit Railway being developed by the MTR Corporation Limited (MTRCL) would straddle the Lot, with the railway track entering the Lot from the south in the form of a viaduct enclosed in concrete box structure above ground, and then descend through a gradient to the underground. Detailed information of the interfaces issues of SIL(E) and the future hospital development within the Lot is at Appendix.

Tenderers should note that possible natural terrain hazards exist within the natural hillside inside and adjacent to the Lot. The attention of tenderers is drawn to Special Condition No. (28) of the Conditions of Sale. The attention of tenderers is also drawn to General Conditions Nos. 5(a) and 5(b) of the Conditions of Sale.

Tenderers should note that the Purchaser (as defined in the Conditions of Sale) (herein referred to as “the Purchaser”) is required under Special Condition No. (34) of the Conditions of Sale to submit to the Director of Environmental Protection for his approval, amongst others, a noise impact assessment report (hereinafter referred to as “NIA”) of the surrounding roads and highways in connection with the development of the Lot, and to implement mitigation measures, improvement works and other measures and works to be approved by him in all respects to his satisfaction. Tenderers may contact the Environmental Protection Department (Tel No. : 2835 1837) for any enquiry on the requirements.

Tenderers should note that MTRCL would carry out landscaping works on the Possession Area 2 and the Possession Area 3 (respectively as defined in Special Condition Nos. (1)(a)(ii) and (1)(a)(iii) of the Conditions of Sale) before possession of the respective areas is delivered to the Purchaser in accordance with the aforesaid Special Conditions. The approved landscape scheme, as at the date of this Explanatory Statement, is referred to in Paragraph 20 of the Appendix of this Explanatory Statement and shown on the drawing nos. 902/B/NFP/T73/C04/230 – 231 (all Revision E) and 902/B/NFP/T73/C04/232 – 233 (all Revision F) at the annex to the said Appendix. Tenderers should note that the approved landscape scheme would be subject to amendments from time to time.

Appendix

Interfaces Issues of South Island Line (East) and Future Hospital Development within the Lot

Introduction

1. This Appendix sets out the basic information on the design of the South Island Line (East) (SIL(E)), details of the Reserved Area as defined in Special Condition No. (33)(a)(i) of the Conditions of Sale and other interfacing issues concerning the co-location of SIL(E) and the future private hospital development within the Lot.

2. About 1.8 ha of the Lot is currently occupied by MTR Corporation Limited (MTRCL) under a Short Term Tenancy granted by the Lands Department for the purpose of works site/ works area in connection with construction of the SIL(E). Under the Short Term Tenancy, MTRCL is required to hand back the Possession Area 2 as defined in Special Condition No. (1)(a)(ii) of the Conditions of Sale to Government on or before 2 July 2013, and the Possession Area 3 as defined in Special Condition No. (1)(a)(iii) of the Conditions of Sale to Government on or before 31 January 2015.

3. The following permanent works of the SIL(E) will impact on the Lot:
- (a) Nam Fung Portal Ventilation Building (NFP Ventilation Building);
 - (b) the enclosed railway 'Transition Box' structure.

The locations of the NFP Ventilation Building and the Transition Box are shown on drawing no. HRWSILE01-SK0040.

4. Permanent works for the NFP Ventilation Building include:
- (a) superstructure of ventilation building;
 - (b) socketed steel H-piles foundation for the building structure; and
 - (c) left-in-place Excavation and Lateral Support (ELS) works.
5. Permanent works for the Transition Box include:
- (a) a Transition Box structure between Piers A1 and A12;
 - (b) landscaping;
 - (c) site drainage system; and
 - (d) left-in-place ELS works between NFP and Pier A3. The ELS works will be cut off at 2m below the final ground profile level.

NFP Ventilation Building

6. The NFP Ventilation Building will be located adjoining the northern boundary of the Lot. The building will be approximately 30.5m x 17.3m. The building will consist of 7 levels to accommodate all the E&M and tunnel ventilation equipment to serve the 3.3km-long Nam Fung Tunnel. The general layout and sectional view of NFP Ventilation Building are shown on drawing nos. 902/T/NFP/L&O/A12/006 and 106, 902/T/NFP/L&O/A13/001 and 002.

7. The structure of the NFP Ventilation Building will be a conventional column-beam frame with shear wall. The building will be supported by piled foundations. The pile cap with socketed H-piles has been designed to resist lateral loads from wind, soil and hydrostatic pressure. The pile cap will be extended from the perimeter of the building and the enlarged piled foundation will provide resistance against overturning due to ground water.

8. Excavation for the NFP Ventilation Building footprint will be required down to a formation level of around +10.6mPD.

9. Slope drainage comprising transverse and longitudinal drains are provided to cater for run-off and groundwater seepages, thereby mitigating potential inflows down the slope to the tunnel portal area for ensuring long term stability. The slope drainage will be channelled to the site-wide drainage as part of the permanent site formation of the NFP Ventilation Building.

10. The following are the assumptions adopted for the design of the NFP Ventilation Building:

- (a) the design groundwater level on the uphill side of the building is at +28mPD;
- (b) the lateral loads on the building will be taken up by raked and socketed H-piles;
- (c) tension and compression socketed H-piles will be relied upon to resist the overturning moment due to the unbalanced earth and water loads; and
- (d) the finished levels of excavation on the downhill side of the building have been taken as the top of the pile cap levels.

11. The following is a summary of constraints affecting the future private hospital development within the Lot:

- (a) no unsupported excavation shall be carried out immediately adjoining the NFP Ventilation Building below the top of pile cap levels as shown in the table below;

NFP Ventilation Building Elevation	Between Gridlines**		Top of Pile Cap Levels (mPD)
West	A	D	+22.4
South	1	4	+22.4
	4	5*	+14.1
	7*	8	+13.6
East	A	D	+13.6

* Transition box structure between Gridlines 5 and 7

** Refer to drawing no. 902/K/NFP/SWL/C21/001 for the gridline location

- (b) no excavation shall be carried out below the top of pile cap level of +22.4mPD within a distance of 7m from the southern edge of the NFP Ventilation Building between Gridlines 1 and 4 unless an excavation scheme with active ELS works are provided such that equivalent soil resistance of the excavated soil is compensated to maintain the stability of the building

(see drawing no. 902/K/NFP/SWL/C21/001). Any excavation at this zone below this level shall be subject to agreement with MTRCL upon receiving the detailed design proposals from the Purchaser; and

- (c) no bulk excavation exceeding 1.5m deeper than the profiles indicated on the final profile plan (see drawing no. 902/T/NFP/SWL/C22/058) within a distance of 10m from the eastern and western edges of the NFP Ventilation Building shall be carried out.

Transition Box

12. The SIL(E) track ascends at a gradient of approximately 3% from north to south through the Lot. The Transition Box will be provided to protect the railway and allow for future construction over the railway when it is in operation. The Transition Box consists of a twin-cell reinforced concrete box structure about 220m long between the NFP near Pier A1 and the start of the viaduct section at Pier A12 (see drawing no. HRWSILE01-SK0040 for plan and HRWSILE01-SK0030 for typical sections).

13. Three ventilators will be located on the Transition Box structure near Pier A12 to cater for the requirements of the emergency modes only, i.e., for smoke extraction and tunnel ventilation in an emergency situation only from fire within the Transition Box. The openings will be closed under the normal operation mode.

14. The substructure of the Transition Box will consist of a series of portal beams supported on bored piles founded on rock.

15. Structural movement joints will be provided at discrete locations for the elevated section and at either ends of the underground section of the Transition Box structure. The structure will be continuous over the supports and monolithic with the pier portals.

16. The foundations for the Transition Box have been designed as bored piles with rock sockets in Grade III or better rock. Overturning moment will be resisted by the couple effect in the pile groups. Vertical load will be resisted by bond/friction between piles and rock sockets. Lateral load will be resisted by sub-grade reaction for deep rockhead and by lateral bearing for rock sockets with shallow rockhead.

17. The length of rock sockets will be governed by checking the rock sockets against planar discontinuity-controlled failure.

18. The buried section of the Transition Box structure will be surrounded by a keyed waterproofing membrane. Buried wall sections will be covered with 2 coats of 2mm-thick sprayed waterproofing membrane with protective board/ blockwork/screen.

19. A site drainage system as shown on drawing no. HRWSILE01- SK0038 will be provided within the Lot. The drainage system incorporates the following:

- (a) slope drainage to the Nam Fung Road;
- (b) slope drainage to the buried portion of the Transition Box;
- (c) drainage to the toe of landscaping bund; and
- (d) drainage to the roof of the Transition Box.

20. The approved landscape scheme is shown on drawing nos. 902/B/NFP/T73/C04/230 to 233. The drawings show the retained trees, transplanted trees and compensatory planting within the Possession Area 2 and the Possession Area 3 both as defined in Special Condition No. (1)(a)(ii) and (iii) respectively of the Conditions of Sale. MTRCL will implement the approved landscape scheme, as may be amended before the dates when the respective areas are required to hand back to the Government in accordance with paragraph 2 above.

21. The drainage to the roof of the Transition Box is fixed to the side or underside of the structure and is position with the Reserved Area as defined in Special Condition No. (33)(a)(i) of the Conditions of Sale. At Pier A12 the elevated pipe drops into the ground adjacent to the pier, and then discharges into drainage system in the public road as indicated on drawing HRWSILE01-SK0038.

22. The following are the assumptions adopted for the design of the Transition Box:

- (a) the design of the Transition Box structure is in accordance with the New Works Design Standard Manual (NWDSM) of the MTRCL. Subsoil loading onto the permanent works are illustrated in drawing no. HRWSILE01-SK0030 to SK0033;
- (b) no differential soil load across the structure in any direction is permitted;
- (c) no additional surcharge is permitted on top of the Transition Box structure;
- (d) the Transition Box structure and its foundation are designed to resist soil loads above the structure between Pier A1 and A3. Excavation in either a temporary or permanent capacity beneath the final site formation is allowed only in the following locations: (i) Between Piers A12 and A6 up to a maximum depth of 3m of soil can be removed (subject to agreement with the MTRCL on suitable excavation methods), (ii) At Pier A5 up to a maximum depth of 3.9m of soil can be removed (subject to agreement with the MTRCL on suitable excavation methods). No soil removal in any other areas or depths outside of those stated will be permitted; and
- (e) typical details of the proposed ventilators are indicated on drawing no. HRWSILE01-SK0037. The ventilators will be constructed to resist the impact of a falling object (large objects up to 5KN within a 15 degree spread) from the Lot.

23. The following constraint affects the future hospital development within the Lot: "restrictions to the future private hospital development within the lot in terms of position of its ventilation provisions may apply. The future private hospital development within the Lot shall not be constructed in such manner that may impede the function of the ventilators of the Transition Box."

Liaison between the Purchaser and the MTRCL

24. The Purchaser should maintain close contact with the MTRCL to ensure the timely submission of the following information to MTRCL prior to agreement and commencement of any construction or maintenance works on the Lot. It should be noted that the list below is not exhaustive and additional information may be required depending on the nature of the work to be undertaken.

- (a) protective measures around the railway structures for preventing damage;

- (b) detailed method statements, together with an indication of the tools and plant to be adopted;
- (c) an assessment of the impact to the railway structures, including but not limited to stress changes, movements and vibration;
- (d) an assessment of the impact of site formation, ELS and excavation in the form of Ground Movements Reports;
- (e) an assessment of the risks to the railway structures and railway operations and the corresponding mitigation measures;
- (f) instrumentation monitoring plan;
- (g) contingency/ emergency action plan;
- (h) programme of works; and
- (i) channels of communication (contact telephone numbers) with the MTRCL during working hours, non-working hours and emergencies.

Enquiry

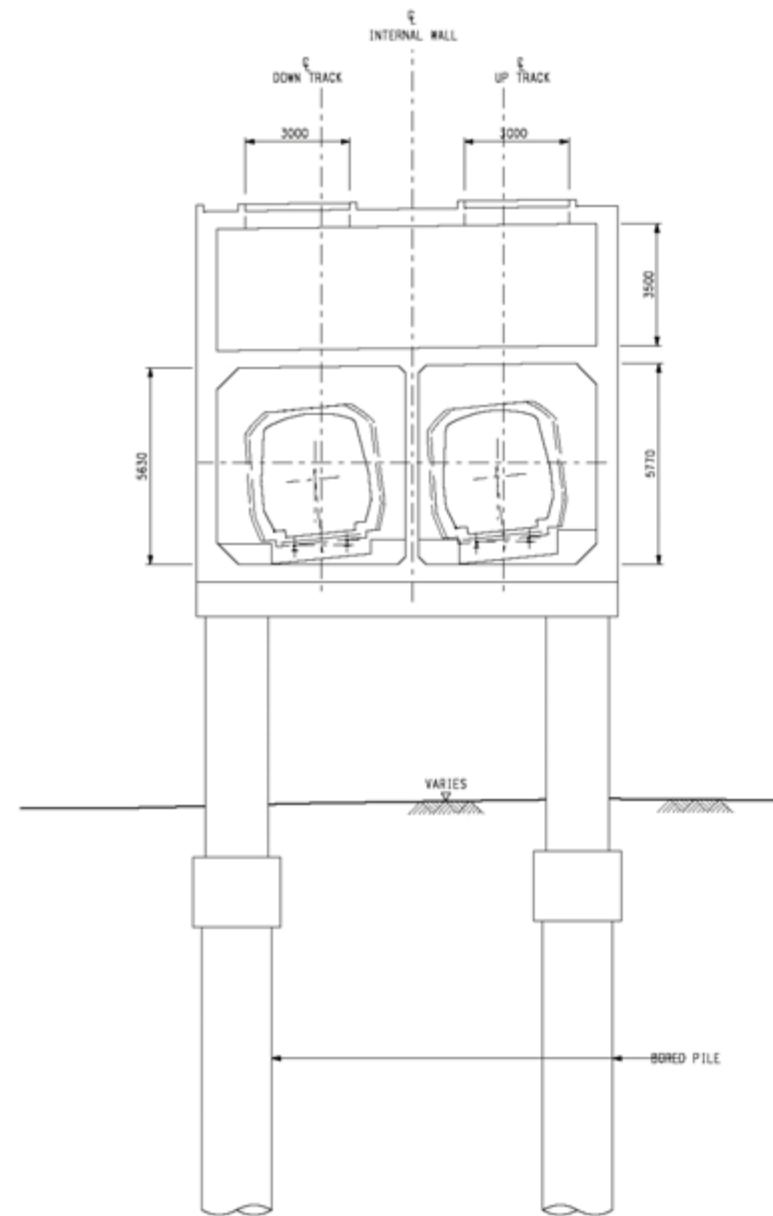
25. Tenderers are invited to contact Railway Development Office of Highways Department at Tel No. : 2762 4040 on 1/F, Ho Man Tin Government Offices, 88 Chung Hau Street, Ho Man Tin, Kowloon for any enquiry on the content of this Appendix.

Annex to Appendix

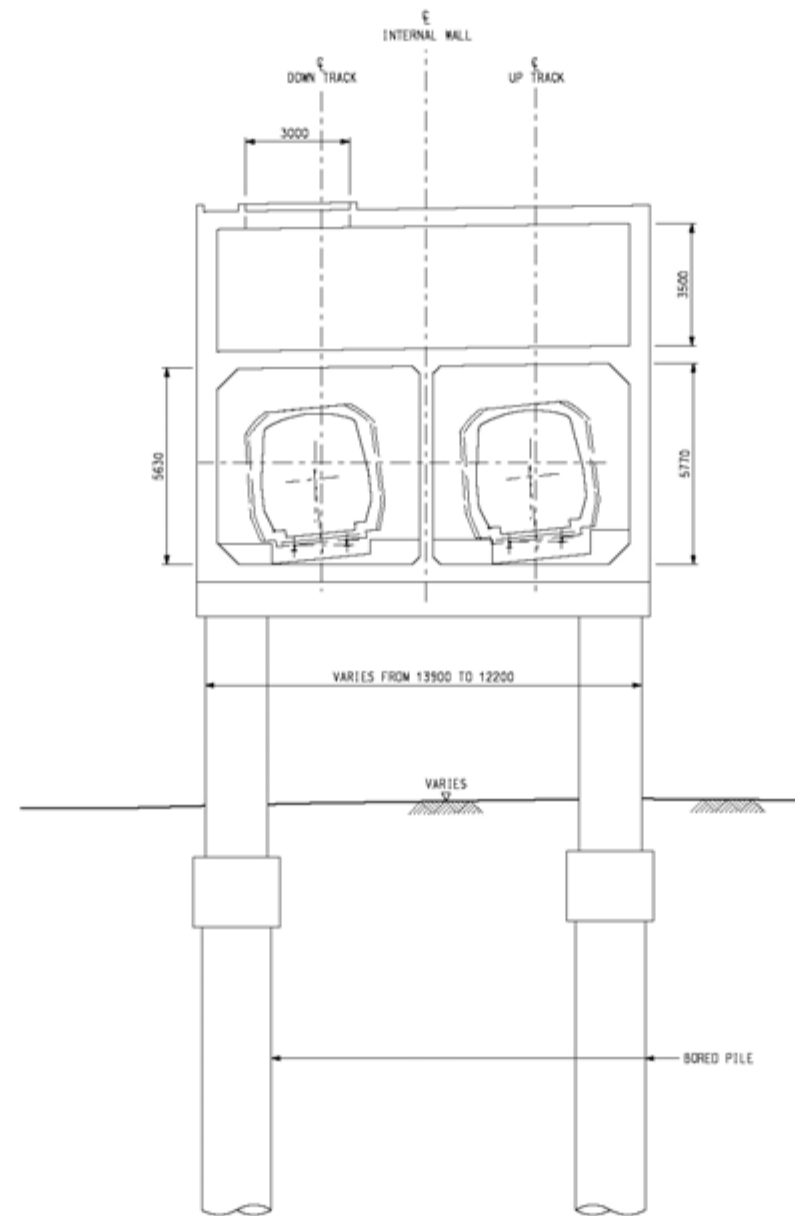
Drawing List

<u>Drawing No.</u>	<u>Rev.</u>	<u>Title</u>
HRWSILE01-SK0029	A	South Island Line (East) Wong Chuk Hang Station, Ocean Park Station and Viaducts. Typical Sections
HRWSILE01-SK0030	A	South Island Line (East) Wong Chuk Hang Station, Ocean Park Station and Viaducts. Proposed Ground Profile Section 1
HRWSILE01-SK0031	A	South Island Line (East) Wong Chuk Hang Station, Ocean Park Station and Viaducts. Proposed Ground Profile Section 2
HRWSILE01-SK0032	A	South Island Line (East) Wong Chuk Hang Station, Ocean Park Station and Viaducts. Proposed Ground Profile Section 3
HRWSILE01-SK0033	A	South Island Line (East) Wong Chuk Hang Station, Ocean Park Station and Viaducts. Proposed Ground Profile Section 4
HRWSILE01-SK0035	A	South Island Line (East) Wong Chuk Hang Station, Ocean Park Station and Viaducts. Transition Box General Arrangement – Elevation
HRWSILE01-SK0037	A	South Island Line (East) Wong Chuk Hang Station, Ocean Park Station and Viaducts. Transition Box Ventilator Details
HRWSILE01-SK0038	B	South Island Line (East) Wong Chuk Hang Station, Ocean Park Station and Viaducts. Site Drainage Scheme
HRWSILE01-SK0040	A	South Island Line (East) Wong Chuk Hang Station, Ocean Park Station and Viaducts. General Arrangement – Transition Box
902/T/NFP/L&O/A12/006	B	Contract 902 Nam Fung Portal Ventilation Building. Layout Plan. GA Plan. Ground Level
902/T/NFP/L&O/A12/106	B	Contract 902 Nam Fung Portal Ventilation Building. Setting Out Plan. Ground Level
902/T/NFP/L&O/A13/001	B	Contract 902 Nam Fung Portal Ventilation Building. Section 1
902/T/NFP/L&O/A13/002	B	Contract 902 Nam Fung Portal Ventilation Building. Section 2
902/K/NFP/SWL/C21/001	-	Contract 902 Nam Fung Portal Ventilation Building. Plan. Excavation Limits for Future Development

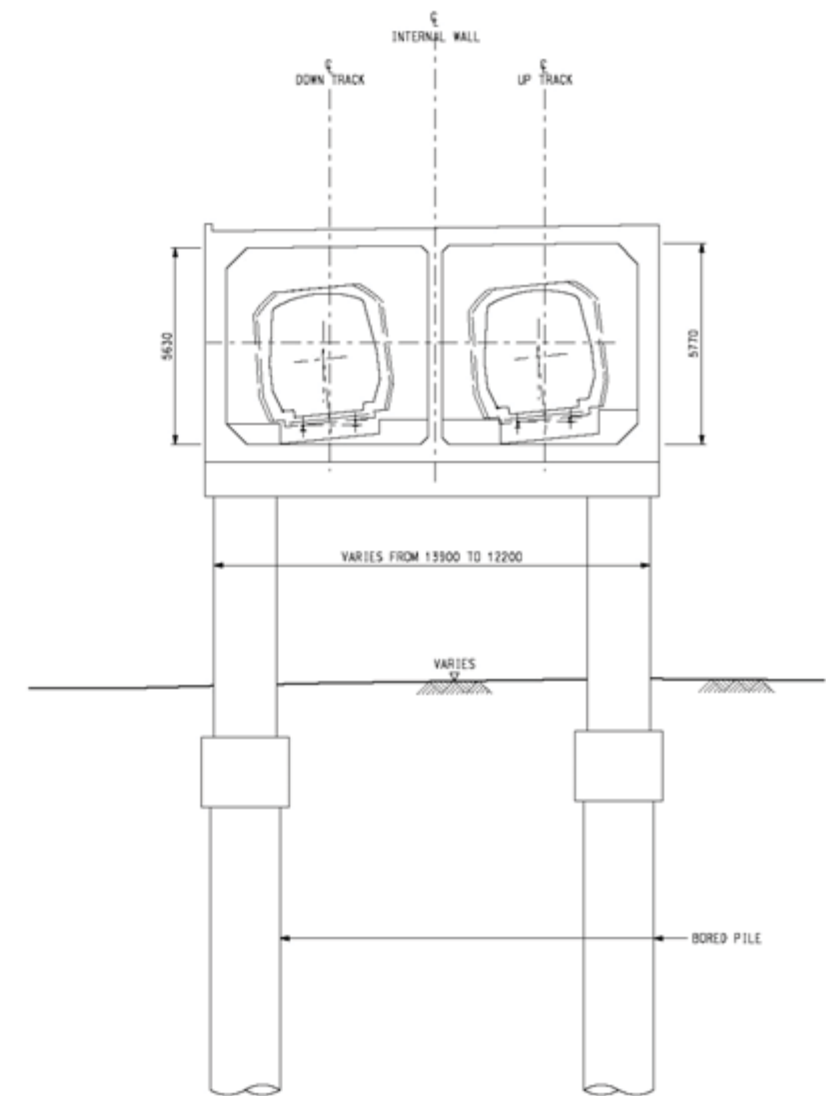
<u>Drawing No.</u>	<u>Rev.</u>	<u>Title</u>
902/T/NFP/SWL/C22/058	B	Contract 902 Nam Fung Portal Ventilation Building. Layout Plan. Permanent Site Formation
902/T/NFP/SWL/C22/087	A	Contract 902 Nam Fung Portal Ventilation Building. Sections Permanent Site Formation (Sheet 1 of 9)
902/T/NFP/SWL/C22/088	A	Contract 902 Nam Fung Portal Ventilation Building. Sections Permanent Site Formation (Sheet 2 of 9)
902/T/NFP/SWL/C22/089	A	Contract 902 Nam Fung Portal Ventilation Building. Sections Permanent Site Formation (Sheet 3 of 9)
902/B/NFP/T73/C04/230	E	Contract 902 Nam Fung Tunnel and Ventilation Buildings. Nam Fung Portal and Works Area. Compensatory Planting Plan (Sheet 1 of 4)
902/B/NFP/T73/C04/231	E	Contract 902 Nam Fung Tunnel and Ventilation Buildings. Nam Fung Portal and Works Area. Compensatory Planting Plan (Sheet 2 of 4)
902/B/NFP/T73/C04/232	F	Contract 902 Nam Fung Tunnel and Ventilation Buildings. Nam Fung Portal and Works Area. Compensatory Planting Plan (Sheet 3 of 4)
902/B/NFP/T73/C04/233	F	Contract 902 Nam Fung Tunnel and Ventilation Buildings. Nam Fung Portal and Works Area. Compensatory Planting Plan (Sheet 4 of 4)



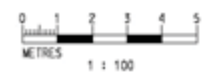
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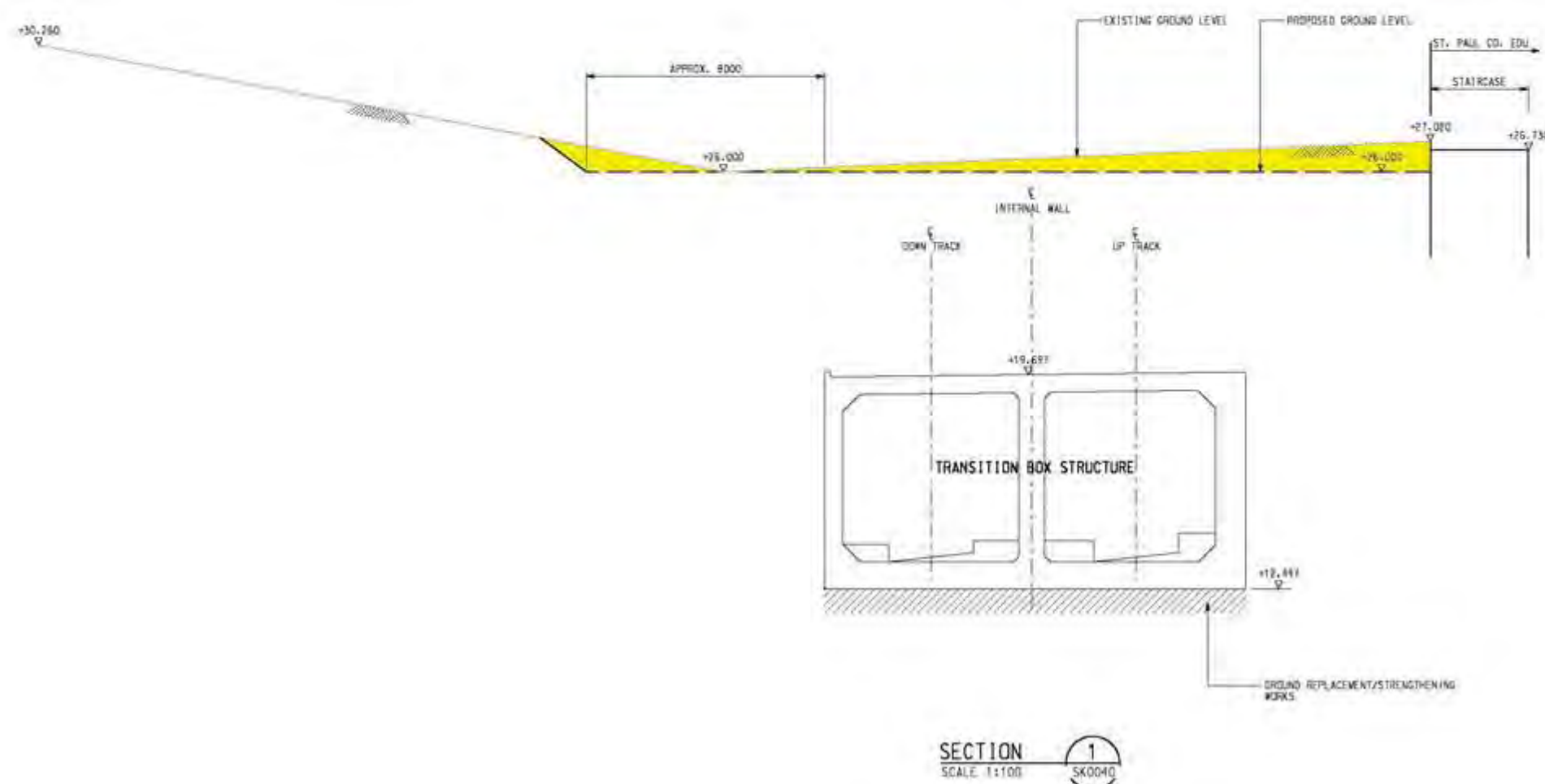


SOUTH ISLAND LINE (EAST) WONG CHUK HANG STATION, OCEAN PARK STATION AND VIADUCTS TYPICAL SECTIONS

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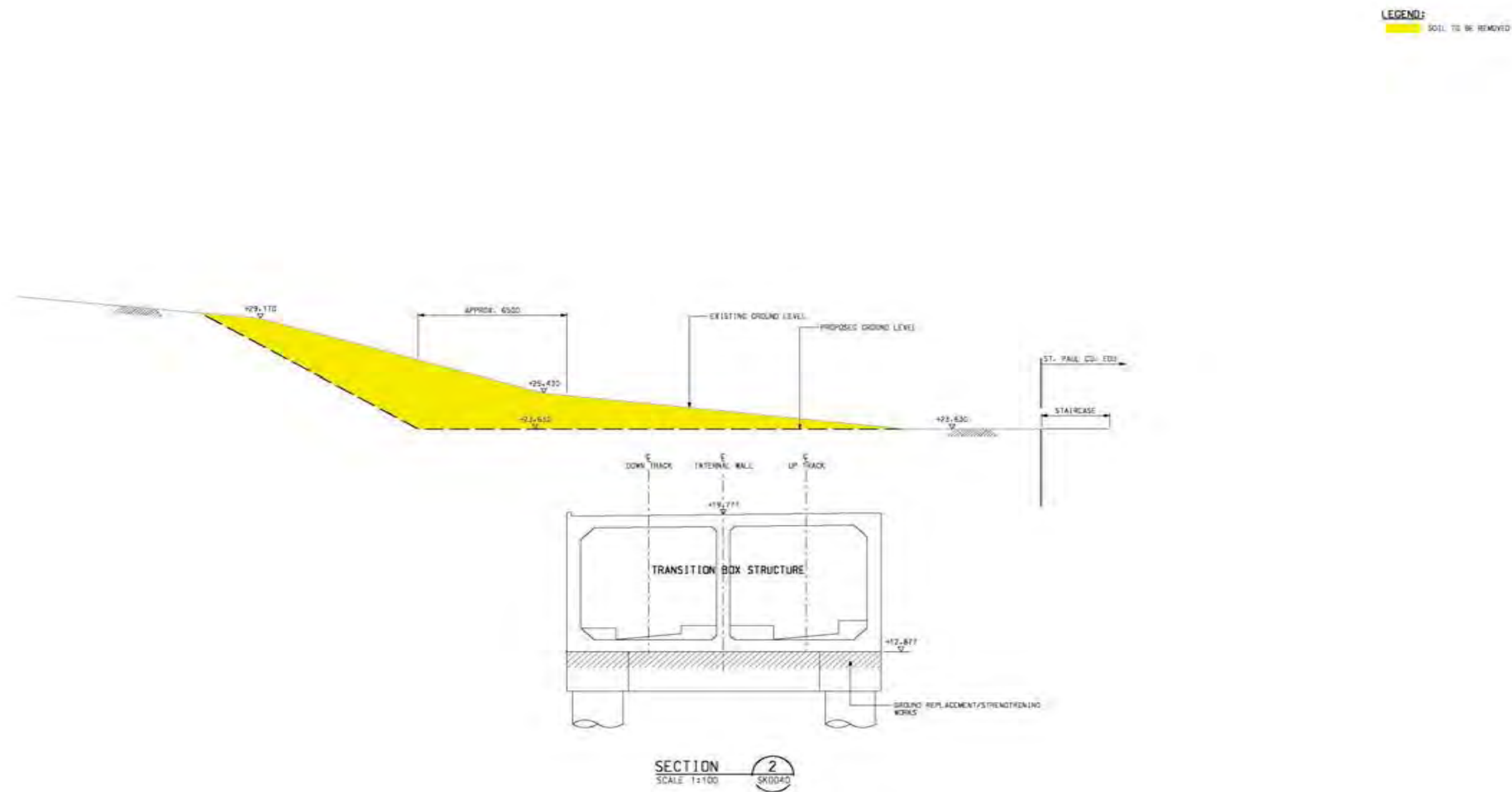
LEGEND:
 SOIL TO BE REMOVED



SOUTH ISLAND LINE (EAST)
 WONG CHUK HANG STATION, OCEAN PARK STATION AND VIADUCTS
 PROPOSED GROUND PROFILE SECTION 1

HRWSILE01-SK0030A


 RAILWAY DEVELOPMENT OFFICE
 HIGHWAYS DEPARTMENT

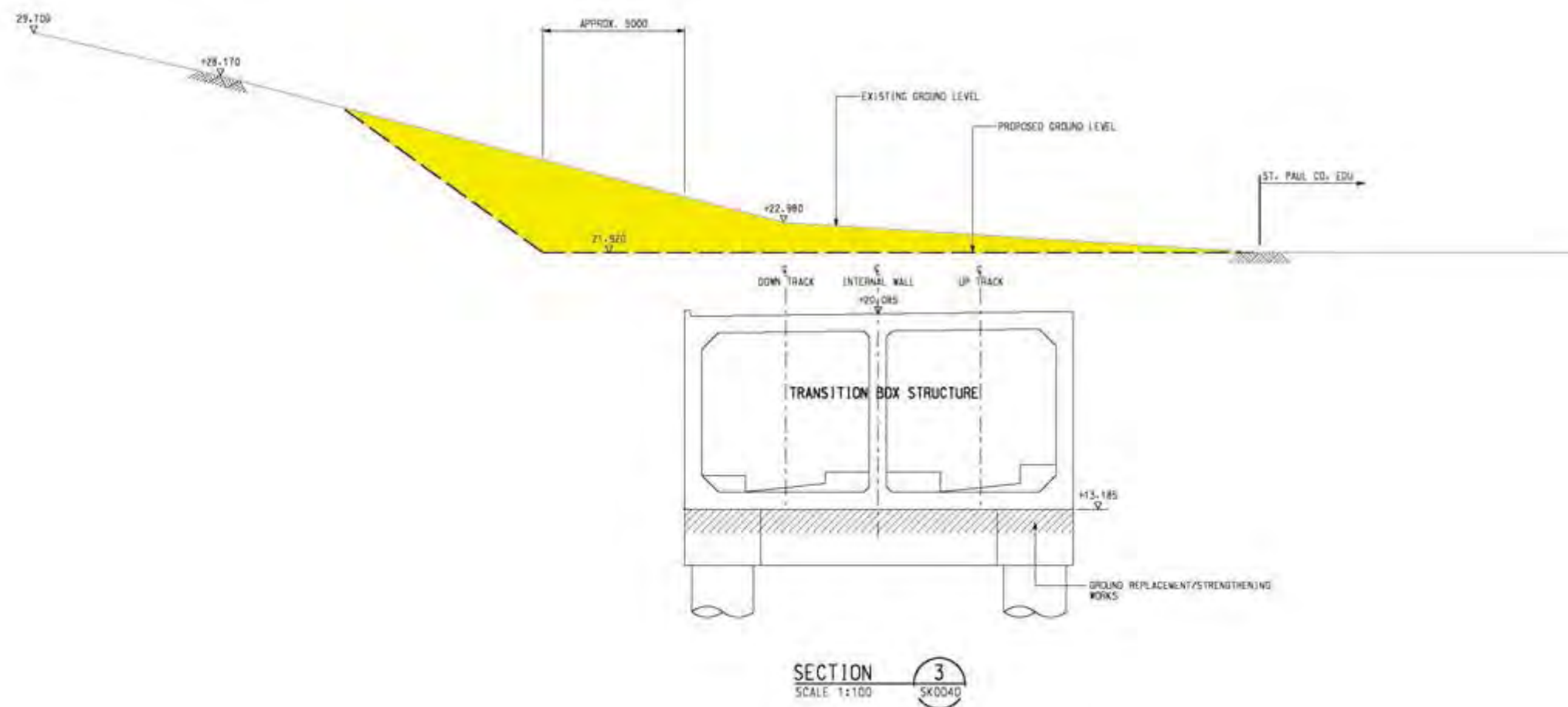


SOUTH ISLAND LINE (EAST)
WONG CHUK HANG STATION, OCEAN PARK STATION AND VIADUCTS
PROPOSED GROUND PROFILE SECTION 2

HRWSILE01-SK0031A

 RAILWAY DEVELOPMENT OFFICE
HIGHWAYS DEPARTMENT

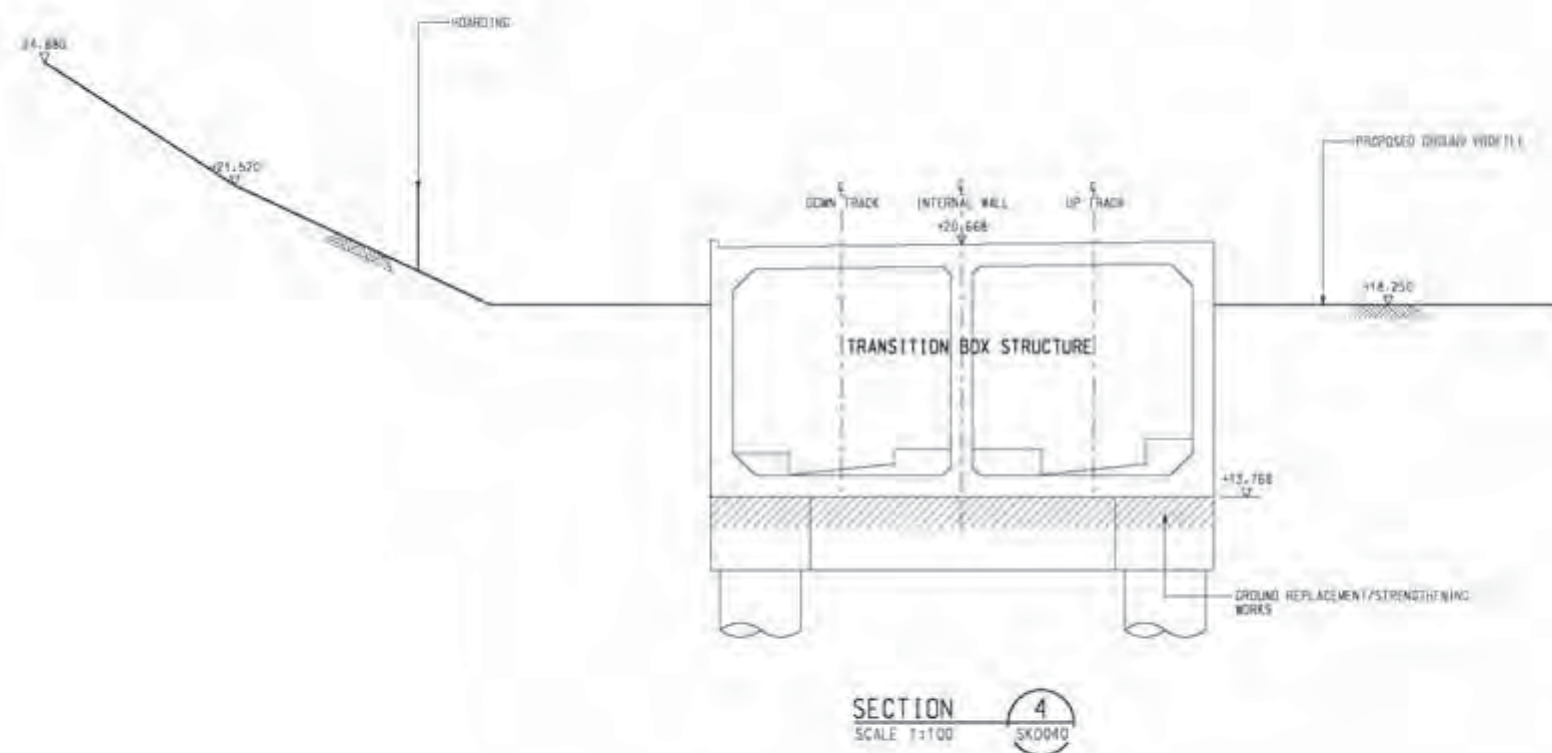
LEGEND:
 SOIL TO BE REMOVED



SOUTH ISLAND LINE (EAST)
 WONG CHUK HANG STATION, OCEAN PARK STATION AND VIADUCTS
 PROPOSED GROUND PROFILE SECTION 3

HRWSILE01-SK0032A

 RAILWAY DEVELOPMENT OFFICE
 HIGHWAYS DEPARTMENT



SOUTH ISLAND LINE (EAST)
WONG CHUK HANG STATION, OCEAN PARK STATION AND VIADUCTS
PROPOSED GROUND PROFILE SECTION 4

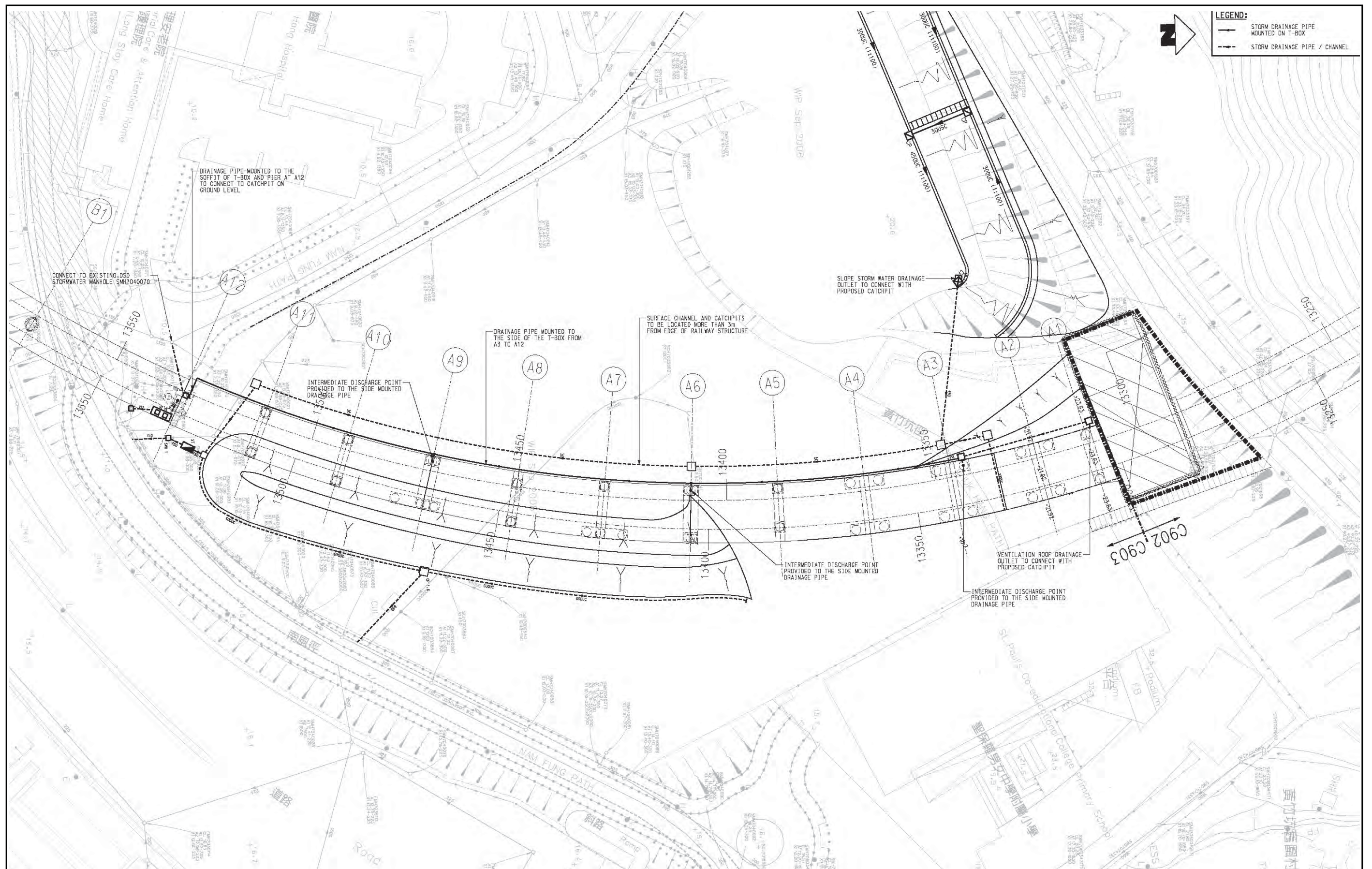
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RAILWAY DEVELOPMENT OFFICE
HIGHWAYS DEPARTMENT



RAILWAY DEVELOPMENT OFFICE
HIGHWAYS DEPARTMENT

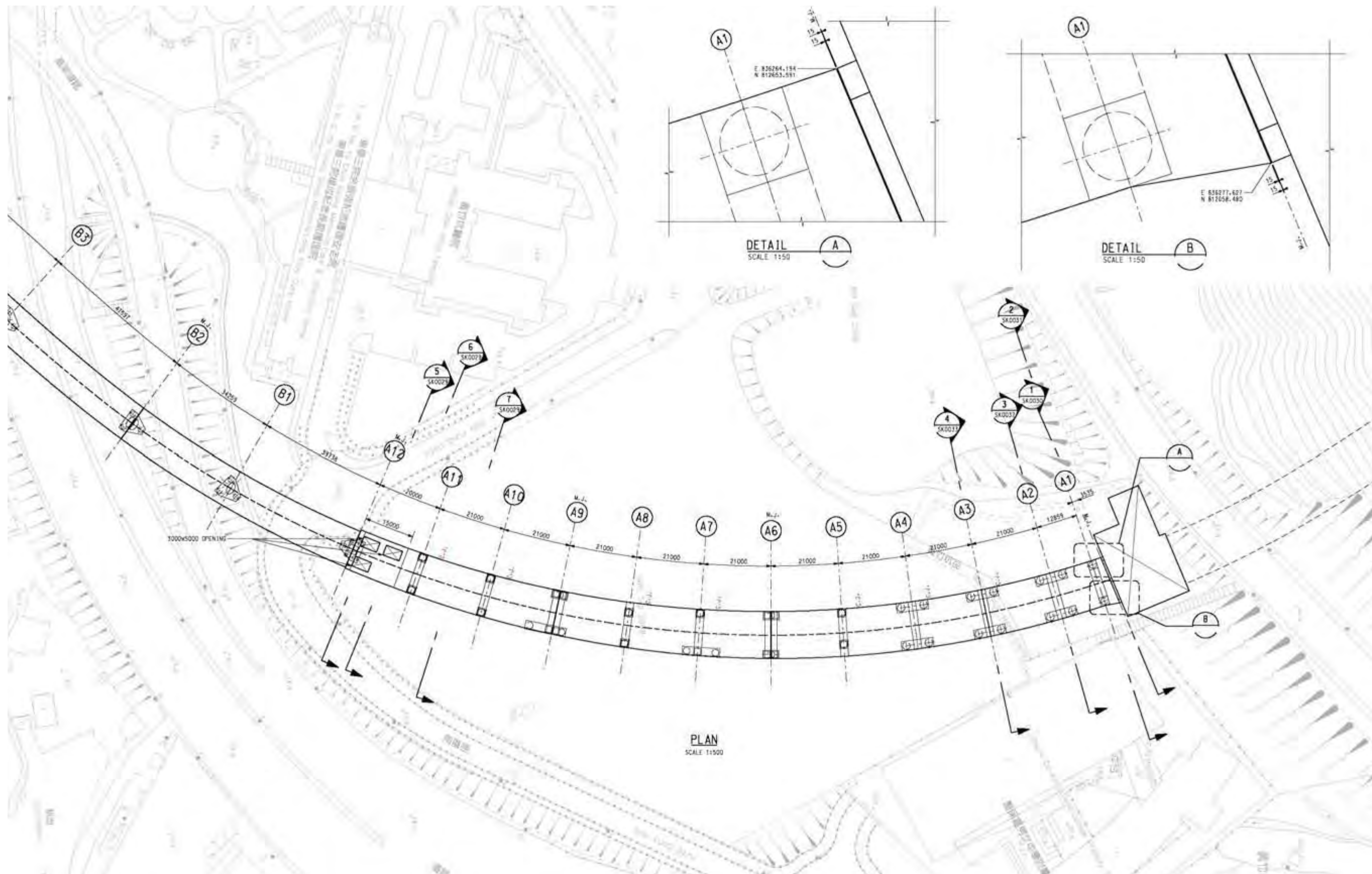


SOUTH ISLAND LINE (EAST) WONG CHUK HANG STATION, OCEAN PARK STATION AND VIADUCTS SITE DRAINAGE SCHEME

HRWSILE01-SK0038B



RAILWAY DEVELOPMENT OFFICE
HIGHWAYS DEPARTMENT



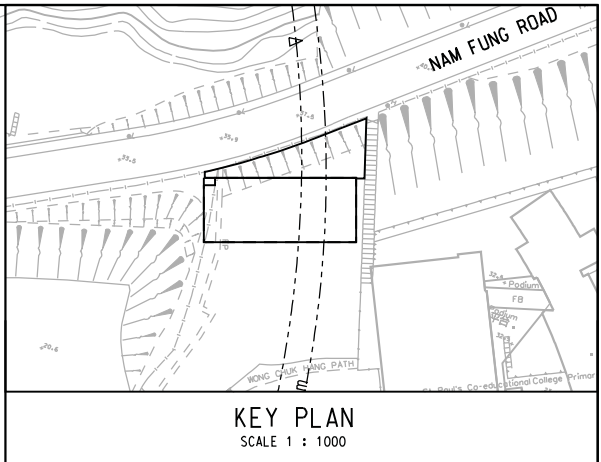
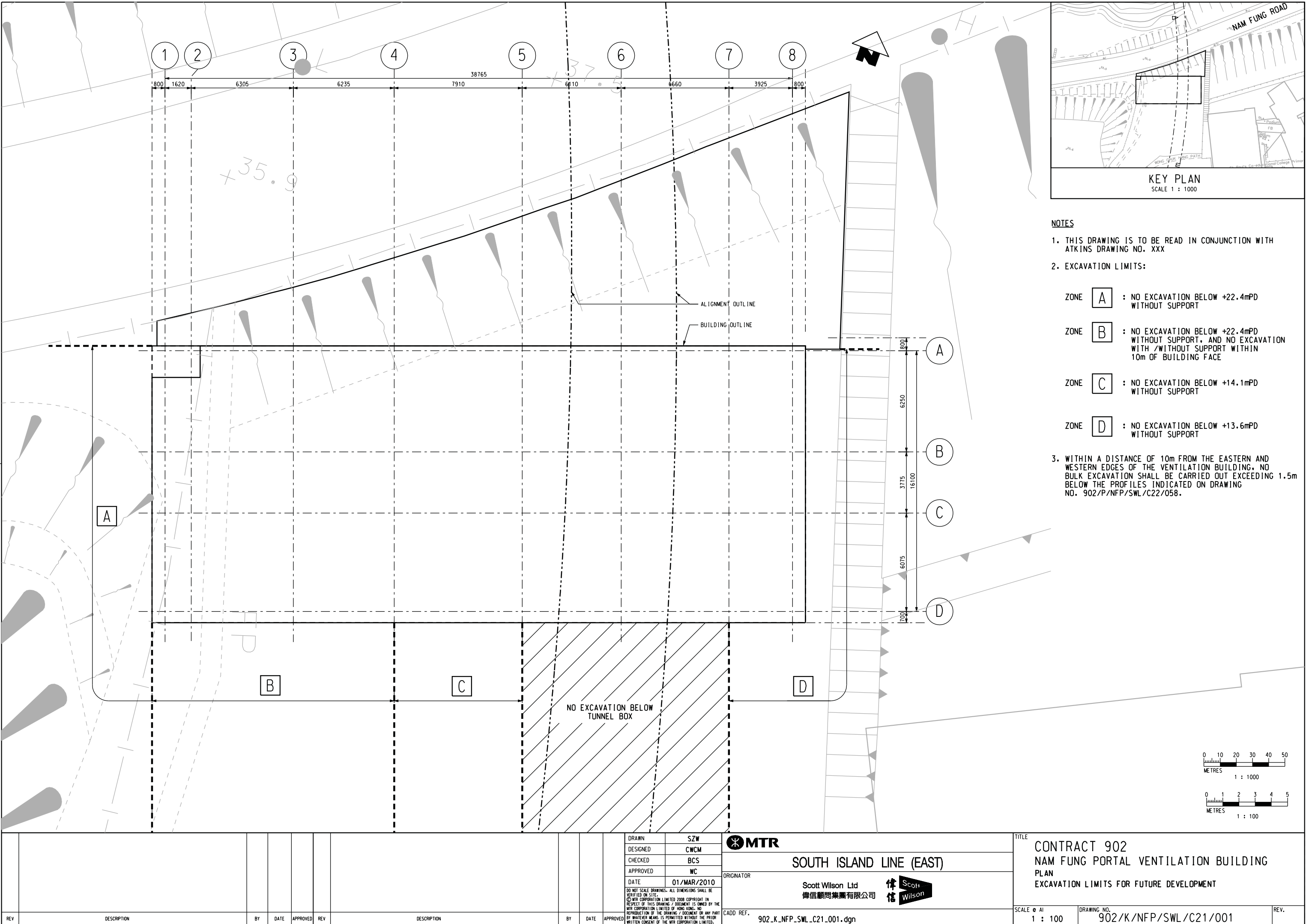
SOUTH ISLAND LINE (EAST)
WONG CHUK HANG STATION, OCEAN PARK STATION AND VIADUCTS
GENERAL ARRANGEMENT – TRANSITION BOX

HRWSILE01-SK0040A

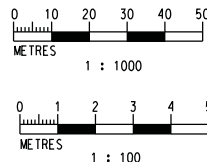
 RAILWAY DEVELOPMENT OFFICE
HIGHWAYS DEPARTMENT




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 DATE: 30/03/2010 5:59:22 PM
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- NOTES
- THIS DRAWING IS TO BE READ IN CONJUNCTION WITH ATKINS DRAWING NO. XXX
 - EXCAVATION LIMITS:
 - ZONE A : NO EXCAVATION BELOW +22.4mPD WITHOUT SUPPORT
 - ZONE B : NO EXCAVATION BELOW +22.4mPD WITHOUT SUPPORT, AND NO EXCAVATION WITH /WITHOUT SUPPORT WITHIN 10m OF BUILDING FACE
 - ZONE C : NO EXCAVATION BELOW +14.1mPD WITHOUT SUPPORT
 - ZONE D : NO EXCAVATION BELOW +13.6mPD WITHOUT SUPPORT
 - WITHIN A DISTANCE OF 10m FROM THE EASTERN AND WESTERN EDGES OF THE VENTILATION BUILDING, NO BULK EXCAVATION SHALL BE CARRIED OUT EXCEEDING 1.5m BELOW THE PROFILES INDICATED ON DRAWING NO. 902/P/NFP/SWL/C22/058.



										<div><div>DRAWN</div><div>DESIGNED</div><div>CHECKED</div><div>APPROVED</div><div>DATE</div></div> <div><div>SZW</div><div>CWCM</div><div>BCS</div><div>WC</div><div>01/MAR/2010</div></div> <div><div>DO NOT SCALE DRAWINGS. ALL DIMENSIONS SHALL BE VERIFIED ON SITE.</div><div>© MTR CORPORATION LIMITED 2008. COPYRIGHT IN RESPECT OF THIS DRAWING / DOCUMENT IS OWNED BY THE MTR CORPORATION LIMITED OF HONG KONG. NO REPRODUCTION OF THE DRAWING / DOCUMENT OR ANY PART BY WHATEVER MEANS IS PERMITTED WITHOUT THE PRIOR WRITTEN CONSENT OF THE MTR CORPORATION LIMITED.</div></div>		<div><div></div><div>SOUTH ISLAND LINE (EAST)</div><div>ORIGINATOR</div><div><div>Scott Wilson Ltd</div><div>偉信顧問集團有限公司</div></div><div><div>偉信</div><div>Scott Wilson</div></div></div> <div>CADD REF. 902_K_NFP_SWL_C21_001.dgn</div>		<div>TITLE</div> <div>CONTRACT 902</div> <div>NAM FUNG PORTAL VENTILATION BUILDING</div> <div>PLAN</div> <div>EXCAVATION LIMITS FOR FUTURE DEVELOPMENT</div>			
REV	DESCRIPTION	BY	DATE	APPROVED	REV	DESCRIPTION	BY	DATE	APPROVED	SCALE @ A1	DRAWING NO.	REV.					
										1 : 100	902/K/NFP/SWL/C21/001						

LEGEND:

- WORKS AREA
- ROCK FILL SLOPE MAX. 30° (GRADE 200)
TO BE HYDROSEEDING
- ROCK FILL SLOPE MAX. 35° (GRADE 200)
TO BE SPRAYED CONCRETE
- CUT SLOPE MAX. 30° TO BE HYDROSEEDING
- CUT SLOPE MAX. 45° TO BE SPRAYED CONCRETE
- CUT AND FILL SLOPE MAX. 30° TO BE HYDROSEEDING
- PROPOSED SOIL NAILS (No.B1)
- PROPOSED TEST NAILS (NO. TN2)
- PROPOSED SOLDIER PILE (NO. SP1)
- PROPOSED CATCHPIT
- PROPOSED 300mm U-CHANNEL / STEPPED CHANNEL
- PROPOSED MAINTENANCE STAIRWAY
- COMPLETED DRILLHOLE DURING PRELIMINARY
DESIGN STAGE UNDER G1 CONTRACT NEX 1024
- COMPLETED DRILLHOLE SUGGESTED IN PRELIMINARY
DESIGN STAGE UNDER G1 CONTRACT 912
- COMPLETED DRILLHOLE DURING DETAILED DESIGN
STAGE UNDER G1 CONTRACT 912
- COMPLETED TRIAL-PIT IN DETAILED DESIGN STAGE
- EXISTING DRILLHOLE (RH REACHED)
- EXISTING DRILLHOLE (RH NOT REACHED)
- PROPOSED FORMATION LEVEL (mPD)
- PROPOSED 800 THK. TOE WALL (RETAINING
HEIGHT 1m MAX.)

NOTES

1. FOR SITE FORMATION WORK GENERAL NOTES REFER TO
DRAWING No.902/T/NFP/SWL/C01/081.
2. FOR TYPICAL SITE FORMATION DETAILS, REFER TO
DRAWING No. 902/T/NFP/SWL/C22/084 & 085.

SETTING OUT
SCHEDULE OF SOIL NAIL

MARK	EASTING	NORTHING
B1	836274.823	812685.488
B2	836272.944	812684.804
B3	836271.064	812684.120
B4	836269.185	812683.436
B5	836267.305	812682.752
B6	836265.426	812682.068
B7	836263.547	812681.384
B8	836261.667	812680.700
C1	836274.567	812683.267
C2	836272.688	812682.583
C3	836270.809	812681.899
C4	836268.929	812681.215
C5	836267.050	812680.531
C6	836265.170	812679.847
C7	836263.291	812679.162
C8	836261.412	812678.478
C9	836259.532	812677.794
C10	836257.653	812677.110

SETTING OUT
SCHEDULE OF SOLDIER PILE

MARK	EASTING	NORTHING
SP1	836240.739	812666.026
SP2	836242.003	812666.902
SP3	836243.646	812668.045
SP4	836245.290	812669.186
SP5	836246.935	812670.327
SP6	836248.537	812671.524
SP7	836250.130	812672.733
SP8	836251.724	812673.942
SP9	836252.847	812674.795
SP10	836254.440	812676.004
SP11	836257.285	812678.334
SP12	836258.846	812679.632

SOIL NAIL SCHEDULE

SOIL NAIL	ELEVATION	SIZE	INCLINATION	SPACING	TOTAL LENGTH
MARK	(mPD)	(mm)	(DEG)	(m)	(m)
B1 TO B8	35.00	32.00	20.00	2.00	16.00
C1 TO C10	33.00	32.00	20.00	2.00	16.00

REMARK: ALL SOIL NAILS ARE NORMAL TO SLOPE SURFACE.

SOIL NAIL SCHEDULE

TEST NAIL	LEVEL	INCLINATION	HOLE	LENGTH	GROUTED	To	Tp	ITERATION	ALLOWABLE
No.	(mPD)	(DEG)	DIAMETER	(m)	LENGTH	(m)	(KN)	1	DEFORMATION
			(mm)		(m)		(KN)	2	(mm)
TN2	33.00	20.00	100	16.00	12.30	11.5	230	84.5	157.5
TN3	35.00	20.00	100	16.00	12.60	10	198	73	136

REMARK: To = 5% Tp THE E USED IS 200000MPa AND A IS 804mm² FOR 32mm DIAMETER BAR.
ALLOWABLE DEFORMATION Smax = (Tp.L free/Ea) + 0.3% OF GROUTED LENGTH
WHERE L free IS LENGTH BETWEEN THE NAIL LENGTH AND GROUTED LENGTH
E IS THE STEEL YOUNG'S MODULUS AND
A IS THE NAIL BAR CROSS SECTIONS AREA.

KEY PLAN

SCALE 1 : 40000

0 4 8 12 16 20
METRES
1 : 400

DRAWN SZW
DESIGNED TL
CHECKED PC
APPROVED WC
DATE JUL/2010



SOUTH ISLAND LINE (EAST)

ORIGINATOR

Scott Wilson Ltd
偉信顧問集團有限公司



CADD REF.

902_T_NFP_SWL_C22_058B.dgn

TITLE
CONTRACT 902
NAM FUNG PORTAL VENTILATION BUILDING
LAYOUT PLAN
PERMANENT SITE FORMATION

SCALE @ A1
1:400

DRAWING NO.
902/T/NFP/SWL/C22/058

REV.
B

Q:\BU\BISZ\PROJECTS\0900\REVISION\902_43_WHITE.dgn
Date: 2010-08-24
Drawn by: SZW
Checked by: PC
Approved by: WC
File Name: 902_T_NFP_SWL_C22_058B.dgn

PLOT: DRV:
MODEL NAME:
FILE NAME:

B TENDER ADDENDUM No.1
A TENDER ISSUE

TL AUG10 WC
TL JUL10 WC

DESCRIPTION

BY DATE APPROVED

1. FOR NOTES, REFER TO DRAWING NO. 902/T/NFP/SWL/C01/081.
2. FOR DETAILS, REFER TO DRAWING NO. 902/T/NFP/SWL/C22/084 TO 085.

MD/M	MARINE DEPOSIT
F/FILL	FILL DEPOSIT
A	ALLUVIUM
C/COLL	COLLUVIUM
V	COMPLETELY DECOMPOSED ROCKS
IV	HIGHLY DECOMPOSED ROCKS
III	MODERATELY DECOMPOSED ROCKS
II	SLIGHTLY DECOMPOSED ROCKS
1	V.SOFT TO SOFT CLAY
2	FIRM TO STIFF CLAY/SILT
3	SAND
4	COBBLE/GRAVEL/BOULDER
KIK :	KOWLOON GRANITE
Kra :	AP LEI CHAU FORMATION
Kt :	TEI TONG TSUI QUARTZ MONZONITE
Gr+	GRANITE

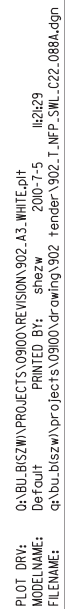








REV	DESCRIPTION	BY	DATE	APPROVED	REV	DESCRIPTION	BY	DATE	APPROVED	DRAWN LLH	DESIGNED KS	CHECKED PC	APPROVED WC	DATE JUL/2010	DO NOT SCALE DRAWINGS. ALL DIMENSIONS SHALL BE VERIFIED ON SITE. © MTR CORPORATION LIMITED 2008. COPYRIGHT IN RESPECT OF THIS DRAWING / DOCUMENT IS OWNED BY THE MTR CORPORATION LIMITED OF HONG KONG. NO REPRODUCTION OF THE DRAWING / DOCUMENT OR ANY PART THEREOF WITHOUT THE WRITTEN CONSENT OF THE MTR CORPORATION LIMITED.	MTR	SOUTH ISLAND LINE (EAST)	ORIGINATOR Scott Wilson Ltd 偉信顧問集團有限公司	偉信Wilson	TITLE CONTRACT 902 NAM FUNG PORTAL VENTILATION BUILDING SECTIONS PERMANENT SITE FORMATION (SHEET 1 OF 9)	SCALE 1:100	DRAWING NO. 902/T/NFP/SWL/C22/087	REV. A

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 PRINTED BY: shezw 2010-7-5 11:21:28

1. FOR NOTES, REFER TO DRAWING NO. 902/T/NFP/SWL/C01/081.
2. FOR DETAILS, REFER TO DRAWING NO. 902/T/NFP/SWL/C22/084 TO 085.
3. THE CONTRACTOR SHALL CARRY OUT TRIAL PIT LOGGING TO DETERMINE THE ACTUAL EXTENT OF FILL MATERIAL TO BE EXCAVATED AND RECOMPACTED FOR THE APPROVAL OF THE ENGINEER.

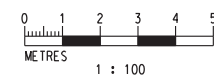
MD/M	MARINE DEPOSIT
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C/COLL	COLLUVIUM
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IV	HIGHLY DECOMPOSED ROCKS
III	MODERATELY DECOMPOSED ROCKS
II	SLIGHTLY DECOMPOSED ROCKS
1	V. SOFT TO SOFT CLAY
2	FIRM TO STIFF CLAY/SILT
3	SAND
4	COBBLE/GRAVEL/BOULDER
KIK :	KOWLOON GRANITE
Kra :	AP LEI CHAU FORMATION
KIt :	TEI TONG TSUI QUARTZ MONZONITE
Gr :	GRANITE



										<table><tr><td>DRAWN</td><td>LLH</td></tr><tr><td>DESIGNED</td><td>KS</td></tr><tr><td>CHECKED</td><td>PC <i>PC</i></td></tr><tr><td>APPROVED</td><td>WC <i>WC</i></td></tr><tr><td>DATE</td><td>JUL/2010</td></tr><tr><td colspan="2">DO NOT SCALE DRAWINGS. ALL DIMENSIONS SHALL BE VERIFIED ON SITE.</td></tr><tr><td colspan="2">© MTR CORPORATION LIMITED 2008. COPYRIGHT IN RESPECT OF THIS DRAWING / DOCUMENT IS OWNED BY THE MTR CORPORATION LIMITED OF HONG KONG. NO REPRODUCTION OF THE DRAWING / DOCUMENT OR ANY PART OF THE SAME IS PERMITTED WITHOUT THE PRIOR WRITTEN CONSENT OF THE MTR CORPORATION LIMITED.</td></tr></table>					DRAWN	LLH	DESIGNED	KS	CHECKED	PC <i>PC</i>	APPROVED	WC <i>WC</i>	DATE	JUL/2010	DO NOT SCALE DRAWINGS. ALL DIMENSIONS SHALL BE VERIFIED ON SITE.		© MTR CORPORATION LIMITED 2008. COPYRIGHT IN RESPECT OF THIS DRAWING / DOCUMENT IS OWNED BY THE MTR CORPORATION LIMITED OF HONG KONG. NO REPRODUCTION OF THE DRAWING / DOCUMENT OR ANY PART OF THE SAME IS PERMITTED WITHOUT THE PRIOR WRITTEN CONSENT OF THE MTR CORPORATION LIMITED.		<table><tr><td colspan="2"></td></tr><tr><td colspan="2">SOUTH ISLAND LINE (EAST)</td></tr><tr><td>ORIGINATOR</td><td>Scott Wilson Ltd 偉信顧問集團有限公司 </td></tr></table>							SOUTH ISLAND LINE (EAST)		ORIGINATOR	Scott Wilson Ltd 偉信顧問集團有限公司 	<table><tr><td colspan="2">TITLE</td></tr><tr><td colspan="2">CONTRACT 902</td></tr><tr><td colspan="2">NAM FUNG PORTAL VENTILATION BUILDING SECTIONS</td></tr><tr><td colspan="2">PERMANENT SITE FORMATION (SHEET 2 OF 9)</td></tr></table>					TITLE		CONTRACT 902		NAM FUNG PORTAL VENTILATION BUILDING SECTIONS		PERMANENT SITE FORMATION (SHEET 2 OF 9)	
DRAWN	LLH																																																			
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					A	TENDER ISSUE	KS	JUL 10	WC <i>WC</i>	902-T_NFP-SWL-C22-088A.dgn	1:100	902/T/NFP/SWL/C22/088	A																																							



- | | |
|---------------|--------------------------------|
| <u>LEGEND</u> | |
| MD/M | MARINE DEPOSIT |
| F/FILL | FILL DEPOSIT |
| A | ALLUVIUM |
| C/COLL | COLLUVIUM |
| V | COMPLETELY DECOMPOSED ROCKS |
| IV | HIGHLY DECOMPOSED ROCKS |
| III | MODERATELY DECOMPOSED ROCKS |
| II | SLIGHTLY DECOMPOSED ROCKS |
| 1 | V.SOFT TO SOFT CLAY |
| 2 | FIRM TO STIFF CLAY/SILT |
| 3 | SAND |
| 4 | COBBLE/GRAVEL/BOULDER |
| K1K : | KOWLOON GRANITE |
| K1a : | AP LEI CHAU FORMATION |
| K1+ : | TEI TONG TSUI QUARTZ MONZONITE |
| Gr: | GRANITE |



REV	DESCRIPTION	BY	DATE	APPROVED	REV	DESCRIPTION	BY	DATE	APPROVED	DRAWN LLH	DESIGNED KS	CHECKED PC	APPROVED WC	DATE JUL/2010	DO NOT SCALE DRAWINGS. ALL DIMENSIONS SHALL BE VERIFIED ON SITE. © MTR CORPORATION LIMITED 2008. COPYRIGHT IN RESPECT OF THIS DRAWING / DOCUMENT IS OWNED BY THE MTR CORPORATION LIMITED OF HONG KONG. NO REPRODUCTION OF THE DRAWING / DOCUMENT OR ANY PART THEREOF WITHOUT THE WRITTEN CONSENT OF THE MTR CORPORATION LIMITED.	MTR	SOUTH ISLAND LINE (EAST)	ORIGINATOR Scott Wilson Ltd 偉信顧問集團有限公司	偉信Wilson	TITLE CONTRACT 902 NAM FUNG PORTAL VENTILATION BUILDING SECTIONS PERMANENT SITE FORMATION (SHEET 3 OF 9)	SCALE 1:100	DRAWING NO. 902/T/NFP/SWL/C22/089	REV. A

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Code 代號	Botanical Name 植物名稱	Chinese Name 中文名稱	Height 高度	Spread 寬度	Spacing 株距	Remarks 備註	Quantity 數量
TREE 樹類							
BAU.BLA.	Bauhinia blakeana	洋紫荊	4m	2m	5m	100mm trunk dia.	133
CEL.SIN.	Celtis sinensis	朴樹	5.5m	2.5m	4m	150mm trunk dia.	13
DEL.REG.	Delonix regia	鳳凰木	5.5m	3.5m	5m	150mm trunk dia.	26
FIC.BEN.	Ficus benjamina	垂葉榕	5m	2.5m	4.5m	150mm trunk dia.	73
FIC.VAR.	Ficus variegata	青果榕	5.5m	2.5m	4m	150mm trunk dia.	9
LIQ.FOR.	Liquidambar formosana	蠟香	5.5m	2.5m	4m	150mm trunk dia.	3
LIT.GLU.	Litsea glutinosa	潺槁樹	4m	2m	4m	100mm trunk dia.	112
STE.LAN.	Sterculia lanceolata	假蘋婆	4m	2m	4m	100mm trunk dia.	217

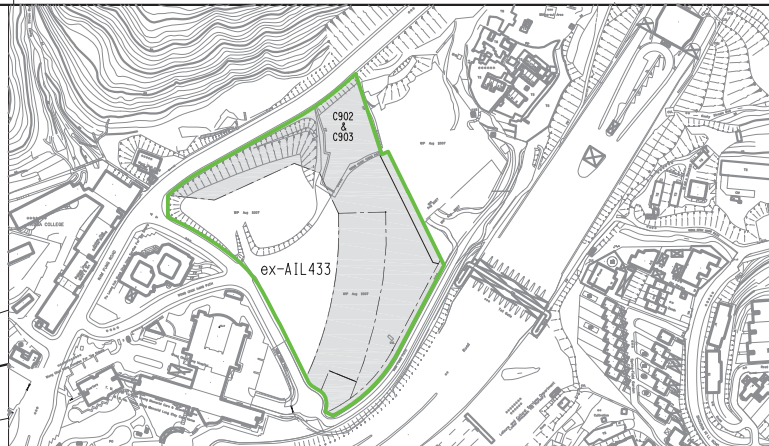

1. ALL COORDINATES ARE REFERENCE TO HONG KONG METRIC GRID (1980).
2. ALL LEVELS ARE IN METRES ABOVE HONG KONG PRINCIPAL DATUM (HPD).
3. ALL DIMENSIONS IN METRES UNLESS INDICATED OTHERWISE.
4. SCHEDULE OF DETAILED TREE SURVEY INFORMATION; REFER TO EXISTING TREE ASSESSMENT SCHEDULE.
5. PHOTO RECORD OF INDIVIDUAL TREE, REFER TO TREE PHOTO RECORD.
6. TREE'S CANOPY MARKED ON PLAN IS PROPORTIONAL TO THE ACTUAL SIZE.
7. SHRUB HYDROSEEDING SHALL CONSISTS OF THE FOLLOWING SHRUBS SPECIES IN EQUAL PORTIONS:
 - (i). MELASTOMA SANGUINEUM
 - (ii). MELASTOMA CANDIDUM
 - (iii). MELASTOMA DOECANDRUM
 - (iv). RHAPHIOLEPS INDICA
 - (v). RHODOMYRTUS TOMENTOSA
 - (vi). RHUS CHINENSIS
 - (vii). RHUS HYPOLEUCA
 - (viii). RHUS SUCCEDANEA

Matrix = Woodland Planting = No Shade

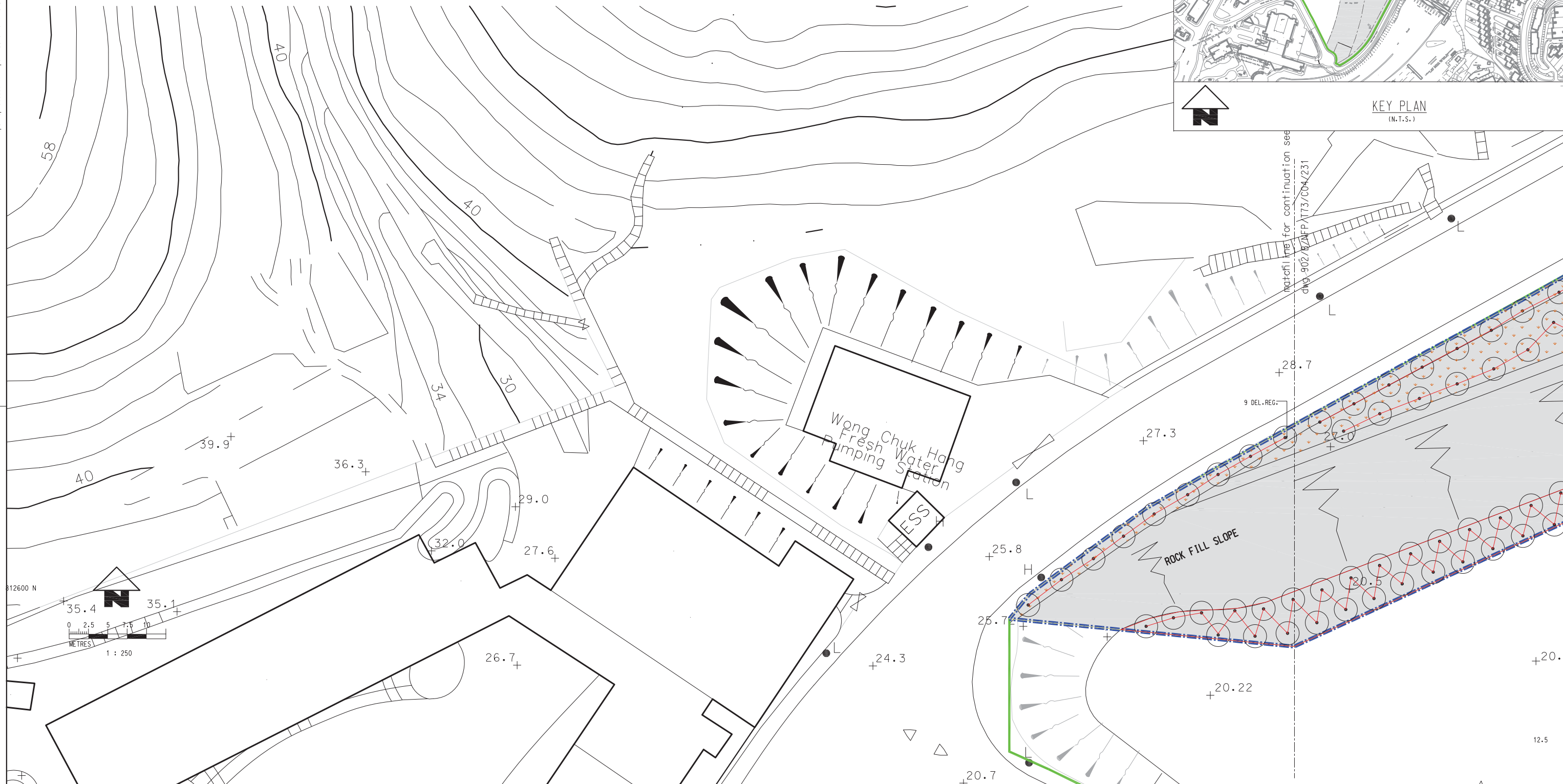
Size: 10m x 10m

Tree(Whip): 33 Nos. Shrub: 88 Nos.

Tree (Whip) 27.3%	 7  6  5  5  5  5	<i>Acacia auriculiformis</i> <i>Casuarina equisetifolia</i> <i>Eucalyptus citridora</i> <i>Cinnamomum camphora</i> <i>Sapium sebiferum</i> <i>Scheffiera actinophylla</i>
Shrub 27.7%	 22  22  22  22	<i>Backea frutescens</i> <i>Gardenia axillaris</i> <i>Melastoma candidum</i> <i>Psychotria rubra</i>



KEY PLAN
(N.T.S.)



 PROPOSED TREE (UNDER C902)
  TRANSPLANTED TREE (UNDER C902)
  TRANSPLANTED TREE (UNDER C903)
  EXISTING TREE RETAINED (UNDER C903)
  PROPOSED TREE AT 4m c/c SPACING (UNDER C903)
  NAM FUNG VENT. BUILDING
  REINSTATE WITH HYDROSEEDED SHRUBS MIX (UNDER C902 & C903)
  Lot No. ex-AIL433
  WORKS AREA BOUNDARY (FOR BOTH C902 & C903)

						DRAWN	CL
E	TREE COMPENSATORY LAYOUT REVISED		MF	09.MAY.11	WC	DESIGNED	MF
D	TREE COMPENSATORY LAYOUT REVISD		MF	04.APR.11	WC	CHECKED	SF
C	TREE COMPENSATORY LAYOUT REVISED		MF	25.JAN.11	WC	APPROVED	WC
B	TREE COMPENSATORY LAYOUT REVISED		MF	30.SEP.10	WC	DATE	25/01/2011
A1	WORKS LAYOUT REVISED		MF	16.APR.10	WC	DO NOT SCALE DRAWINGS- ALL DIMENSIONS SHALL BE VERIFIED ON SITE. © THE CORPORATION LIMITED 2008 COPYRIGHT IN RESPECT OF THIS DRAWING / DOCUMENT IS OWNED BY THE CORPORATION LIMITED OF HONG KONG. NO REPRODUCTION OF THE DRAWING / DOCUMENT OR ANY PART BY WHATEVER MEANS IS PERMITTED WITHOUT THE PRIOR WRITTEN CONSENT OF THE CORPORATION LIMITED.	
A	FIRST ISSUE		MF	30.DEC.09	WC		
REV	DESCRIPTION		BY	DATE	APPROVED		

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SOUTH ISLAND LINE (EAST)

ORIGINATOR

Scott Wilson Ltd
偉信顧問集團有限公司



CADD REF.

902_B_NPF_T73_C04_230E.DGN

TITLE

CONTRACT 902
NAM FUNG TUNNEL AND VENTILATION BUILDINGS
NAM FUNG PORTAL AND WORKS AREA
COMPENSATORY PLANTING PLAN
(SHEET 1 OF 4)

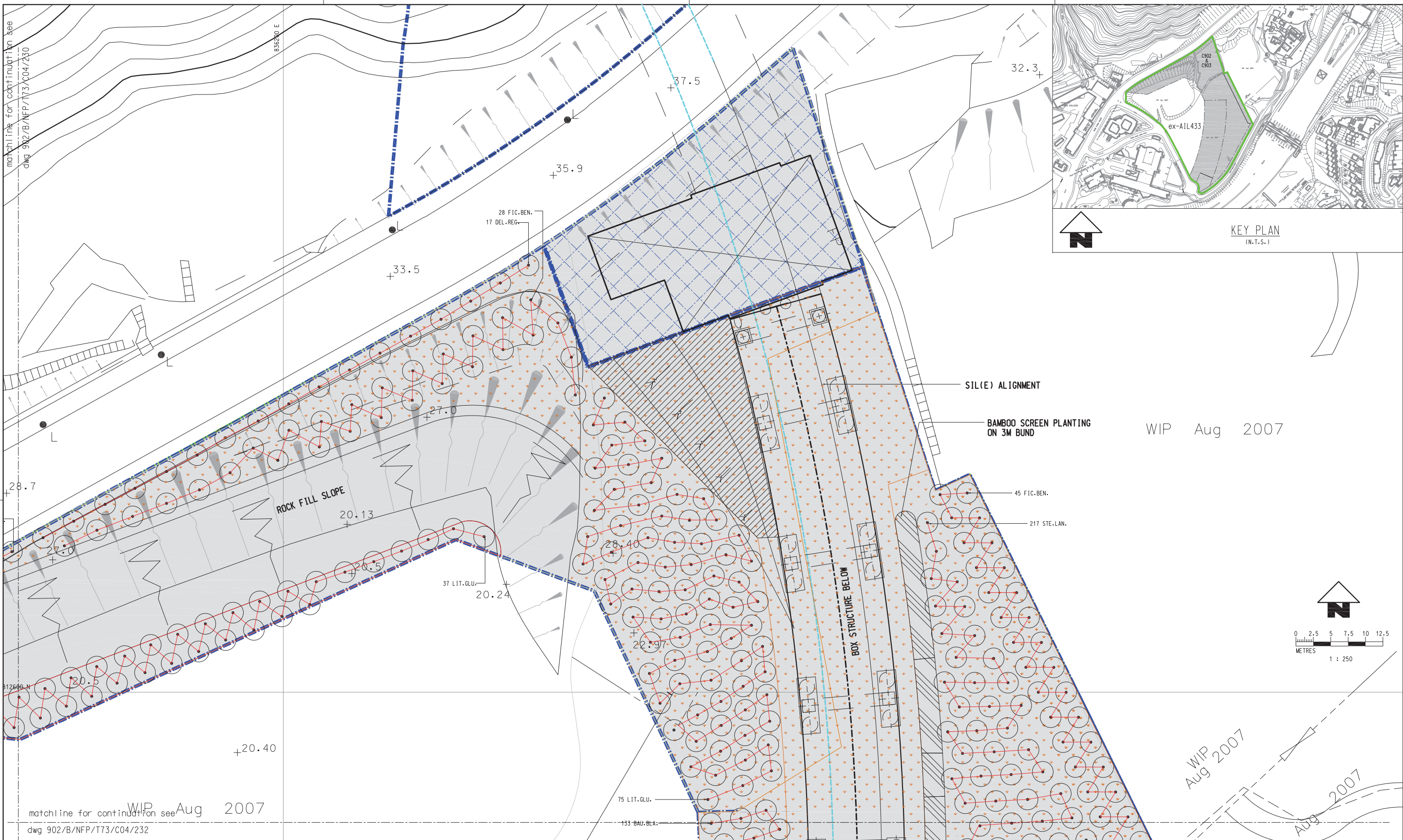
SCALE @ A1
1 :

DRAWING NO. 902/B/NFP/T73/C04/230

REV.

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matchline for continuation see
dwg 902/B/NFP/T73/C04/230



matchline for continuation see
dwg 902/B/NFP/T73/C04/232

LEGEND :-



PROPOSED TREE
(UNDER C902)



TRANSPLANTED TREE
(UNDER C902)



EXISTING TREE RETAINED
(UNDER C903)



TRANSPLANTED TREE
(UNDER C903)



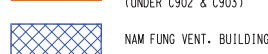
WOODLAND PLANTING MATRIX
(UNDER C902 & C903)



PROPOSED TREE AT
4m c/c SPACING
(UNDER C903)



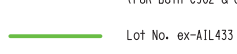
REINSTATE WITH
HYDROSEEDED GRASS MIX
(UNDER C902 & C903)



NAM FUNG VENT. BUILDING



WORKS AREA BOUNDARY
AT GROUND LEVEL
(FOR BOTH C902 & C903)



Lot No. ex-A1L433

NOTES :-

1. ALL COORDINATES ARE REFERENCE TO HONG KONG METRIC GRID (1980).
2. ALL LEVELS ARE IN METRES ABOVE HONG KONG PRINCIPAL DATUM (HPD).
3. ALL DIMENSIONS IN METRES UNLESS INDICATED OTHERWISE.
4. SCHEDULE OF DETAILED TREE SURVEY INFORMATION, REFER TO EXISTING TREE ASSESSMENT SCHEDULE.
5. PHOTO RECORD OF INDIVIDUAL TREE, REFER TO TREE PHOTO RECORD.
6. TREE'S CANOPY MARKED ON PLAN IS PROPORTIONAL TO THE ACTUAL SIZE.
7. REFER TO DWG 902/B/NFP/T73/C04/230 FOR TREE SCHEDULE.
8. REFER TO DWG 902/B/NFP/T73/C04/230 FOR SHRUB HYDROSEEDING AND WOODLAND PLANTING MATRIX.
9. REFER TO DWG 902/B/NFP/T73/C04/230 FOR WOODLAND PLANTING MATRIX DETAILS.

PLOT DATE: \$DATE\$
MODEL NAME: \$FILENAME\$
ELEVATION: \$ELEVATION\$

PRINTED BY: \$USER\$ \$DATE\$ \$TIME\$

E	TREES COMPENSATORY LAYOUT REVISED	MF	09.MAY.11	WC	DRAWN	CL
D	TREES COMPENSATORY LAYOUT REVISED	MF	04.APR.11	WC	DESIGNED	MF
C	TREES COMPENSATORY LAYOUT REVISED	MF	27.JAN.11	WC	CHECKED	SF
B1	TREES COMPENSATORY LAYOUT REVISED	MF	06.OCT.10	WC	APPROVED	WC
B	TREES COMPENSATORY LAYOUT REVISED	MF	27.SEP.10	WC	DATE	30/12/2009
A1	WORKS LAYOUT REVISED	MF	16.APR.10	WC	DO NOT SCALE DRAWINGS. ALL DIMENSIONS SHALL BE VERIFIED ON SITE. © MTR CORPORATION LIMITED 2009. COPYRIGHT IN RESPECT OF THIS DRAWING / DOCUMENT IS OWNED BY THE MTR CORPORATION LIMITED OF HONG KONG. NO REPRODUCTION OF THE DRAWING / DOCUMENT OR ANY PART BY WHATEVER MEANS IS PERMITTED WITHOUT THE PRIOR WRITTEN CONSENT OF THE MTR CORPORATION LIMITED.	
A	FIRST ISSUE	MF	30.DEC.09	WC		
REV	DESCRIPTION	BY	DATE	APPROVED	BY	DATE

SOUTH ISLAND LINE (EAST)

ORIGINATOR
Scott Wilson Ltd
信信有限公司

DATE
30/12/2009

CADD REF.
902_B_NPF_T73_C04_231E.DGN

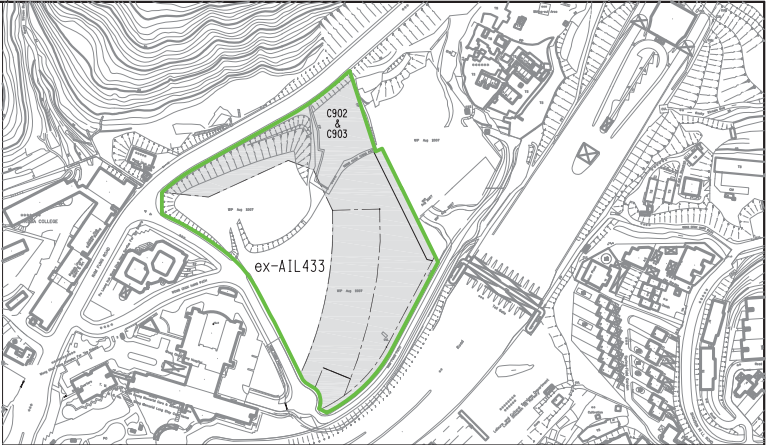
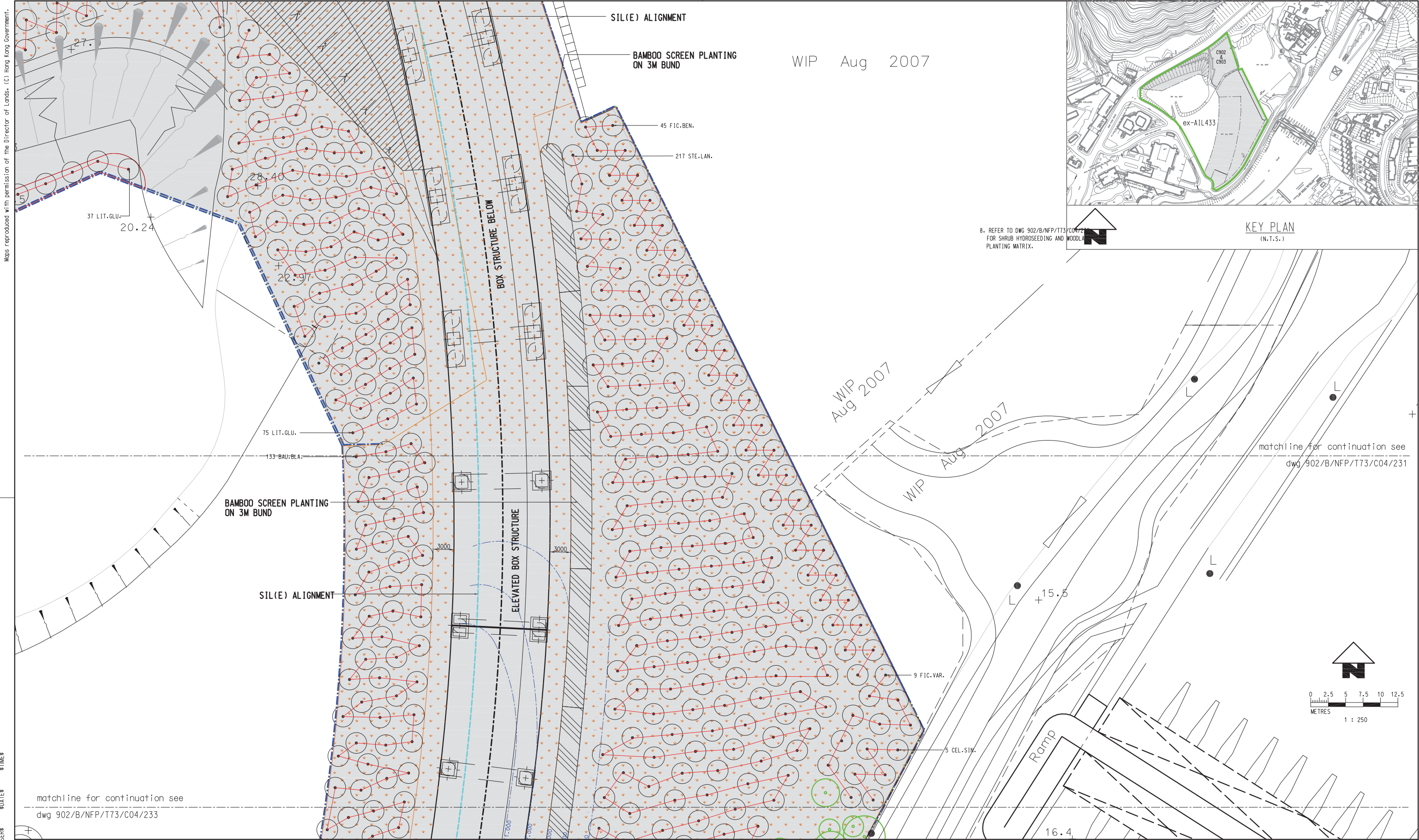
TITLE
CONTRACT 902
NAM FUNG TUNNEL AND VENTILATION BUILDINGS
NAM FUNG PORTAL AND WORKS AREA
COMPENSATORY PLANTING PLAN
(SHEET 2 OF 4)

SCALE @ A1
1 : 250

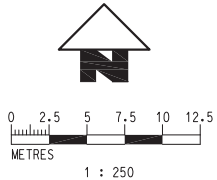
DRAWING NO.
902/B/NFP/T73/C04/231

REV.
E

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8. REFER TO DWG 902/B/NFP/T73/C04/231 FOR SHRUB HYDROSEEDING AND WOODLAND PLANTING MATRIX.



- LEGEND :-
- PROPOSED TREE (UNDER C902)
 - TRANSPLANTED TREE (UNDER C902)
 - EXISTING TREE RETAINED (UNDER C903)
 - PROPOSED TREE AT 4m c/c SPACING (UNDER C903)
 - TRANSPLANTED TREE (UNDER C903)
 - REINSTATE WITH HYDROSEEDED GRASS MIX (UNDER C902 & C903)
 - NAM FUNG VENT. BUILDING
 - WORKS AREA BOUNDARY AT GROUND LEVEL (FOR BOTH C902 & C903)
 - Lot No. ex-A1L433

- NOTES :-
- ALL COORDINATES ARE REFERENCE TO HONG KONG METRIC GRID (1980).
 - ALL LEVELS ARE IN METRES ABOVE HONG KONG PRINCIPAL DATUM (mPD).
 - ALL DIMENSIONS IN METRES UNLESS INDICATED OTHERWISE.
 - SCHEDULE OF DETAILED TREE SURVEY INFORMATION, REFER TO EXISTING TREE ASSESSMENT SCHEDULE.
 - PHOTO RECORD OF INDIVIDUAL TREE, REFER TO TREE PHOTO RECORD.
 - TREE'S CANOPY MARKED ON PLAN IS PROPORTIONAL TO THE ACTUAL SIZE.
 - REFER TO DWG 902/B/NFP/T73/C04/230 FOR TREE SCHEDULE.
 - REFER TO DWG 902/B/NFP/T73/C04/230 FOR SHRUB HYDROSEEDING AND WOODLAND PLANTING MATRIX.

MODEL NO. \$MODEL\$ FILE NO. \$FILE\$							E	TREES COMPENSATORY LAYOUT REVISED	MF	09.MAY.11	WC	DRAWN	CL	 SOUTH ISLAND LINE (EAST) ORIGINATOR <div>Scott Wilson Ltd 偉信顧問集團有限公司</div>  DO NOT SCALE DRAWINGS. ALL DIMENSIONS SHALL BE VERIFIED ON SITE. © MTR CORPORATION LIMITED 2008. COPYRIGHT IN RESPECT OF THIS DRAWING / DOCUMENT IS OWNED BY THE MTR CORPORATION LIMITED OF HONG KONG. NO REPRODUCTION OF THE DRAWING / DOCUMENT OR ANY PART BY WHATEVER MEANS IS PERMITTED WITHOUT THE PRIOR WRITTEN CONSENT OF THE MTR CORPORATION LIMITED.	TITLE CONTRACT 902 NAM FUNG TUNNEL AND VENTILATION BUILDINGS NAM FUNG PORTAL AND WORKS AREA COMPENSATORY PLANTING PLAN (SHEET 3 OF 4)					
						D	TREES COMPENSATORY LAYOUT REVISED	MF	04.APR.11	WC	DESIGNED	MF								
						C	TREES COMPENSATORY LAYOUT REVISED	MF	27.JAN.11	WC	CHECKED	SF								
						B1	TREES COMPENSATORY LAYOUT REVISED	MF	05.OCT.10	WC	APPROVED	WC								
						B	TREES COMPENSATORY LAYOUT REVISED	MF	30.SEP.10	WC	DATE	30/12/2009								
						A1	WORKS LAYOUT REVISED	MF	16.APR.10	WC										
						A	FIRST ISSUE	MF	30.DEC.09	WC										
	F	TREES COMPENSATORY LAYOUT REVISED	MF	02.DEC.11	WC															
	REV	DESCRIPTION	BY	DATE	APPROVED	REV	DESCRIPTION	BY	DATE	APPROVED	CADD REF.	902_B.NPF_T73_C04_232F.DGN	SCALE @ A1 1 : 250						DRAWING NO. 902/B/NFP/T73/C04/232	REV. F

TENDER NOTICE

1. Invitation to Tender

The Government of the Hong Kong Special Administrative Region ("the Government") invites tenders by way of premium for the grant of the lot of land described in the Particulars of the Lot hereunder for a term of fifty years commencing from the date of the Memorandum of Agreement at a rent specified in the Particulars of the Lot hereunder and subject to the terms and conditions of this Tender Notice (this Tender Notice together with its annexes and appendices are hereinafter collectively referred to as "this Tender Notice"), the General and Special Conditions of Sale together with their schedule (hereinafter collectively referred to as "the Conditions of Sale") and the Service Deed at Annex III together with its schedules and annexes (hereinafter collectively referred to as "the Service Deed") and subject also to the delivery of the tender bond in accordance with paragraph 16 ("the Tender Bond") and delivery of the performance guarantee ("the Performance Guarantee") and the bank bond ("the Bank Bond") in accordance with paragraph 20. This Tender Notice, together with the Conditions of Sale, the Memorandum of Agreement and the Service Deed, in their original forms as annexed hereto, are hereinafter collectively referred to as the "Tender Documents". Terms and expressions used and not otherwise defined in this Tender Notice but which are defined in the Conditions of Sale or the Service Deed shall have the respective meanings ascribed to them therein.

PARTICULARS OF THE LOT

Registry No.	Location	Site	Area in square metres	Rent
Aberdeen Inland Lot No. 458	Nam Fung Path, Hong Kong	As delineated and shown coloured pink, pink hatched black, pink hatched green, pink hatched black hatched green, pink stippled green and pink hatched black stippled green on the plan marked PLAN I annexed hereto	27,500.00 (about)	An annual rent of an amount equal to 3% of the rateable value from time to time of the lot, subject to General Condition No. 4 of the Conditions of Sale

2. The Government does not bind itself to accept the tender with the highest overall combined score assessed in accordance with paragraph 17 or any tender submitted.

3. Tenders must be :

(a) made in the Form of Tender comprising (i) Form A and (ii) Form B annexed hereto, all duly signed and completed by the tenderers' authorized signatory/signatories,

(b) subject to paragraph 4, enclosed in two separate sealed envelopes:

(i) one marked on the outside "Non-premium Submission" and enclosing

(1) in DUPLICATE the duly signed and completed Form A annexed hereto;

(2) the tender bond referred to in paragraph 16.1;

(3) all documents referred to in paragraphs 8.1(iv), 8.1(v) and 9.1, in sufficient number of copies/sets as required under paragraph 11.1; and

(ii) the other marked on the outside "Premium Submission" and enclosing the duly signed and completed Form B annexed hereto,

which must then be placed inside one sealed outer envelope addressed to the Chairman, Central Tender Board and clearly marked on the outside of the outer envelope "Tender for Aberdeen Inland Lot No. 458",

and must be placed in the Tender Box labelled "Government Secretariat Tender Box" on the Ground Floor, East Wing, Central Government Offices, 2 Tim Mei Avenue, Tamar, Hong Kong by no later than 12 noon on Friday, the 27th day of July 2012 (such time or, where a Black Rainstorm Warning is issued or Typhoon Signal No. 8 or above is hoisted between 9 a.m. and 12 noon on the 27th day of July 2012, the time referred to in paragraph 5 is for the purpose of this Tender Notice referred to as "the Tender Closing Time").

4. If it is not practicable to place the "Non-premium Submission" documents in one envelope then they should be placed in separate sealed envelopes. Tenders with a size exceeding 0.1 m² and a thickness of more than 30 centimetres should be separated into smaller parcels, each parcel to be clearly marked with the words "Non-premium Submission – Part ____ of No. ____". Bulky submissions should be wrapped properly with strong paper which is unlikely to break when tender is being deposited in the Tender Box.

5. In case a Black Rainstorm Warning is issued or Typhoon Signal No. 8 or above is hoisted between 9 a.m. and 12 noon on the 27th day of July 2012, tenders must be submitted by no later than 12 noon on the first working day of the following week.

6. Tenders submitted after the Tender Closing Time will not be considered.

7. By submitting a tender, a tenderer shall be taken to have agreed to all terms and conditions set out in this Tender Notice. The person who is named as the Tenderer in the Particulars of Tenderer in Form A shall be regarded as acting as a principal.

8. **Submission of Essential Documents**

8.1 Tenderers must submit the following essential documents by the Tender Closing Time (hereinafter collectively referred to as the "Submission of Essential Documents Requirements"):

- (i) duly signed and completed Form A (in duplicate) as required under paragraph 3(a) in an envelope separate from the one in which Form B is contained;
- (ii) duly signed and completed Form B as required under paragraph 3(a) in an envelope separate from the one in which Form A is contained;
- (iii) tender deposit as required under paragraph 16;
- (iv) tenderer's service provision proposals in the forms at Appendices A to D of the Marking Scheme at Annex II annexed hereto; and
- (v) duly signed undertaking by each Key Personnel as defined in Annex VII annexed hereto.

8.2 Proposals submitted in the forms at Appendices A to D of the Marking Scheme in accordance with paragraph 8.1(iv) must comply with the Mandatory Requirements and must meet the Minimum Acceptable Levels set out respectively in Section I and Section II of Annex I annexed hereto.

8.3 A tender which does not comply with paragraph 8.1 or paragraph 8.2 will not be further considered.

9. **Submission of other proposals and information**

9.1 Tenderers shall submit the following in their tenders:

- (i) tenderer's other service provision proposals in the forms at Appendices E to J of the Marking

Scheme at Annex II annexed hereto;

- (ii) financial statements in respect of each of the tenderer and the proposed performance guarantor in accordance with paragraph 13.1(a), to be marked as "Appendix K";
- (iii) original letter from the tenderer's proposed performance guarantor undertaking to submit to the Government the Performance Guarantee in accordance with the requirements set out in paragraph 13.1(b), to be marked as "Appendix L";
- (iv) original letter(s) from bank(s) in accordance with the requirements set out in paragraph 13.1(c), to be marked as "Appendix M";
- (v) information regarding sufficient working capital in respect of the tenderer and the proposed performance guarantor in accordance with paragraph 13.1(d), to be marked as "Appendix N";
- (vi) tenderer's projected annual profit and loss accounts and cash-flow statements in accordance with paragraph 13.1(e), to be marked as "Appendix O"; and
- (vii) tenderer's proposed schedule of development of the Lot in the form at Annex VIII annexed hereto.

9.2 The Government reserves the right to decide at its absolute discretion whether to consider a tender which fails to comply with paragraph 9.1.

10. **Tenderer's Counter-proposal**

10.1 Notwithstanding anything provided in the Tender Documents, a tenderer must not submit a proposal which has the effect of:

- (i) altering or varying any term or condition of the Tender Documents including, for the avoidance of doubt, any Mandatory Requirements and Minimum Acceptable Levels set out respectively in Section I and Section II of Annex I annexed hereto; or
- (ii) limiting or avoiding, or which seeks to limit or avoid, any responsibility or liability of the tenderer under the Tender Documents; or
- (iii) limiting or avoiding, or which seek to limit or avoid, any responsibility or liability of the tenderer or its employees, agents or subcontractors (whether in contract, tort or otherwise) for breach of any obligations under the Conditions of Sale, the Memorandum of Agreement and

the Service Deed, or for failing to exercise the skill and care required by the Conditions of Sale, the Memorandum of Agreement or the Service Deed or reasonably expected of the aforesaid persons in these circumstances.

10.2 The Government reserves the right to decide at its absolute discretion whether to consider a tender which fails to comply with paragraph 10.1.

11. **Number of copies of documents to be provided in the “Non-premium Submission” envelope**

11.1 A tenderer must submit with its tender one original and 15 copies/sets of documents as required under paragraph 3(b)(i)(3).

11.2 The Government shall have the right to call upon any tenderer to submit additional copies of the documents referred to in paragraph 11.1 whereupon such additional copies, if requested, shall be delivered within five (5) working days free of cost to the Government.

11.3 Notwithstanding paragraphs 3, 11.1 and 11.2, the Government shall have the discretion to decide whether or not a tender has been submitted with sufficient copies of the documents as required in paragraphs 11.1 and 11.2 and to decide whether or not to consider such a tender.

12. **Clarification and Request for Missing Information**

12.1 Notwithstanding anything herein contained, the Government reserves the right to seek clarification or request missing information (other than the documents required to be submitted as Submission of Essential Documents Requirements under paragraph 8.1) from any tenderer as the Government may at its absolute discretion consider necessary. The tenderer shall within five (5) working days or such other period as specified in the request, submit to the Government such clarification, information or document. A tender may not be considered further if adequate information or requested documents are not provided as required by the deadline specified in the request, or in the case of clarification, such clarification is not provided or is not acceptable to the Government.

13. **Financial Capability**

13.1 A tenderer must demonstrate that it is financially capable of fulfilling its obligations under the Conditions of Sale, the Memorandum of Agreement and the Service Deed, and that its proposed performance guarantor is an incorporated company and financially capable of performing its obligations under the Performance Guarantee. For this purpose, the tenderer must provide and submit such financial information or financial statements stated in Hong Kong dollars, giving evidence of the financial capability of the tenderer and

the proposed performance guarantor, including but not limited to the following:

- (a) financial statements in respect of each of the tenderer and the proposed performance guarantor to be marked as “Appendix K”, including:

- (I) audited accounts complying with the following requirements:

- (1) originals or copies certified by the tenderer’s and the proposed performance guarantor’s auditors for each of the three (3) financial years prior to the date on which the tenderer submits its tender, or for each of the financial years since the date of their incorporation if either the tenderer or its proposed performance guarantor is a newly incorporated company;
 - (2) the latest audited accounts must be for a period ending no more than eighteen (18) months before the date on which the tenderer submits its tender;
 - (3) the audited accounts must contain the directors’ report, auditors’ report, balance sheet, profit and loss account, statement of changes in equity, cash flow statement (if applicable) and notes to the accounts;
 - (4) if the tenderer is an unincorporated partnership, audited accounts for each participant in such unincorporated partnership must be submitted in the manner prescribed in paragraph 13.1(a)(I);
 - (5) all such accounts must be audited by a Certified Public Accountant (Practising) as defined in the Professional Accountants Ordinance (Cap.50) or, for a company which is incorporated outside the Hong Kong Special Administrative Region (“Hong Kong”), by auditors recognised in its home jurisdiction;
 - (6) in the event any such accounts are in a language other than Chinese or English, a full translation of such audited accounts into English certified in accordance with Regulation 6 of Companies (Forms) Regulations (Cap. 32B) must also be provided; and
 - (7) the basis and policies of accounting adopted for the purpose of preparing each set of audited accounts in respect of the last three (3) financial years, or for each of the financial years since the date of incorporation if either the tenderer or its proposed performance guarantor is a newly incorporated

company, shall be the same; and each set of audited accounts shall have been prepared according to accounting principles generally accepted in Hong Kong and the disclosure requirements of the Companies Ordinance (Cap. 32);

- (II) management accounts covering the period commencing immediately after the end of the last financial year up to a date not earlier than three (3) months before the date on which the tenderer submits its tender (if such period has not already been covered by the latest audited accounts). The management accounts shall have been prepared on the same basis and policies of accounting as were adopted in the preparation of the audited accounts for the last three (3) financial years, or for each of the financial years since the date of incorporation if either the tenderer or its proposed performance guarantor is a newly incorporated company, and in accordance with accounting principles generally accepted in Hong Kong and the disclosure requirements of the Companies Ordinance (Cap. 32);
 - (III) unaudited accounts in respect of the tenderer are acceptable only if the tenderer is a newly incorporated company where the first accounts are not yet available or the tenderer is an unincorporated partnership where audited accounts are not mandatorily required and unaudited accounts in respects of the proposed performance guarantor are acceptable only if the proposed performance guarantor is a newly incorporated company where the first accounts are not yet available; and
 - (IV) the management accounts mentioned in (II) above and the unaudited accounts mentioned in (III) above in respect of the tenderer must be certified as true copies by a director or the managing partner of the tenderer or the management accounts mentioned in (II) above and the unaudited accounts mentioned in (III) above in respect of the proposed performance guarantor must be certified as true copies by a director or the managing partner of the proposed performance guarantor or by certified public accountants or other accountants acceptable to the Government; and
- (b) original letter from the proposed performance guarantor undertaking to submit to the Government the Performance Guarantee as required in paragraph 20, to be marked as "Appendix L";
 - (c) original letter(s) from bank(s) confirming the line of credit facilities available to both the tenderer and the proposed performance guarantor and the current undrawn balances of such facilities and the respective amounts standing to the credit of the bank accounts respectively in the names of the tenderer and the proposed performance guarantor as at a date to fall on or

after the 30th day of March 2012, to be marked as “Appendix M”;

- (d) any other information in support of the tenderer having sufficient working capital for fulfilling its obligations under the Conditions of Sale, the Memorandum of Agreement and the Service Deed and the proposed performance guarantor having sufficient working capital for fulfilling its obligations under the Performance Guarantee, such as information showing the amount of paid up capital, credit line, reserve and other financing support agreement, to be marked as “Appendix N”;
- (e) the projected annual profit and loss accounts and cash flow statements in respect of expenditure to be incurred and income to be generated from the performance of the Conditions of Sale, the Memorandum of Agreement and the Service Deed for the first five years from the date of commencement of operation of the hospital proposed by the tenderer under paragraph 1 of Appendix C of the Marking Scheme at Annex II, certified by the tenderer, to be marked as “Appendix O”, provided that;
 - (i) the assumptions used in preparing the projected profit and loss accounts should be reasonable and must be clearly stated. All supporting schedules and detailed calculations shall also be submitted in full; and
 - (ii) in so far as the estimated profits or any part thereof are derived and based on any assumed sources of income which requires the Government’s approval in advance, the Government’s acceptance of its tender shall not constitute or imply any approval of such sources of income by the Government. The Government shall not be deemed to have accepted or endorsed these profit and loss accounts or the assumptions set out therein merely by accepting any tender which incorporates such accounts; and
- (f) any other additional financial information as may be requested by the Government.

13.2 If the tenderer is incorporated within twelve (12) months immediately preceding the Tender Closing Time, the information of each shareholder of such tenderer required under paragraph 13.1(a) shall also be provided.

13.3 If the tenderer is an unincorporated partnership, the financial capability assessment will apply to each participant of the unincorporated partnership.

13.4 If the tenderer is a subsidiary of another company according to the Companies Ordinance (Cap.32), apart from the “company only” accounts reflecting financial position and results of the tenderer itself, the audited consolidated accounts reflecting the financial position of the “group of companies” as defined in the

Companies Ordinance (Cap.32) as a whole shall also be provided.

14. **Company Status**

14.1 At the time of submitting a tender:

- (a) a tenderer which is a company must be incorporated under the laws of Hong Kong or the laws of its place of incorporation if outside Hong Kong;
- (b) a tenderer which is a partnership must have been formed;
- (c) if a shareholder of an incorporated tenderer or partner of an unincorporated partnership is a company, it must be incorporated under the laws of Hong Kong or the laws of its place of incorporation if outside Hong Kong; and
- (d) a partner of a partnership must have been formed.

14.2 In case the tenderer is an unincorporated partnership, the tenderer shall submit details of each participant of the partnership as set out in the Particulars of Tenderer in Form A. Such details shall be submitted under the name of the partnership. Each participant of the partnership is required to sign all parts of the Tender Documents where the tenderer's signature is required.

14.3 Where the successful tenderer referred to in paragraph 19.1 is incorporated or established outside Hong Kong, it shall provide to the Government, within fourteen (14) working days from the date of notification of award referred to under paragraph 19.1, a legal opinion in English containing the matters set out in Annex VI hereto with regard to the successful tenderer and the Conditions of Sale as well as the Service Deed and, as the Government may require, any additional legal opinion on all and any matters arising from its tender, the Conditions of Sale and the Service Deed before a date to be specified by the Government. The legal opinion, containing the matters set out in Annex VI hereto, and any additional legal opinion, must be issued by a lawyer or a firm of lawyers duly qualified to practise in the place where the successful tenderer is incorporated or established. The legal opinion and any additional legal opinion must be addressed to and issued for the benefit of "The Government of the Hong Kong Special Administrative Region". The legal opinion and any additional legal opinion must also be satisfactory to the Government in all respects.

15. **Right of Incorporation**

The Government reserves the right at its absolute discretion whether to accept all or any part of a tender. A tenderer must note and accept that, should the tenderer be selected to be awarded the Memorandum of Agreement and the Service Deed by the Government, the Government may, at its absolute discretion, make any of the proposals submitted by the tenderer an integral part of the Service Deed, the Memorandum of Agreement and the Conditions of Sale mentioned in paragraphs 19.1(a) and 19.1(b) or any one or more of such documents. The tenderer, by submitting a tender, irrevocably authorizes the Government to amend the Memorandum of Agreement, the Conditions of Sale and the Service Deed as the Government in its sole discretion considers

appropriate for the purpose of incorporating the proposals.

16. **Tender Deposit**

16.1 A TENDERER MUST FORWARD WITH ITS TENDER a tender deposit in the form of a tender bond in the sum of five million Hong Kong dollars (HK\$5,000,000) made payable upon demand by the Government and issued by a bank duly licensed under Section 16 of the Banking Ordinance (Cap. 155) in favour of the Government and which is expressed to be irrevocable and remain in full force and effect from the date of the Tender Bond until the 26th day of July 2013 subject to clause 10 of the Tender Bond. Unless otherwise agreed by the Government, the Tender Bond shall be in the form set out in Annex IX hereto. If a tenderer is notified of the award of the Memorandum of Agreement and the Service Deed, the Government shall demand payment of the whole tender deposit under the Tender Bond and the tender deposit paid under the Tender Bond shall be treated as a deposit towards and applied in part payment of the premium tendered. Subject to paragraphs 16.2 and 16.3, all other tender bonds will be returned within a period of fourteen (14) working days from the date of the execution of the Memorandum of Agreement and the Service Deed by the successful tenderer, to the unsuccessful tenderers at the addresses stated in their tenders.

16.2 A tender must remain valid and open for acceptance on and subject to the terms and conditions set out in the Tender Documents and the delivery of the Performance Guarantee and the Bank Bond up to and including the 26th day of April 2013 subject to clause 10 of the Tender Bond (hereinafter referred as the "Tender Validity Date"). The Government reserves the right to extend at its sole and absolute discretion the Tender Validity Date to a date on or before the 26th day of July 2013 (such date is hereinafter referred to as the "Extended Tender Validity Date").

16.3 Notwithstanding paragraph 16.1, the tender deposit paid under the Tender Bond submitted under paragraph 16.1 will be fully forfeited by the Government if:

- (a) a tenderer withdraws or revokes its tender on or before the Tender Validity Date or the Extended Tender Validity Date (if the Tender Validity Date is extended in accordance with paragraph 16.2); or
- (b) a tenderer, after it has been notified by the Government in accordance with paragraph 19.1 that it has been awarded the Memorandum of Agreement and the Service Deed, fails or refuses to:
 - (i) comply with the requirements set out in paragraph 19; or
 - (ii) duly execute the Memorandum of Agreement, the Service Deed and all the other documents referred to in paragraphs 19.1(a) and 19.1(b) within the time frame

specified therein; or

- (iii) provide and deliver all the documents set out in paragraph 19.1 within the time frame specified therein.

For the avoidance of doubt, the forfeiture of the tender deposit shall not prejudice any other right or remedy of the Government under this Tender Notice or at law.

17. **Tender Assessment**

Tenders will be considered in accordance with the Marking Scheme at Annex II hereto.

18. **Tender Negotiation**

18.1 Notwithstanding anything herein contained, the Government reserves the right to negotiate with any tenderer (including requiring any tenderer to amplify and supplement) the terms and conditions of any parts of its tender except the land premium offered under Form B annexed hereto.

18.2 Notwithstanding paragraph 6, if a tenderer has submitted a tender on or prior to the Tender Closing Time and such tenderer is requested by the Government to amplify or supplement the terms of its tender in accordance with paragraph 18.1, then the submission of an amplified or supplemented tender in accordance with the Government's said request within the period stipulated by the Government for such submission shall not constitute a late tender.

19. **Award of the Memorandum of Agreement and the Service Deed**

19.1 If a tenderer is selected to be awarded the Memorandum of Agreement and the Service Deed by the Government, the successful tenderer will be notified of the award (the "notification of award") by a letter posted to it at or delivered to the address stated in its Form A, or sent by fax to the facsimile number stated in its Form A. The successful tenderer must within fourteen (14) working days of the date of the said letter:

- (a) executes as a deed (and in the case of a limited company duly execute under its common seal and in accordance with its Articles of Association or as otherwise required under the law of the jurisdiction in which it is incorporated) the Service Deed in the form of the proforma appearing in Annex III hereto incorporating the tenderer's proposals submitted and as considered appropriate by the Government under paragraph 15;
- (b) sign or, in the case of a limited company, duly execute under its Common Seal and in accordance with its Articles of Association, or as otherwise required under the law of the

jurisdiction in which it is incorporated or established, the following:

- (i) the Memorandum of Agreement in the form annexed to the Conditions of Sale, with the Conditions of Sale incorporating the tenderer's proposals submitted and as considered appropriate by the Government under paragraph 15; and
- (ii) the sale plan(s) annexed hereto.
- (c) submit to the Government a Performance Guarantee and a Bank Bond duly executed by the Performance Guarantor and the bank referred to in paragraph 20.1 to secure the successful tenderer's performance of its obligations under the terms and conditions of the Service Deed to be executed between the Government and the successful tenderer;
- (d) provide to the Government a legal opinion required under paragraph 14.3 where the successful tenderer is incorporated or established outside Hong Kong; and
- (e) provide to the Government a legal opinion required under paragraph 20.2, where the performance guarantor accepted by the Government in accordance with paragraph 20.1 is incorporated or established outside Hong Kong,

and deliver all the above documents duly signed and executed to the Director of Lands.

19.2 The successful tenderer shall, if required by the Government, provide such additional legal opinion(s) referred to in paragraph 14.3 or paragraph 20.2 before a date to be specified by the Government.

19.3 Tenderers must note and accept that there is no binding contract between the Government and the successful tenderer unless and until each of the Memorandum of Agreement and Service Deed have been executed by the Government and the successful tenderer.

19.4 In the event that:

- (a) the successful tenderer fails to duly execute all the documents referred to in, and in accordance with, paragraphs 19.1(a) and 19.1(b); or
- (b) the successful tenderer fails to provide and deliver all the documents specified in paragraph 19.1; or
- (c) the successful tenderer fails to provide or deliver to the Government any additional legal opinion referred to in paragraph 14.3 or paragraph 20.2, if so required by the Government,

before a date to be specified by the Government,

the Government's notification of award under paragraph 19.1 will become void. The Government will disqualify the tenderer concerned, and the Government may, but is not obliged to, award the Memorandum of Agreement and the Service Deed to another tenderer. Without prejudice to the rights and remedies of the Government, should the premium offered by the disqualified tenderer be higher than that offered by the tenderer who eventually enters into the Memorandum of Agreement and Service Deed with the Government, whether awarded pursuant to this invitation to tender or another subsequent invitation to tender, the disqualified tenderer shall pay the Government the difference between the premium it offered under Form B annexed hereto and that offered by the tenderer who eventually enters into the Memorandum of Agreement and Service Deed with the Government.

19.5 After the notification of award, the identities of the successful tenderer and its parent companies (if any), the identities of the unsuccessful tenderers, the amount tendered by the successful tenderer, and the Service Deed executed or to be executed by the successful tenderer may be disclosed by the Government. The Government reserves the right to announce the tender results without the need to seek the prior agreement of the tenderers and their parent companies (if any).

20. Performance Guarantee and Bank Bond

20.1 Upon receipt of the notification of award under paragraph 19.1, as security for due performance of the Service Deed, the successful tenderer must within fourteen (14) working days of the date of the notification of award procure and submit to the Government a Performance Guarantee in the form set out in Annex IV hereto and a Bank Bond in the form set out in Annex V hereto duly executed respectively by a performance guarantor accepted by the Government and a bank duly licensed under Section 16 of the Banking Ordinance (Cap. 155). In the event that the successful tenderer is an unincorporated partnership, the successful tenderer shall procure and submit to the Government a single Performance Guarantee and a single Bank Bond in accordance with the provisions in this paragraph and covering the obligations of all the partners and participants of the unincorporated partnership. Unless otherwise agreed by the Government, a Performance Guarantee and a Bank Bond not in the form or not on the terms as set out respectively in Annex IV and Annex V hereto will not be accepted by the Government.

20.2 Where the proposed performance guarantor is incorporated or established outside Hong Kong, the successful tenderer shall submit to the Government, within fourteen (14) working days from the date of notification of award, a legal opinion in English containing the matters set out in Annex VI hereto, with regard to the performance guarantor and the Performance Guarantee and, as the Government may require, any additional legal opinion on all and any matters arising from its proposed performance guarantor or the Performance Guarantee before a date to be specified by the Government. The legal opinion, containing the matters set out in Annex VI hereto, and any additional legal opinion must be issued by a lawyer or a firm of

lawyers duly qualified to practise in the place where the proposed performance guarantor is incorporated. The legal opinion and any additional legal opinion must be addressed to and issued for the benefit of “The Government of the Hong Kong Special Administrative Region”. The legal opinion and any additional legal opinion must also be satisfactory to the Government in all respects.

21. **Warning Against Collusion**

21.1 By submitting a tender, the tenderer represents and warrants that in relation to the tender:

- (a) it has not communicated and will not communicate to any person other than the Government its premium offer;
- (b) it has not fixed and will not fix its premium offer by arrangement with any person;
- (c) it has not made and will not make any arrangement with any person as to whether it or that other person will or will not submit a tender; and
- (d) it has not otherwise colluded and will not otherwise collude with any person in any manner whatsoever in the tendering process.

21.2 In the event that the tenderer is in breach of any of the representations and/or warranties in paragraph 21.1, the Government shall be entitled to, without compensation to any person or liability on the part of the Government:

- (a) not accept the tender;
- (b) if the Government has accepted the tender, withdraw its acceptance of the tender; and
- (c) if the Government has executed the Memorandum of Agreement and Service Deed with the tenderer, forthwith terminate the Memorandum of Agreement and Service Deed.

21.3 The tenderer shall indemnify and keep indemnified the Government against all losses, damages, costs or expenses arising out of or in relation to any breach of any of the representations and/or warranties in paragraph 21.1.

21.4 Paragraph 21.1 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 premium offer, or with its professional advisers, consultants or contractors to solicit their assistance in preparation of tender submission.

21.5 The rights of the Government under paragraphs 21.2 and 21.3 are in addition to and without prejudice to any other rights or remedies available to it against the tenderer at law or otherwise.

22. **Tenderers' Enquiries**

22.1 Tenderers are requested to note that the Government will only answer questions of a general nature concerning this invitation to tender and will not provide legal or other advice in respect of the Conditions of Sale, the Service Deed, the Performance Guarantee, the Bank Bond, the Tender Bond or any other documents referred to in this Tender Notice or any statutory provisions relating to development of the lot. All enquiries should be in writing only and directed to the Chief Estate Surveyor/Headquarters at fax number (852) 2116 0764 or e-mail address 'ceshq@landsd.gov.hk'. The Government is entitled to decide at its sole discretion whether or not to answer any enquiries or part thereof. If answers are to be given, they will be placed on the Lands Department's website '<http://www.landsd.gov.hk/>' and Food and Health Bureau's website '<http://www.fhb.gov.hk/>'. The Government reserves the right to disclose in full or in part the contents of these enquiries and the answers given without the need to seek the prior agreement of the enquirers. Tenderers are advised to check these websites from time to time for the Government's response to enquiries. It is hereby specifically declared by the Government that any statement, whether oral or written, made and any action taken by any Government officer in response to any enquiry made by a prospective tenderer or in respect of any disclosure of the contents of these enquiries and the answers given shall be for guidance and reference purposes only. Any statement or disclosure shall not be deemed to form part of this Tender Notice and such statement, disclosure or action shall not be deemed to amplify, alter, negate, waive or otherwise vary any of the terms or conditions as are set out in the Tender Documents. The Government will not accept any liability in respect of the adequacy, accuracy and completeness of or otherwise arising out of or in relation to any statement, disclosure or action taken by the Government or its officers.

22.2 After lodging a tender with Government, tenderers shall not attempt to initiate any further contact, whether direct or indirect, with the Government on their tenders or this Tender Notice. The Government shall have the sole right to initiate any such further contact and all such contacts and replies of tenderers shall be in writing only.

23. **Disposal of Tender Documents**

Tenderers are required to note that in no circumstances will the documents submitted by the tenderers be returned to the tenderers.

24. **License, Permit and Certificate**

The successful tenderer will be required to comply with all applicable statutory provisions and requirements pertaining to the occupation and use of the Lot for the development of a hospital. The

successful tenderer shall be responsible for obtaining all licenses, permits, certificates, consent or approval required by law. For the avoidance of doubt, execution of the Memorandum of Agreement and Service Deed shall not be taken as agreement on the part of the Government that any license, permit, certificate, consent or approval required under any legislation in connection with the occupation or use of the Lot will be given. No claim shall be made against the Government in respect of the successful tenderer's inability or failure to obtain any such license, permit, certificate, consent or approval nor shall the Government's rights and remedies under or pursuant to the Memorandum of Agreement and Service Deed be in any way affected by reason thereof. The successful tenderer enters into the Memorandum of Agreement and Service Deed entirely at its own risk.

25. **Personal Data**

25.1 Tenderers are required to note that pursuant to the provisions of the Land Registration Ordinance (Cap. 128) and the regulations made thereunder the personal data contained in this Tender Notice, the Form of Tender comprising Form A and Form B both annexed hereto, the Memorandum of Agreement, the Conditions of Sale and the Service Deed will appear in the land register(s) or record(s) of the Land Registry to facilitate the orderly conduct of land transactions and to provide the most up-to-date information to searchers.

25.2 Tenderers are required to note that the personal data of any individual provided in the tender will be used for tender evaluation and contract award purposes.

25.3 A tenderer shall ensure that the relevant individual to whom the personal data belongs prior to its disclosure in the tender has acknowledged and consented that his personal data may be disclosed to the Government and as provided below for the purpose of the tender.

25.4 Each tenderer acknowledges and consents that the personal data provided in the tender may be disclosed to the parties responsible for tender evaluation in other Government bureaux, departments and non-Government organizations.

25.5 The individual to whom the personal data belongs has the right of access and correction with respect to personal data as provided for in Sections 18 and 22 and Principle 6 of Schedule 1 of the Personal Data (Privacy) Ordinance (Cap. 486). The right of access includes the right to obtain a copy of the individual's personal data provided in the Tender Documents. Enquiries in writing concerning the personal data collected by means of the tender, including the making of access and corrections, should be directed to the Chief Estate Surveyor/Headquarters at fax number (852) 2116 0764 or e-mail address 'ceshq@landsd.gov.hk'.

26. **Modification of the Tender and Cancellation**

26.1 The Government reserves the right without prior consultation or notice to modify, amend or revise any provision of this Tender Notice, any of the Annexes and Appendices hereto and the Form of Tender and to issue

addenda to such effect at any time prior to the Tender Closing Time.

26.2 Notwithstanding anything herein contained, the Government may at any time cancel this Tender Notice or withdraw this invitation to tender at any time before or after the Tender Closing Time at the Government's absolute discretion and the Government is not bound to give any reasons for the cancellation or withdrawal. Without prejudice to such right of the Government, where there are any changes in the requirements of the Government after the Tender Closing Time for whatever reasons, the Government is not bound to consider any tender and reserves the right to re-issue or alter the terms of any of the Tender Documents, or withdraw this Tender Notice. Upon cancellation or withdrawal of this Tender Notice, if and when the Government considers fit, the Government may re-issue a Tender Notice on such terms and conditions as the Government thinks fit.

27. **Disqualification of Tenderers**

27.1 The Government reserves the right to disqualify any tenderer on the following grounds:

- (a) if a petition is presented, a proceeding is commenced, an order is made or a resolution is passed for the winding up or bankruptcy of the tenderer; or
- (b) if any false, inaccurate or incomplete statement or representation including personal data is contained in the tender or a promise or proposal is made knowingly that the tenderer will not be able to fulfil or deliver such promise or proposal.

28. **No Liability on Government's Part**

The participation of the tenderers in this tender (including without limitation, the preparation or submission of tenders) shall be entirely at their own risk. The Government will not under any circumstances be liable to any of the tenderers for any costs, expenses, loss or damage whatsoever arising out of or in connection with this invitation for tender irrespective of whether the Government actually proceeds with the grant of the lot or not.

29. **Interpretation**

29.1 In this Tender Notice, unless otherwise provided or the context otherwise requires, the following rules of interpretation shall apply:

- (a) references to Ordinances or statutory provisions shall be construed as references to those Ordinances or statutory provisions as replaced, amended, modified or re-enacted from time to time; and shall include all subordinate legislation made under those Ordinances;

- (b) words importing the singular shall include the plural and vice versa; words importing a gender shall include every gender; references to any person shall include references to individuals, firms, public bodies, bodies corporate or unincorporated (wherever established or incorporated);
- (c) headings are inserted for convenience of reference only and shall not affect the construction of the Tender Documents;
- (d) references to paragraphs are to the paragraphs of this Tender Notice and references to Annexes are to the Annexes annexed to this Tender Notice;
- (e) references to a document:
 - (i) shall include all schedules, appendices, annexures and other documents attached to such document; and
 - (ii) shall mean the same as from time to time amended or supplemented;
- (f) references to “law” and “regulation” shall include any constitutional provisions, treaties, conventions, ordinances, subsidiary legislation, orders, rules and regulations having the force of law and rules of civil and common law and equity;
- (g) a time of a day shall be construed as a reference to Hong Kong time;
- (h) references to a working day means any day other than Saturdays and Public Holidays as defined in the Interpretation and General Clauses Ordinance (Cap. 1);
- (i) the words “include” and “including” shall be construed without limitation to the words following; and
- (j) references to a company mean an incorporated entity and include an incorporated joint venture; references to a partnership include an unincorporated joint venture.

Form A

(Non-premium Submission envelope)

FORM OF TENDER

Non-premium Submission

Tender for the grant of Aberdeen Inland Lot No. 458 for a term of fifty years commencing from the date of the Memorandum of Agreement annexed to the Tender Notice at the rent specified in the Particulars of the Lot in the Tender Notice and subject to the terms and conditions of the Tender Notice, the Conditions of Sale and the Service Deed.

To : The Chairman,
Central Tender Board,
Government Secretariat,
Hong Kong.

I/We.....
of (address/registered office)

.....
having read the Tender Documents and examined the plan(s) therein referred to, hereby offer to purchase the above-mentioned lot at the premium set out in Form B (enclosed in my/our "Premium Submission" envelope submitted in accordance with paragraph 3(b)(ii) of the Tender Notice) for the term and upon the terms and conditions set forth in the Tender Notice, the Memorandum of Agreement, the Conditions of Sale and the Service Deed. For the avoidance of doubt, this Form A and the Premium Submission in Form B enclosed in my/our "Premium Submission" envelope together form and constitute my/our Tender offer to purchase the above-mentioned lot.

2. I/We note and accept that there is no binding contract between the Government of the Hong Kong Special Administrative Region (hereinafter referred to as "the Government") and the successful tenderer unless and until each of the Memorandum of Agreement and the Service Deed have been executed by the Government and the successful tenderer.

3. I/We submit herewith a tender bond for the tender deposit in the sum of HK\$5,000,000 made payable upon demand by the Government and issued by a bank duly licensed under Section 16 of the Banking Ordinance (Cap. 155) in favour of the Government and which is expressed to be irrevocable and remain in full force and effect from the date of the tender bond until the 26th day of July 2013 subject to clause 10 of the Tender Bond. I/We acknowledge and agree that if I/We am/are selected to be awarded the Memorandum of Agreement and the Service Deed, the Government will demand payment of the whole tender deposit under the tender bond and the tender deposit paid under the tender bond shall be treated as a deposit towards and applied in part payment of the premium for the lot as provided in the Conditions of Sale.

4. If I/we am/are selected to be awarded the Memorandum of Agreement and the Service Deed, I/we will pay the balance of premium in the manner and within the time limit stated in General Condition No. 2 of the Conditions of Sale and I/we shall execute the Memorandum of Agreement and the Service Deed in accordance with paragraph 19 and procure and submit to the Government the Performance Guarantee and the Bank Bond in accordance with paragraph 20 of the Tender Notice.

5. I/We understand that the Government reserves the right to disclose the identities of the successful tenderer and its parent companies (if any), the identities of the unsuccessful tenderers, the amount tendered by the successful tenderer and the Service Deed executed or to be executed by the successful tenderer, and to announce the tender results in accordance with paragraph 19.5 of the Tender Notice.

6. I/We hereby attach my/our Particulars of Tenderer, my/our proposals and such other information as required in paragraphs 8, 9 and 13 of the Tender Notice.

7. For the avoidance of doubt, capitalized terms herein shall have the meaning attributed to such terms in the tender notice issued by the Government on 13th day of April 2012 in connection with the above-mentioned lot.

Dated the _____ day of _____, 20____.

[In the case of a company:]

Signed by [Name] for and on behalf of the Tenderer:

Post/Title of Signatory (in block letters):

Name of Tenderer (in block letters):

[In the case of a partnership:]

Signature of each partner :

Name of each partner (in block letters):

Name of Tenderer (in block letters):

Address in block letters

Telephone Number

Facsimile Number

Particulars of Parent Company (if appropriate) :

Name in block letters

Address in block letters

Name of Contact Person(s)

Telephone Number

Facsimile Number

Note : In case the tenderer is an unincorporated partnership composing of more than one party, the tender must be signed by each partner.

Form A

(Non-premium Submission envelope)

Particulars of Tenderer

(To be placed in the envelope containing the Non-Premium Submission. In case the tenderer is an unincorporated partnership composing of more than one party, all participants/shareholders are required to provide the required information. Use additional sheets if necessary.)

- (1) (a) Name of Tenderer in block letters: _____ (in English)
- _____ (in Chinese, if applicable)
- (b) Address in block letters: _____
- _____
- _____
- (c) Nature of Business Incorporated/Unincorporated
(Please delete as appropriate)
- (d) Years of Establishment _____
- (e) For Incorporated Company

Names of shareholders of the incorporated company and their respective shareholdings or equity interests in percentages (Note):

- (f) For unincorporated partnership

Names of all participants of unincorporated partnership and their respective percentage of participation and interest. (Please state which participant is leading the partnership) (Note):

- (g) Names and residential addresses of the following, where appropriate:

Directors or partners of company/
partnership:

- (h) A copy of the Memorandum and Articles of Association, Certificate of Incorporation, the latest Annual Return filed with the Companies Registry, the shareholders' agreement, partnership agreement, or other documents evidencing its corporate and business status. (Please specify the document which is attached):

- (i) A photocopy of the current Business Registration certificate (or equivalent document). The Certificate should bear a machine printed line to show that full registration fee has been effected (Please specify the document which is attached):

The number of the Business Registration Certificate (or equivalent document) is _____

The date of expiry of Business Registration Certificate (or equivalent document) is _____

(j) Name of Contact Person(s) in block letters

(k) Telephone Number _____ Facsimile Number _____

(2) (a) Name of parent/holding (in English)
company in block letters (if any) : _____
(in Chinese, if applicable)

(b) Places and Details of Incorporation
of the parent/holding
company: _____

(c) Diagram showing the relationship between the Tenderer and the parent/holding company and its respective shareholdings or equity interest in percentage.

(d) Name of Contact Person(s) in block letters

(e) Telephone Number _____ Facsimile Number _____

Note The information shall, in the case of the successful tenderer, be incorporated into the Memorandum of Agreement, the Conditions of Sale and the Service Deed and shall be binding on it unless amended with the Government's prior approval.

Form B

(Premium Submission envelope)

Premium Submission

Tender for the grant of Aberdeen Inland Lot No. 458 for a term of fifty years commencing from the date of the Memorandum of Agreement annexed to the Tender Notice at the rent specified in the Particulars of the Lot in the Tender Notice and subject to the terms and conditions of the Tender Notice, the Conditions of Sale and the Service Deed.

To : The Chairman,
Central Tender Board,
Government Secretariat,
Hong Kong.

I/We..... of (address/Registered office)
having read the Tender Documents and examined the plan(s) therein referred to, and having duly signed the Form A (enclosed in my/our "Non-premium Submission" envelope submitted in accordance with paragraph 3(b)(i) of the Tender Notice) offer to purchase the above-mentioned lot at a premium of _____ dollars (HK\$ _____) for the term and upon the terms and conditions set forth in the Tender Notice, the Memorandum of Agreement, the Conditions of Sale and the Service Deed. For avoidance of doubt, this Form B and the Non-premium Submission in Form A enclosed in my/our "Non-premium Submission" envelope together form and constitute my/our tender offer to purchase the above-mentioned lot.

Dated the _____ day of _____, 20 _____.

[In the case of a company:]

Signed by [Name] for and on behalf of the Tenderer:

Post/Title of Signatory (in block letters):

Name of Tenderer (in block letters):

[In the case of a partnership:]

Signature of each partner :

_____	_____
_____	_____
_____	_____

Name of each partner (in block letters):

_____	_____
_____	_____
_____	_____

Name of Tenderer (in block letters):

Address in block letters

Telephone Number _____ Facsimile Number _____

Particulars of Parent Company (if appropriate) :

Name in block letters _____

Address in block letters _____

Name of Contact Person(s) _____

Telephone Number _____ Facsimile Number _____

Note : In case the tenderer is an unincorporated partnership composing of more than one party, the tender must be signed by each partner.

Form A

(Non-premium Submission envelope)

FORM OF TENDER

Non-premium Submission

Tender for the grant of Aberdeen Inland Lot No. 458 for a term of fifty years commencing from the date of the Memorandum of Agreement annexed to the Tender Notice at the rent specified in the Particulars of the Lot in the Tender Notice and subject to the terms and conditions of the Tender Notice, the Conditions of Sale and the Service Deed.

To : The Chairman,
Central Tender Board,
Government Secretariat,
Hong Kong.

I/We.....
of (address/registered office)

.....
having read the Tender Documents and examined the plan(s) therein referred to, hereby offer to purchase the above-mentioned lot at the premium set out in Form B (enclosed in my/our "Premium Submission" envelope submitted in accordance with paragraph 3(b)(ii) of the Tender Notice) for the term and upon the terms and conditions set forth in the Tender Notice, the Memorandum of Agreement, the Conditions of Sale and the Service Deed. For the avoidance of doubt, this Form A and the Premium Submission in Form B enclosed in my/our "Premium Submission" envelope together form and constitute my/our Tender offer to purchase the above-mentioned lot.

2. I/We note and accept that there is no binding contract between the Government of the Hong Kong Special Administrative Region (hereinafter referred to as "the Government") and the successful tenderer unless and until each of the Memorandum of Agreement and the Service Deed have been executed by the Government and the successful tenderer.

3. I/We submit herewith a tender bond for the tender deposit in the sum of HK\$5,000,000 made payable upon demand by the Government and issued by a bank duly licensed under Section 16 of the Banking Ordinance (Cap. 155) in favour of the Government and which is expressed to be irrevocable and remain in full force and effect from the date of the tender bond until the 26th day of July 2013 subject to clause 10 of the Tender Bond. I/We acknowledge and agree that if I/We am/are selected to be awarded the Memorandum of Agreement and the Service Deed, the Government will demand payment of the whole tender deposit under the tender bond and the tender deposit paid under the tender bond shall be treated as a deposit towards and applied in part payment of the premium for the lot as provided in the Conditions of Sale.

4. If I/we am/are selected to be awarded the Memorandum of Agreement and the Service Deed, I/we will pay the balance of premium in the manner and within the time limit stated in General Condition No. 2 of the Conditions of Sale and I/we shall execute the Memorandum of Agreement and the Service Deed in accordance with paragraph 19 and procure and submit to the Government the Performance Guarantee and the Bank Bond in accordance with paragraph 20 of the Tender Notice.

5. I/We understand that the Government reserves the right to disclose the identities of the successful tenderer and its parent companies (if any), the identities of the unsuccessful tenderers, the amount tendered by the successful tenderer and the Service Deed executed or to be executed by the successful tenderer, and to announce the tender results in accordance with paragraph 19.5 of the Tender Notice.

6. I/We hereby attach my/our Particulars of Tenderer, my/our proposals and such other information as required in paragraphs 8, 9 and 13 of the Tender Notice.

7. For the avoidance of doubt, capitalized terms herein shall have the meaning attributed to such terms in the tender notice issued by the Government on 13th day of April 2012 in connection with the above-mentioned lot.

Dated the _____ day of _____, 20_____.

[In the case of a company:]

Signed by [Name] for and on behalf of the Tenderer:

Post/Title of Signatory (in block letters):

Name of Tenderer (in block letters):

[In the case of a partnership:]

Signature of each partner :

Name of each partner (in block letters):

Name of Tenderer (in block letters):

Address in block letters

Telephone Number _____ Facsimile Number _____

Particulars of Parent Company (if appropriate) :

Name in block letters

Address in block letters

Name of Contact Person(s)

Telephone Number _____ Facsimile Number _____

Note : In case the tenderer is an unincorporated partnership composing of more than one party, the tender must be signed by each partner.

Form A

(Non-premium Submission envelope)

Particulars of Tenderer

(To be placed in the envelope containing the Non-Premium Submission. In case the tenderer is an unincorporated partnership composing of more than one party, all participants/shareholders are required to provide the required information. Use additional sheets if necessary.)

(1) (a) Name of Tenderer in block letters: _____ (in English)

(in Chinese, if applicable)

(b) Address in block letters:

(c) Nature of Business Incorporated/Unincorporated
(Please delete as appropriate)

(d) Years of Establishment

(e) For Incorporated Company

Names of shareholders of the incorporated company and their respective shareholdings or equity interests in percentages (Note):

- (f) For unincorporated partnership

Names of all participants of unincorporated partnership and their respective percentage of participation and interest. (Please state which participant is leading the partnership) (Note):

- (g) Names and residential addresses of the following, where appropriate:

Directors or partners of company/
partnership:

- (h) A copy of the Memorandum and Articles of Association, Certificate of Incorporation, the latest Annual Return filed with the Companies Registry, the shareholders' agreement, partnership agreement, or other documents evidencing its corporate and business status. (Please specify the document which is attached):

- (i) A photocopy of the current Business Registration certificate (or equivalent document). The Certificate should bear a machine printed line to show that full registration fee has been effected (Please specify the document which is attached):

The number of the Business Registration Certificate (or equivalent document) is _____

The date of expiry of Business Registration Certificate (or equivalent document) is _____

(j) Name of Contact Person(s) in block letters

(k) Telephone Number _____ Facsimile Number _____

(2) (a) Name of parent/holding company in block letters (if any) : _____ (in English)
_____ (in Chinese, if applicable)

(b) Places and Details of Incorporation of the parent/holding company:

(c) Diagram showing the relationship between the Tenderer and the parent/holding company and its respective shareholdings or equity interest in percentage.

(d) Name of Contact Person(s) in block letters

(e) Telephone Number _____ Facsimile Number _____

Note The information shall, in the case of the successful tenderer, be incorporated into the Memorandum of Agreement, the Conditions of Sale and the Service Deed and shall be binding on it unless amended with the Government's prior approval.

Form B

(Premium Submission envelope)

Premium Submission

Tender for the grant of Aberdeen Inland Lot No. 458 for a term of fifty years commencing from the date of the Memorandum of Agreement annexed to the Tender Notice at the rent specified in the Particulars of the Lot in the Tender Notice and subject to the terms and conditions of the Tender Notice, the Conditions of Sale and the Service Deed.

To : The Chairman,
Central Tender Board,
Government Secretariat,
Hong Kong.

I/We..... of (address/Registered office)
having read the Tender Documents and examined the plan(s) therein referred to, and having duly signed the Form A (enclosed in my/our "Non-premium Submission" envelope submitted in accordance with paragraph 3(b)(i) of the Tender Notice) offer to purchase the above-mentioned lot at a premium of _____ dollars (HK\$_____) for the term and upon the terms and conditions set forth in the Tender Notice, the Memorandum of Agreement, the Conditions of Sale and the Service Deed. For avoidance of doubt, this Form B and the Non-premium Submission in Form A enclosed in my/our "Non-premium Submission" envelope together form and constitute my/our tender offer to purchase the above-mentioned lot.

Dated the _____ day of _____, 20 _____.

[In the case of a company:]

Signed by [Name] for and on behalf of the Tenderer:

Post/Title of Signatory (in block letters):

Name of Tenderer (in block letters):

[In the case of a partnership:]

Signature of each partner :

_____	_____
_____	_____
_____	_____

Name of each partner (in block letters):

_____	_____
_____	_____
_____	_____

Name of Tenderer (in block letters):

Address in block letters

Telephone Number

Facsimile Number

Particulars of Parent Company (if appropriate) :

Name in block letters

Address in block letters

Name of Contact Person(s)

Telephone Number

Facsimile Number

Note : In case the tenderer is an unincorporated partnership composing of more than one party, the tender must be signed by each partner.

Annex I to Tender Notice

Mandatory Requirements and Minimum Acceptable Levels of Tenderer's Proposals for development of a private hospital at the Lot

Section I. Mandatory Requirements (to be assessed under Stage 2 of Tender evaluation)

A tenderer must submit service provision proposals of a private hospital to be developed at the Lot (hereinafter referred as the "Hospital") in accordance with Paragraph 8.1(iv) of the Tender Notice. The proposals submitted must comply with the following mandatory requirements ("Mandatory Requirements") and will be assessed under Stage 2 of the Tender Evaluation.

(1) Experience

- (i) A tenderer which is a company must submit information, in the form set out at Appendix A of the Marking Scheme, and demonstrate that the following Mandatory Requirements are satisfied –
 - (I) the board of directors of the company must comprise a minimum of three (3) directors; and
 - (II) more than half of the directors in the board of the tenderer must each have at least three (3) years' experience, on an aggregate basis from 1 January 2006 to 31 December 2011, in managing or operating a hospital(s) in Hong Kong or overseas with average annual in-patient discharges and deaths of not less than 25,000 from 1 January 2006 to 31 December 2011.
- (ii) A tenderer which is a partnership must submit information, in the form set out at Appendix A of the Marking Scheme, and demonstrate that the following Mandatory Requirements are satisfied –
 - (I) the partnership must comprise a minimum of three (3) partners; and
 - (II) more than half of the partners of the partnership must each have at least three (3) years' experience, on an aggregate basis from 1 January 2006 to 31 December 2011, in managing or operating a hospital(s) in Hong Kong or overseas with average annual in-patient discharges and deaths of not less than 25,000 from 1 January 2006 to 31 December 2011.
- (iii) A tenderer must propose, in the form set out in Appendix A of the Marking Scheme, a project team for implementing the Hospital project ("Project Team") which satisfies the following Mandatory Requirements –
 - (I) the project team must comprise a minimum of three (3) full-time key

personnel ("Key Personnel");

- (II) each full-time Key Personnel must have relevant experience in one or more of the five functional areas of hospital operation, viz clinical services, quality assurance, planning and maintenance, finance, and human resource management; and
 - (III) all Key Personnel taken together must possess relevant experience in all the five functional areas mentioned in (II) above.
- (iv) For the purpose of satisfying (1)(iii)(II) and (III), relevant experience shall mean the experience gained by a person when he was employed or worked –
- (I) in hospital(s) in Hong Kong or overseas with average annual in-patient discharges and deaths of not less than 25,000 from 1 January 2006 to 31 December 2011; and
 - (II) in the capacity of at least the deputy head of a hospital (such as deputy medical superintendent, deputy medical director, deputy chief executive of a hospital) or head of a department of a hospital (such as departmental manager, chief of department) or head of a specialty (such as head of service) or equivalent, for at least three (3) years on an aggregate basis from 1 January 2006 to 31 December 2011.

For the avoidance of doubt, the relevant experience of each Key Personnel may be gained from working at different hospitals and may be with different employers.

- (v) For the avoidance of doubt, an individual who is a director or partner of a tenderer as mentioned in (1)(i) and (ii) above can at the same time be a Key Personnel of that tenderer.
- (vi) For the purpose of satisfying (1)(iii), the Government has no objection to a tenderer proposing to engage an individual as a Key Personnel if such individual is also being proposed as a Key Personnel by another tenderer provided that all such proposed engagements of the individual are disclosed in the tender of the first mentioned tenderer.
- (vii) After submission of its tender, a tenderer must not make any changes to the board of directors as mentioned in (1)(i), the partners as mentioned (1)(ii), or any Key Personnel as mentioned in (1)(iii). In the event that there are such changes beyond a tenderer's control after the Tender Closing Time but prior to the award of the Memorandum of Agreement and the Service Deed, the tenderer must immediately inform the Government of such change in writing and the change will be taken into account by the Government for determining if a tenderer has satisfied this requirement. The Government will consider the changes only if the original proposals at the Tender Closing Time and the revised or substituted board of directors, partners or Key Personnel meet the Mandatory Requirements in (1)(i), 1(ii) and 1(iii).

(2) Accommodation Facilities

A tenderer's proposal on accommodation facilities must be submitted in the form set out at Appendix B of the Marking Scheme. The tenderer must not propose to allocate more than 5% of total Gross Floor Area (GFA) of the Hospital for accommodation facilities for patients of the Hospital and their carers, if provided, upon completion of the development of the Hospital. Accommodation facilities shall have the meaning under the Conditions of Sale.

(3) Obstetric Service

A tenderer's proposal on obstetric service must be submitted in the form set out at Appendix C of the Marking Scheme. The maximum percentage of number of obstetric beds proposed by the tenderer throughout the term must not exceed at all times 20% of the total number of hospital beds being provided at the Hospital. For the purpose of complying with this Mandatory Requirement, obstetric beds shall have the meaning under the Service Deed at Annex III of the Tender Notice.

Section II. Minimum Acceptable Levels (to be assessed under Stage 3 assessment of Tender evaluation)

A tenderer must submit proposals in developing the Hospital in accordance with Paragraph 8.1(iv) of the Tender Notice. The proposals submitted must meet the following minimum acceptable levels of quality/technical/service standards ("Minimum Acceptable Levels") and will be assessed under Stage 3 of the Tender evaluation.

(A) Land related Minimum Acceptable level

(4) Land use

A tenderer must submit proposals on land use, in the form set out at Appendix B of the Marking Scheme, which meet the following minimum acceptable levels -

- (i) the Hospital must allocate at least 70% of total GFA of the Hospital for clinical and clinical supporting facilities upon completion of the development of the Hospital;
- (ii) the Hospital must not allocate more than 30% of total GFA of the Hospital for non-clinical supporting facilities (including the accommodation facilities, if provided) upon completion of the development of the Hospital; and
- (iii) for the purpose of satisfying (i) and (ii) –
 - (I) clinical and clinical supporting facilities shall have the meaning under the Conditions of Sale;
 - (II) non-clinical supporting facilities shall have the meaning under the Conditions of Sale; and
 - (III) the Assessment Panel as mentioned in paragraph 1.2 (c) of the Marking

Scheme will consider and solely decide whether any facilities should be regarded as clinical and clinical supporting or non-clinical supporting facility.

(5) Scale and schedule of development

A tenderer must submit proposals on scale and schedule of development of the Hospital, in the form set out at Appendix C of the Marking Scheme, which meet the following minimum acceptable levels –

- (i) the Hospital must commence to operate within 60 months from the date of execution of the Memorandum of Agreement and Service Deed;
- (ii) no less than 300 hospital beds must be provided at the Hospital (the overall number of hospital beds a tenderer proposed to provide shall be referred as “proposed total number of hospital beds”). For the purpose of satisfying this minimum acceptable level, hospital beds shall have the meaning under the Service Deed at Annex III of the Tender Notice;
- (iii) with regard to the schedule of provision of hospital beds, the Hospital must provide -
 - (I) no less than 90 hospital beds upon commencement of Hospital operation;
 - (II) no less than a cumulative total of 150 hospital beds within 24 months from the date of commencement of Hospital operation;
 - (III) no less than a cumulative total of 300 hospital beds within 48 months from the date of commencement of Hospital operation; and
 - (IV) the “proposed total number of hospital beds” within 72 months from the date of commencement of Hospital operation, if applicable.

(B) Service related Minimum Acceptable Levels

(6) Charging and service arrangement

A tenderer must submit proposals on charging and service arrangement, in the form set out at Appendix D of the Marking Scheme, that meet the following minimum acceptable levels –

- (i) more than 50% of the in-patient bed days taken up in the Hospital each service year must be for services provided for Eligible Persons, where “Eligible Persons” means –
 - (I) holders of Hong Kong Identity Card issued under the Registration of Persons Ordinance (Cap 177); or
 - (II) children under 11 years of age with Hong Kong resident status.

For the purpose of meeting this minimum acceptable level, the in-patient bed days provided by standard beds at packaged charge in (6)(ii) below will be counted as part of the in-patient bed days required to be provided for Eligible Persons, and service year has the meaning attributed to "Service Year" under the Service Deed at Annex III of the Tender Notice;

- (ii) at least 30% of the in-patient bed days taken up in the Hospital each service year must be for services provided through standard beds at packaged charge (i.e. the provision of essential services and specialty services to patients in standard beds at an all-inclusive price) for Eligible Persons. For the purpose of meeting this minimum acceptable level –
 - (I) the packaged charge must cover doctors' fees, maintenance fees, diagnostic procedures, surgical operations, laboratory testing, X-ray tests, drugs, and other miscellaneous items;
 - (II) in-patient bed days provided through obstetric beds at packaged charge must be excluded;
 - (III) service year, essential services, specialty services, in-patient bed days, standard beds and obstetric beds have the meaning respectively attributed to "Service Year", "Essential Services", "Specialty Services", "In-Patient Bed Days", "Standard Beds" and "Obstetric Beds" under the Service Deed at Annex III of the Tender Notice; and
 - (IV) the Hospital must provide services at packaged charge based on the Diagnosis Related Groups (DRGs) system, which has the meaning attributed to "DRG System" under the Service Deed at Annex III of the Tender Notice.

Section III. Conditions in the Conditions of Sale and Service Deed

Tenderers should also note the following binding conditions on services of the Hospital set out in the Conditions of Sale and Service Deed. A tenderer must not submit a tender which includes proposals that are less favorable than the conditions set out in paragraphs (7) to (10) below. Tenders which include proposals that are less favorable than the conditions set out in paragraphs (7) to (10) will not be further considered. For the avoidance of doubt, these conditions are highlighted in this Annex for the attention of tenderers only but do not mean to represent an exhaustive list of conditions the successful tenderer need to comply with if awarded the Memorandum of Agreement and Service Deed.

(7) Service scope

The Hospital must, upon commencement of Hospital operation, provide services in specialties of –

- (I) general medicine, with or without medical sub-specialties;
- (II) general surgery, with or without surgical sub-specialties;
- (III) orthopaedics & traumatology; and

(IV) gynaecology,

as required in section 9(a)(i)(I) of the Special Conditions of the Conditions of Sale and Schedule 2 of the Service Deed at Annex III of the Tender Notice.

(8) Charging and service arrangement

The Hospital must publish and provide comprehensive charging information of its services as set out in paragraph 3 of Schedule 2 of the Service Deed at Annex III of the Tender Notice.

(9) Service Standards

The Hospital must, as required in Clause 6 of the Service Deed at Annex III of the Tender Notice, obtain within 48 months from the date of commencement of Hospital operation hospital accreditation by a qualified accreditation agent recognized by the International Society for Quality in Healthcare or such other organization as approved by the Government; and to maintain the hospital accreditation so obtained on an ongoing basis.

(10) Reporting

Tenderers must, as required in Clause 8 of the Service Deed at Annex III of the Tender Notice, provide –

- (i) regular reports to the Director of Health (“DoH”) on its compliance with –
 - (I) the Mandatory Requirements and Minimum Acceptable Levels set out in Section I and II of this Annex;
 - (II) the service provision proposals surpassing the Minimum Acceptable Levels as accepted by the Government;
 - (III) Conditions in the Conditions of Sale and Service Deed as set out in this Section III of this Annex; and
- (ii) any other information as required by DoH from time to time.

Annex II to Tender Notice

Marking Scheme for Tender Evaluation

1. Marking Scheme

1.1 The Government will use this marking scheme to consider tenders received. Tenders would score marks on the basis of the merits of their –

- (a) service provision proposals of a private hospital to be developed at the Lot according to individual assessment criteria (which will carry a weighting of 70%); and
- (b) land premium offers (which will carry a weighting of 30%)

1.2 The tender evaluation procedure includes the following five stages -

- (a) Stage 1 Assessment – Completeness Checking

Tenders will be checked to see whether all documents as required in paragraph 8.1 of the Tender Notice have been submitted. A tender which does not comply with paragraph 8.1 of the Tender Notice will not be considered further.

- (b) Stage 2 Assessment –Mandatory Requirements

Tenders which have passed the Stage 1 Assessment will be checked to see whether their service provision proposals comply with the Mandatory Requirements (set out in Section I of Annex I of the Tender Notice). A tender with service provision proposals which do not comply with any one or more of the Mandatory Requirements will not be considered further.

- (c) Stage 3 Assessment – Technical Assessment

Stage 3 Assessment will be conducted by an assessment panel (“the Assessment Panel”) comprising representatives from the Food and Health Bureau and other relevant bureaux and departments. Tenders which have passed the Stage 1 Assessment and Stage 2 Assessment will

be checked to see whether their service provision proposals comply with the Minimum Acceptable Levels. Tenders which do not comply with the Minimum Acceptable Levels will not be further considered or awarded any score. Tenderers' service provision proposals which have passed the Stage 1 Assessment and Stage 2 Assessment and have complied with the Minimum Acceptable Levels will be given technical scores based on this Marking Scheme. The overall technical score will carry a weighting of 70%. Upon completion of Stage 3 Assessment, a weighted technical score for each tender which has passed the Stage 1 Assessment and Stage 2 Assessment will be calculated as follows –

Weighted Technical = 70 x	Overall technical score of the tender offer being considered
Score	Highest overall technical score among all conforming tender ¹

(d) Stage 4 Assessment – Calculation of Weighted Land Premium Score

Tenders that are awarded weighted technical scores in the Stage 3 Assessment will proceed to Stage 4 Assessment, which is to calculate the weighted land premium score based on the land premium offered in such tenders to the Government for the grant of the Lot. Stage 4 Assessment will be conducted by the Assessment Panel.

The land premium score will carry a weighting of 30%. Upon completion of Stage 4 Assessment, a weighted land premium score for each tender that is awarded a weighted technical score in Stage 3 Assessment will be calculated as follows –

Weighted Land Premium = 30 x	Land premium offer of the tender being considered
Score	Highest land premium offer among all conforming tenders

(e) Stage 5 Assessment – Calculation of combined score

On completion of Stage 4 Assessment, the weighted technical score

¹ For the purpose of this Marking Scheme, a tender will be deemed as a conforming tender if it passed Stages 1, 2 and 3 Assessment of the tender evaluation.

and weighted land premium score of conforming tenders will be added together to give the combined score according to the following formula

$$\text{Combined Score (maximum 100)} = \text{Weighted Technical Score (maximum 70)} + \text{Weighted Land Premium Score (maximum 30)}$$

- 1.3 Without prejudice to the rights and powers of the Government, unless it is not in the public interest to do so, the tender with the highest combined score will normally be recommended for the award of the Memorandum of Agreement and Service Deed.
- 1.4 The financial capability of the Tenderer that scores the highest combined score and that of its proposed Performance Guarantor will then be assessed to ensure that the Tenderer has the capability to provide sufficient working capital to support the development and operation of the Hospital.
- 1.5 All calculations of scores will be rounded to two decimal places at each stage of tender evaluation (e.g. figures at 0.005 or above but below 0.01 will be rounded to 0.01 while figures below 0.005 will be rounded to 0.00).
- 1.6 All service provision proposals on percentage submitted by the tenderers should be rounded down to the nearest digit (e.g. percentage at 25.8% will be rounded down to 25%).
- 1.7 In calculating any weighted score in accordance with this Marking Scheme, if the denominator of the relevant formula is zero, the weighted score being calculated will be deemed to be zero.

2. Assessment criteria of Stage 3 Assessment :

	Assessment Criteria		Maximum Score	Remarks
(1)	Scale and schedule of development	(a) Proposal concerning the percentage of Gross Floor Area (GFA) of the Hospital to be allocated for clinical	30	See Note 1

		and clinical supporting facilities		
		(b) Proposal concerning the date of commencement of the Hospital operation	20	See Note 2
		(c) Proposal concerning the number of beds to be provided	50	See Note 3
		(d) Proposal concerning the schedule of provision of beds	70	See Note 4
(2)	Specialties and facilities	(a) Proposal on clinical services	110	See Note 5
		(b) Proposal on patient-care related facilities and services	15	See Note 6
(3)	Charging and service arrangement	(a) Proposal on promoting transparency of the mechanism for reviewing Hospital fees and charges	15	See Note 7
		(b) Proposal on services for “Eligible Persons” and services at packaged charging	90	See Note 8
(4)	Manpower	(a) Manpower plan of the Hospital	40	See Note 9
		(b) Proposal on provision of training programmes and training facilities	30	See Note 10
(5)	Clinical governance	Proposal on safeguarding and promoting patient safety and service quality	30	See Note 11
		Total	500	

Explanatory Notes on Stage 3 Assessment – Technical Assessment

Note 1

- (1) Tenderers shall propose the allocation of Gross Floor Area (GFA) of the Hospital for various Clinical and Clinical Supporting Facilities in the form set out in Appendix B annexed hereto. In tenderers' proposal, the Hospital –
 - (i) must allocate at least 70% of total GFA of the Hospital for clinical and clinical supporting facilities upon completion of the development of the Hospital; and
 - (ii) must not allocate more than 30% of total GFA of the Hospital for non-clinical supporting facilities (including the accommodation facilities, if provided) upon completion of the development of the Hospital.
- (2) For the purpose of satisfying (1)(i) and (ii) –
 - (i) clinical and clinical supporting facilities shall have the meaning under the Conditions of Sale; and
 - (ii) non-clinical supporting facilities shall have the meaning under the Conditions of Sale.
- (3) Tenders with proposals not complying with (1) above will not be considered further.
- (4) Marks will be given based on the GFA allocated for clinical and clinical supporting facilities. Two marks will be given for each additional 1% of GFA allocated for clinical and clinical supporting facilities from 71% onwards, up to 85%. The maximum score is 30. Some of the scoring scenarios are shown below for reference.

Examples of scoring scenarios

	Percentage of GFA allocated for clinical and clinical supporting facilities	Marks
(a)	70%	0 mark
(b)	71%	2 marks
(c)	72%	4 marks
	:	:
	:	:
(d)	$\geq 85\%$	30 marks

Note 2

- (1) Tenderers shall propose the date of commencement of Hospital operation in the form set out in Appendix C annexed hereto. In tenderers' proposal, the Hospital must commence to operate within 60 months from the date of execution of the Memorandum of Agreement and Service Deed.
- (2) Tenders with proposals not complying with (1) above will not be considered further.
- (3) Marks will be given based on the length of period between the date of execution of the Memorandum of Agreement and Service Deed, and the date of commencement of Hospital operation. The maximum score is 20.

Scoring scenarios

	Duration between the date of execution of the Memorandum of Agreement and Service Deed and the date of commencement of Hospital operation	Marks
(a)	55 months \leq date of commencement \leq 60 months	0 mark
(b)	54 months \leq date of commencement < 55 months	2 marks
(c)	53 months \leq date of commencement < 54 months	4 marks
(d)	52 months \leq date of commencement < 53 months	6 marks
(e)	51 months \leq date of commencement < 52 months	8 marks
(f)	50 months \leq date of commencement < 51 months	10 marks
(g)	49 months \leq date of commencement < 50 months	12 marks
(h)	48 months \leq date of commencement < 49 months	14 marks
(i)	47 months \leq date of commencement < 48 months	16 marks
(j)	46 months \leq date of commencement < 47 months	18 marks
(k)	< 46 months	20 marks

Note 3

- (1) Tenderers shall propose the total number of hospital beds to be provided at the Hospital in the form set out at Appendix C annexed hereto. In tenderers' proposal, the Hospital must provide no less than 300 hospital beds (the overall number of hospital beds a tenderer proposed to provide shall be referred as "proposed total number of hospital beds" in Note 4). For the purpose of satisfying this paragraph, hospital beds shall have the meaning under the Service Deed at Annex III of the Tender Notice.
- (2) Tenders with proposals not complying with (1) above will not be considered further.
- (3) Marks will be given based on the number of hospital beds to be provided at

the Hospital. Zero mark will be given for a proposal of 300 beds. One additional mark will be given for every additional 4 hospital beds over and above 300 beds. The maximum score is 50.

Note 4

- (1) Tenderers shall propose the schedule of provision of hospital beds in the form set out at Appendix C annexed hereto. In the proposal, the Hospital must provide –
 - (i) no less than 90 hospital beds upon commencement of Hospital operation;
 - (ii) no less than a cumulative total of 150 hospital beds within 24 months from the date of commencement of Hospital operation;
 - (iii) no less than a cumulative total of 300 hospital beds within 48 months from the date of commencement of Hospital operation; and
 - (iv) the “proposed total number of hospital beds” within 72 months from the date of commencement of Hospital operation, if applicable.
- (2) Tenders with proposals not complying with (1) above will not be considered further.
- (3) Total weighted marks up to a maximum score of 70 will be given according to the percentage of hospital beds to be provided at different stages as set out in the table below.

Calculation of Marks				Examples	
Schedule of opening of hospital beds	Percentage of hospital beds to be provided	Weighting	Marks	Percentage of hospital beds to be provided	Marks
On date of commencement of Hospital operation	$v \%$	6	$v \times 6$	$v = 50$	300
Within 24 months thereafter	$w \%$	5	$w \times 5$	$w = 30$	150
Within 48 months thereafter	$x \%$	4	$x \times 4$	$x = 10$	40
Within 72	$y \%$	3	$y \times 3$	$y = 10$	30

months thereafter					
<i>Total</i>	<i>100%</i>		<i>z</i>		520
<p>Total Total score of the tender being considered (i.e. z)</p> <p>Weighted = 70 x $\frac{\text{Total score of the tender being considered (i.e. z)}}{\text{Highest total score among all conforming tenders}}$</p> <p>Score Highest total score among all conforming tenders</p>					

Note 5

(1) Apart from the provision of essential services as required in section 9(a)(i)(I) of the Special Conditions of the Conditions of Sale and Schedule 2 of the Service Deed at Annex III of the Tender Notice (see the definition of "Essential Services" in Schedule 2 of the Service Deed), tenderers shall provide a comprehensive and practicable proposal on the scope of other services of the Hospital in the form set out at Appendix E annexed hereto. The maximum score is 110 with a maximum of 10 marks to be given for provision of each of the following preferred specialties/services :

- (i) Neurosurgery
- (ii) Cardiothoracic surgery
- (iii) Cardiology
- (iv) Haematology
- (v) Oncology (including the provision of radiotherapy and chemotherapy)
- (vi) Pediatric services
- (vii) Intensive care / Cardiac care / Pediatric intensive care / Neonatal intensive care unit
- (viii) Ophthalmology
- (ix) Accident and Emergency service
- (x) Chinese Medicine
- (xi) Mental health services

(2) For each of the proposed specialties/services, the proposal shall cover –

- (i) details of the proposed specialties/services that would help to meet the projected service demand of the community based on the disease trend/pattern of Hong Kong;
- (ii) the service delivery model and the level of standard and quality of the proposed specialties/services;

<ul style="list-style-type: none"> (iii) target patients of the proposed services and the number of patients to be served by the proposed services; (iv) the timing for introduction of the proposed specialties/services; and (v) the plan to provide suitable equipment/facilities and deploy staff with appropriate expertise to support the effective provision of the proposed specialties/services. 	
Calculation of Marks	
Considerations	Marks
The proposal is practicable as supported by detailed information on all five items listed in (2)(i) to (v).	10
The proposal is practicable as supported by detailed information on four of the items listed in (2)(i) to (v), and brief information on the remaining item.	8
The proposal is practicable as supported by detailed information on three of the items listed in (2)(i) to (v), and brief information on the remaining items.	6
The proposal is practicable as supported by detailed information on two of the items listed in (2)(i) to (v), and brief information on the remaining items.	4
The proposal is practicable as supported by detailed information on one of the items listed in (2)(i) to (v) and brief information on the remaining items, or brief information on all items.	2
The proposal is not practicable notwithstanding the provision of detailed information on all or any of the items, or the proposal does not provide information that would enable an assessment on the practicability of the proposal.	0

Note 6
<p>(1) Tenderers shall provide a comprehensive and practicable proposal on the patient-care related facilities and services of the Hospital in the form set out at Appendix F annexed hereto. Examples of patient-care related facilities and services mean rehabilitation facilities, hydrotherapy facilities, and other supporting services provided by allied health professionals such as dietitians, physiotherapists, occupational therapists, clinical psychologists. The determination of the Assessment Panel as to whether a facility is a patient-care related facility shall be final. The maximum score is 15.</p>

- (2) The proposal shall cover –
- (i) details of the proposed facilities and services that are related/connected to or in support of clinical services proposed under Item (2)(a) in Section 2 of the Marking Scheme;
 - (ii) the service delivery model and the level of standard and quality of the proposed facilities and services;
 - (iii) the number of patients to be served by the proposed facilities and services;
 - (iv) the timing for introduction of the proposed facilities and services; and
 - (v) the plan to provide suitable equipment/facilities and deploy staff with appropriate expertise to support the effective provision of the proposed services.

Calculation of Marks	
Considerations	Marks
The proposal is practicable as supported by detailed information on all five items listed in (2)(i) to (v).	15
The proposal is practicable as supported by detailed information on four of the items listed in (2)(i) to (v), and brief information on the remaining item.	12
The proposal is practicable as supported by detailed information on three of the items listed in (2)(i) to (v), and brief information on the remaining items.	9
The proposal is practicable as supported by detailed information on two of the items listed in (2)(i) to (v), and brief information on the remaining items.	6
The proposal is practicable as supported by detailed information on one of the items listed in (2)(i) to (v) and brief information on the remaining items, or brief information on all items.	3
The proposal is not practicable notwithstanding the provision of detailed information on all or any of the items, or the proposal does not provide information that would enable an assessment on the practicability of the proposal.	0

Note 7

- (1) Tenderers shall provide a comprehensive and practicable proposal on the

mechanism for review of Hospital fees and charges and announcement of reviewed fees and charges that can enhance price transparency of services provided by the Hospital in the form set out at Appendix G annexed hereto. The maximum score is 15.

(2) The proposal shall include:

- (i) detailed procedures and the frequency of reviewing the fees and charges;
- (ii) list of types of stakeholder to be engaged for the purpose of (i) above; and
- (iii) means to inform the public of the outcome of each fees and charges review exercise.

Calculation of Marks	
Considerations	Scores
The proposal is practicable as supported by detailed information on all three items listed in (2)(i) to (iii).	15
The proposal is practicable as supported by detailed information on two of the items listed in (2) (i) to (iii), and brief information on the remaining item.	10
The proposal is practicable as supported by detailed information on one of the items listed in (2)(i) to (iii), and brief information on the remaining items; or brief information on all items.	5
The proposal is not practicable notwithstanding the provision of detailed information on all or any of the items, or the proposal does not provide information that would enable an assessment on the practicability of the proposal.	0

Note 8

(a) Service for “Eligible Persons”

(1) Tenderers shall propose the percentage of total in-patient bed days taken up in the Hospital each service year for services provided for Eligible Persons in the form set out at Appendix D annexed hereto. In their proposal, tenderers must propose to provide more than 50% of the in-patient bed days taken up in the Hospital each service year for services provided for Eligible Persons, where “Eligible Persons” means –

- (i) holders of Hong Kong Identity Card issued under the Registration of

- Persons Ordinance (Cap 177); or
- (ii) children under 11 years of age with Hong Kong resident status.
- (2) For the purpose of complying with (1) above, the in-patient bed days provided by standard beds at packaged charge in “(b) Services at packaged charging” below will be counted as part of the in-patient bed days required to be provided for Eligible Persons, and service year has the meaning attributed to “Service Year” under the Service Deed at Annex III of the Tender Notice.
- (3) Tender with proposals not complying with (1) above will not be considered further.
- (4) Two marks will be given to tenders which propose that 52% of total in-patient bed days taken up in the Hospital each year are for services provided for Eligible Persons. One additional mark will be given for each additional 1% of in-patient bed days taken up for services provided for Eligible Persons from 52% onwards, up to a maximum of 70%. The maximum score is 20. Some of the scoring scenarios are shown below for reference.

Examples of scoring scenarios

	Proposed percentage of in-patient bed days taken up in the Hospital each year for services provided for “Eligible Persons”	Marks
(a)	51%	0 mark
(b)	52%	2 marks
(c)	53%	3 marks
	:	
	:	
(d)	≥ 70%	20 marks

(b) Services at packaged charging

- (1) Tenderers shall propose the percentage of in-patient bed days taken up for services provided through standard beds at packaged charge (i.e. the provision of essential services and specialty services to patients in standard beds at an all-inclusive price) for Eligible Persons out of the total number of in-patient bed days taken up in the Hospital each service year in the form set out at Appendix D annexed hereto. In their proposal, tenderers must propose to provide at least 30% of the in-patient bed days taken up in the Hospital each service year for services provided through standard beds at packaged charge for Eligible Persons.
- (2) For the purpose of complying with paragraph (1) above –
- (i) the packaged charge must cover doctors’ fees, maintenance fees,

- diagnostic procedures, surgical operations, laboratory testing, X-ray tests, drugs, and other miscellaneous items;
- (ii) in-patient bed days provided through obstetric beds at packaged charge must be excluded;
 - (iii) service year, essential services, specialty services, in-patient bed days, standard beds and obstetric beds have the meaning respectively attributed to "Service Year", "Essential Services", "Specialty Services", "In-patient Bed Days", "Standard Bed" and "Obstetric Beds" under the Service Deed at Annex III of the Tender Notice; and
 - (iv) the Hospital must provide services at packaged charge based on the Diagnosis Related Groups (DRGs) system, which has the meaning attributed to "DRG System" under the Service Deed at Annex III of the Tender Notice.
- (3) Tenders with proposals not complying with (1) above will not be considered further.
- (4) Marks will be given based on the percentage of in-patient bed days taken up for services provided through standard beds at packaged charge for Eligible Persons. One mark will be given for each additional 1%, from 31% onwards. The maximum score is 70. Some of the scoring scenarios are shown below for reference.

Examples of scoring scenarios

	Proposed percentage of in-patient bed days taken up each year for services provided through standard beds at packaged charge for "Eligible Persons"	Marks
(a)	30%	0 mark
(b)	31%	1 mark
(c)	32%	2 marks
	:	:
	:	:
(f)	100%	70 marks

Note 9

Tenderers shall provide a proposal on manpower deployment to support the operation of the Hospital at the time when the Hospital is fully commissioned (i.e. the time the Hospital provides all hospital beds, specialties and services, patient-care related facilities and services as proposed under Items 1(d), 2(a) and 2(b) of Section 2 of the Marking Scheme) in the form set out at Appendix H

annexed hereto. Having regard to the proposed scope of services of the Hospital, the proposal shall cover the number of doctors, nurses, allied health professionals, administration staff and supporting staff, as well as the manpower-to-bed ratios for (a) In-house on-site 24-hours specialists, (b) nurses, and (c) allied health professionals respectively. Marks shall be awarded SEPARATELY for each of the three aforementioned ratios as follows –

		Maximum score
(a)	In-house on-site 24-hours specialist-to-bed ratio	15 marks
(b)	Nurse-to-bed ratio	15 marks
(c)	Allied Health professional-to-bed ratio	10 marks

The score of each Tender will be converted into a weighted score in accordance with the following formula –

(a)	Weighted Score on In-house on-site 24-hours specialist-to-bed ratio	$= 15 \times \frac{\text{Number of in-house on-site 24 hours specialists per bed of the tender being considered}}{\text{Highest number among all conforming tenders}}$
(b)	Weighted Score on nurse-to-bed ratio	$= 15 \times \frac{\text{Number of nurses per bed of the tender being considered}}{\text{Highest number among all conforming tenders}}$
(c)	Weighted Score on Allied Health professional-to-bed ratio	$= 10 \times \frac{\text{Number of Allied Health professionals per bed of the tender being considered}}{\text{Highest number among all conforming tenders}}$

The weighted score of (a), (b) and (c) above will be added together to give the total score for Item (4)(a) in Section 2 of the Marking Scheme. The maximum score is 40.

Note 10

Tenderers shall provide comprehensive and practicable proposals for provision of training programmes/facilities in the form set out at Appendix I annexed hereto for

- Fellowship or post-fellowship training programmes/facilities for doctors; and/or
- On-site training programmes/facilities for nurses and/or allied health professionals.

For the purpose of (ii), only training programmes with duration of no shorter than 3 days will be considered for scoring. The maximum score is 30.	
Calculation of Marks for (i)	
Considerations	Marks
The proposal is practicable as supported by detailed information on the fellowship or post-fellowship training programmes for more than 30 training places each year for doctors, including the partnering institutions/organizations of the training programme, the timing for introduction of the proposed training programme, and supporting training facilities (such as simulation facilities).	15
The proposal is practicable as supported by detailed information on the fellowship or post-fellowship training programmes for 16 to 30 training places each year for doctors, including the partnering institutions/organizations of the training programme, the timing for introduction of the proposed training programme, and supporting training facilities (such as simulation facilities).	10
The proposal is practicable as supported by detailed information on the fellowship or post-fellowship training programmes for 15 or less than 15 training places each year for doctors, including the partnering institutions/organizations of the training programme, the timing for introduction of the proposed training programme, and supporting training facilities (such as simulation facilities).	5
The proposal is not practicable notwithstanding the provision of detailed information or the information provided does not enable an assessment to be made on the practicability of the proposal.	0
Calculation of Marks for (ii)	
Considerations	Marks
The proposal is practicable as supported by detailed information on the on-site training programmes for more than 80 training places each year for nurses and/or allied health professionals, including the partnering institutions/organizations of the training programme, the timing for introduction of the proposed training programme, and supporting training facilities.	15
The proposal is practicable as supported by detailed information on the on-site training programmes for 41 to 80 training places each	10

year for nurses and/or allied health professionals, including the partnering institutions/organizations of the training programme, the timing for introduction of the proposed training programme, and supporting training facilities.	
The proposal is practicable as supported by detailed information on the on-site training programmes for 40 or less than 40 training places each year for nurses and/or allied health professionals, including the partnering institutions/organizations of the training programme, the timing for introduction of the proposed training programme, and supporting training facilities.	5
The proposal is not practicable notwithstanding the provision of detailed information or the information provided on the on-site training programmes/facilities for nurses and/or allied health professionals does not enable an assessment of the practicability of the proposal.	0

Note 11	
<p>(1) Tenderers shall provide a comprehensive and practicable proposal on the clinical governance structure of the Hospital that could help ensure service quality and standards of the Hospital and patient safety in the form set out at Appendix J annexed hereto. The maximum score is 30.</p> <p>(2) The proposal shall include -</p> <ul style="list-style-type: none"> (i) a clear governance structure with well-defined roles and responsibilities of relevant parties; (ii) detailed mechanism and procedures for conducting clinical audit of the Hospital, including internal and external audit; (iii) detailed mechanism and procedures in monitoring, reporting and handling of sentinel events and medical incidents; (iv) detailed mechanism and procedures for review and introduction of advanced and new medical technology, medical equipment and drugs; and (v) detailed mechanism and procedures for handling complaints, enquiries and suggestions. 	
Calculation of Marks	

Considerations	Marks
The proposal is practicable as supported by detailed information on all five items listed in (2)(i) to (v).	30
The proposal is practicable as supported by detailed information on four of the items listed in (2)(i) to (v), and brief information on the remaining item.	24
The proposal is practicable as supported by detailed information on three of the items listed in (2)(i) to (v), and brief information on the remaining items.	18
The proposal is practicable as supported by detailed information on two of the items listed in (2)(i) to (v), and brief information on the remaining items.	12
The proposal is practicable as supported by detailed information on one of the items listed in (2)(i) to (v), and brief information on the remaining items; or brief information on all items.	6
The proposal is not practicable notwithstanding the provision of detailed information or the information provided does not enable an assessment of the practicability of the proposal.	0

Appendices to Annex II to Tender Notice

Appendix A

Form of Tenderer's proposal – Experience of Tenderers and the Proposed Key Personnel in the Project Team

Important note:

1. Please also refer to Annex I of the Tender Notice when completing this Appendix A.
2. Tenderers must at least propose three directors/partners in Table 1.
3. Tenderers must provide information of each of the proposed directors/partners in Table 2.
4. If a tenderer is a partnership comprising more than one entity, information required in Tables 1 and 2 of each entity comprising the partnership must be submitted.
5. Tenderers must at least propose three key personnel in Table 3.

Table 1 - Particulars of the board of directors of the tenderer (if tenderer is a company) or partners of partnership (if tenderer is a partnership)

	Name of Directors/Partners	Post
1.		
2.		
3.		
4.		
5.		
Total number of Directors/Partners		

Table 2 - Experience of the members of the board of directors (if tenderer is a company) / partners of partnership (if tender is a partnership) in hospital management or operation

	Name of Director/ Partner	Details of the hospital from which the experience was gained (a) Name and address of the hospital	Years of experience From (dd/mm/yy)	Position(s) held in the hospital	Description of experience
--	---------------------------	--	--	----------------------------------	---------------------------

		(b) Average number of in-patient discharge and deaths per year from 2006-2011	to (dd/mm/yy)		
1.					
2.					
3.					
4.					
5.					

Table 3 - Particulars and experience of Key Personnel

	Name of Key Personnel	Details of the hospital from which the experience was gained (a) Name and address of the hospital (b) Average number of in-patient discharge and deaths per year from 2006-2011	Years of experience From (dd/mm/yy) to (dd/mm/yy)	Position(s) held in the hospital	Description of "Relevant experience" in one or more of the five functional areas of hospital operation
1.					
2.					
3.					
4.					
5.					

4. Key responsibilities of each Key Personnel

Key Personnel ^{Note 1}	Key Responsibilities ^{Note 2}
(a) Clinical Services	
<i>Full Name of the Key</i>	▪ To oversee the provision of clinical services and

Note (1) : An individual key personnel may appear in more than one functional area. But each key personnel must be assigned to at least one functional area.

Note (2) : Separate sheets may be added to set out additional responsibilities of the key personnel under individual functional area.

Key Personnel ^{Note 1}	Key Responsibilities ^{Note 2}
<i>Personnel</i>	operation of clinical facilities of the hospital
- // -	<ul style="list-style-type: none"> To supervise a team of relevant and qualified personnel in operating the hospital according to the service proposals offered by the Tenderer and as set out under the Service Deed and the Conditions of Sale
	<ul style="list-style-type: none"> {Other responsibilities to be set by Tenderer}
	<ul style="list-style-type: none"> { Other responsibilities to be set by Tenderer}
(b) Quality Assurance	
<i>Full Name of the Key Personnel</i>	<ul style="list-style-type: none"> To oversee the quality of services of the hospital, including patient safety and risk management, quality and standards of services and healthcare professionals
- // -	<ul style="list-style-type: none"> To formulate and manage the contingency plan in response to infection and emergency situation
	<ul style="list-style-type: none"> {Other responsibilities to be set by Tenderer}
	<ul style="list-style-type: none"> { Other responsibilities to be set by Tenderer}
(c) Planning and maintenance	
<i>Full Name of Members</i>	<ul style="list-style-type: none"> To be responsible for all matters relating to the planning and development of the hospital according to the service proposals offered by the Tenderer and as set out under the Service Deed and the Conditions of Sale
- // -	<ul style="list-style-type: none"> To be responsible for all matters relating to the maintenance of the hospital, and initiate, implement and monitor programmes to maintain the hospital and relevant facilities in good condition
	<ul style="list-style-type: none"> {Other responsibilities to be set by Tenderer}
	<ul style="list-style-type: none"> { Other responsibilities to be set by Tenderer}
(d) Finance	
<i>Full Name of the Key Personnel</i>	<ul style="list-style-type: none"> To oversee the financial planning, budget and resources management
- // -	<ul style="list-style-type: none"> To oversee the financial risk management and financial operation
	<ul style="list-style-type: none"> {Other responsibilities to be set by Tenderer}

Key Personnel ^{Note 1}	Key Responsibilities ^{Note 2}
	<ul style="list-style-type: none"> ▪ { Other responsibilities to be set by Tenderer }
(e) Human Resource Management	
<i>Full Name of the Key Personnel</i>	<ul style="list-style-type: none"> ▪ To be responsible for matters relating to the recruitment, staffing and manpower deployment of the hospital
- // -	<ul style="list-style-type: none"> ▪ To be responsible for matters relating to staff benefits, remuneration and occupational safety of the hospital
	<ul style="list-style-type: none"> ▪ { Other responsibilities to be set by Tenderer }
	<ul style="list-style-type: none"> ▪ { Other responsibilities to be set by Tenderer }

5. For the purpose to demonstrate that the proposed Directors/Partners and key personnel have met the Mandatory Requirements in Section I of Annex I to the Tender Notice, the following documents or documentary proof shall be submitted –
- (I) a curriculum vitae or a statement of experience by each of the Directors/Partners on managing or operating a hospital; and by each proposed key personnel in one or more of the functional areas of hospital operation in clinical services, quality assurance, planning and maintenance, finance, human resource management in Hong Kong or overseas;
 - (II) reference letters from current and/or previous employers on the capacity of service, and the years of working experience of each of the proposed key personnel, in one of more of the functional areas of hospital operation in clinical services, quality assurance, planning and maintenance, finance, human resource management in Hong Kong or overseas;
 - (III) details of the hospital(s) referenced in (I) above including but not limited to the name and address of the hospital, total number of beds, scope of services, number of doctors, nurses and other employees, as well as the service throughput such as the number of annual in-patient discharges, outpatient attendance, day patient attendance and accident and emergency attendance; and
 - (IV) a confirmation duly signed by the tenderer that no restraints of trade or business have been contravened in proposing to engage the individuals as key personnel of the project team.

Appendix B

Form of Tenderer's proposal – Land Use

Important note:

1. Please also refer to Annex I to Tender Notice and Explanatory Note 1 of the Marking Scheme when completing this Appendix B.
2. Percentage to be provided in (I) of Column 2 must not be less than 70%.
3. Percentage to be provided in (II) of Column 2 must not exceed 5%.
4. Percentage to be provided in (III) and (IV) of Column 2 must not exceed 30%.

1. The percentage of total Gross Floor Area (GFA) of the Hospital to be allocated for each of the following categories of facilities upon completion of the development of the Hospital are as follows -

Column 1	Column 2
	The proportion (expressed in percentage (%)) which the total gross floor area of the building or buildings designed and constructed for the corresponding facilities in column 1 bears to the total gross floor area of the building or buildings erected or to be erected on the Lot
(I) Clinical and Clinical Supporting Facilities	_____ %
(II) Accommodation Facilities (if any)	_____ %
(III) Non-Clinical Supporting Facilities (other than Accommodation Facilities (if any))	_____ %
(IV) Sub-total of the Non-Clinical Supporting Facilities (including the Accommodation Facilities, if any) (i.e. (II) + (III))	_____ %
(V) Total (i.e. (I) + (II) + (III))	100%

Appendix C

Form of Tenderer's proposal – Scale and Schedule of Development

Important note:

1. Please also refer to Annex I to Tender Notice and Explanatory Notes 2, 3, 4 of the Marking Scheme when completing this Appendix C.
2. Figure to be provided in (I) of Column 2 must not exceed 60.
3. Figure to be provided in (II) of Column 2 must not be less than 300.
4. Figure to be provided in (III)(ii) of Column 2 must not exceed 20.
5. Figure to be provided in (IV)(i) of Column 2 must not be less than 90.
6. Figure to be provided in (IV)(i) of Column 1 should be the same as that inserted in (I) of Column 2.
7. Figure to be provided in (IV)(ii) of Column 2 must not be less than 150.
8. Figure to be provided in (IV)(iii) of Column 2 must not be less than 300.
9. Figure to be provided in (IV)(iv) of Column 2 should be the same as the number inserted in (II) of Column 2.

1. The date of commencement of operation of the Hospital, total number of hospital beds, percentage of obstetric beds to be provided at the Hospital and the schedule of provision of beds are as follows -

	<u>Column 1</u>	<u>Column 2</u>
(I)	Date of commencement of operation of the Hospital	Within_____ Months from the date of execution of the Memorandum of Agreement
(II)	Proposed total number of hospital beds	_____ Beds
(III)	Obstetric beds_	
(i)	Total number of obstetric beds to be provided at the hospital	_____ Beds (Note)
(ii)	Maximum percentage of obstetric beds to be provided at the hospital as against the total number of hospital beds	_____ %
(IV)	Schedule of provision of beds	
(i)	Upon commencement of operation of Hospital (i.e. the date inserted in (I) of Column 2)	_____ Beds

(ii)	Within 24 months from the date of commencement of Hospital operation	_____ Beds
(iii)	Within 48 months from the date of commencement of Hospital operation	_____ Beds
(iv)	Within 72 months from the date of commencement of Hospital operation	_____ Beds

Note: The number to be provided by the tenderers in (III)(i) of Column 2 will be used by the Government for verification of tenderers' proposed percentage provided in (III)(ii) of Column 2.

Appendix D

Form of Tenderer's proposal – Charging and Service Arrangement

Important note:

1. Please also refer to Annex I to Tender Notice and Explanatory Note 8 of the Marking Scheme when completing this Appendix D.
2. The percentage of total in-patient bed days taken up in the Hospital each Service Year (as defined in the Service Deed) for services for “Eligible Persons” proposed by tenderers must be more than 50%.
3. The percentage of total in-patient bed days taken up in the Hospital each Service Year (as defined in the Service Deed) for services provided through standard beds at packaged charge for “Eligible Persons” proposed by tenderers must not be less than 30%.

1. The service arrangement for services for “Eligible Persons” is as follows –

[Please specify:

- (a) the percentage of total in-patient bed days taken up in the Hospital each Service Year (as defined in the Service Deed) that will be for services for “Eligible Persons”; and
- (b) any other supporting information.]

2. The service arrangement for services provided through standard beds at packaged charge for “Eligible Persons” is as follows –

[Please specify:

- (a) the percentage of total in-patient bed days taken up in the Hospital each Service Year (as defined in the Service Deed) that will be for services provided through standard beds at packaged charge for “Eligible Persons” (i.e. “Minimum Number” for Packaged Charging); and
- (b) any other supporting information.]

Note: Separate sheets may be added as necessary.

Appendix E

Form of Tenderer's proposal – Clinical Services

Important note:

Please also refer to Annex I to Tender Notice and Explanatory Note 5 of the Marking Scheme when completing this Appendix E.

3. The clinical services to be provided at the Hospital are as follows –

	Clinical Services (Please specify the specialties and/or other services)	Description and other supporting information	Timing of introduction of the specialties and/or other services
1.			Within _____ months from the date of commencement of Hospital operation
2.			Within _____ months from the date of commencement of Hospital operation
3.			Within _____ months from the date of commencement of Hospital operation

Note: Separate sheets may be added as necessary.

Appendix F

Form of Tenderer's proposal – Patient-care related facilities and services

Important note:

Please also refer to Annex I to Tender Notice and Explanatory Note 6 of the Marking Scheme when completing this Appendix F.

1. The patient-care related facilities and services to be provided at the Hospital are as follows –

	Patient-care related facilities and services	Description and other supporting information	Timing of introduction of the facilities and services
1.			Within _____ months from the date of commencement of Hospital operation
2.			Within _____ months from the date of commencement of Hospital operation
3.			Within _____ months from the date of commencement of Hospital operation

Note: Separate sheets may be added as necessary.

Appendix G

Form of Tenderer's proposal – Review of Hospital Fees and charges

Important note:

Please also refer to Annex I to Tender Notice and Explanatory Note 7 of the Marking Scheme when completing this Appendix G.

1. The mechanism for review of Hospital fees and charges and announcement of reviewed fees and charges is as follows –

Appendix H

Form of Tenderer's proposal – Manpower Deployment

Important note:

Please also refer to Annex I to Tender Notice and Explanatory Note 9 of the Marking Scheme when completing this Appendix H.

1. The manpower plan of the Hospital at the time when the Hospital is fully commissioned is as follows –

Table (I)	
Doctors	Number
(i) Specialists ^{Note 1} directly employed by the Hospital	_____ Note 2
(ii) Specialists in (i) providing in-house on-site 24 hours services	_____ Note 3
(iii) Trainees/non-specialists ^{Note 1} directly employed by the Hospital	_____ Note 2
(iv) Total number of doctors directly employed by the Hospital (i.e. (i) + (iii))	_____ Note 2
(v) Doctors not directly employed by the Hospital with admission right to the Hospital	_____ Note 2

Table (II)	
Nurses	Number
(i) Registered Nurses ^{Note 1}	_____ Note 2
(ii) Enrolled Nurses ^{Note 1}	_____ Note 2
(iii) Total number of nurses employed by the Hospital (i.e. (i) + (ii))	_____ Note 3
(iv) Nurses in (iii) who are at the rank of Department Operations Managers or Senior Nursing Officers or equivalent	_____ Note 2
(v) Nurses in (iii) who are at the rank of Advanced Practice Nurses or Nurse Specialists or Nursing Officers Ward Managers or equivalent	_____ Note 2

Table (III)	
Allied Health Professionals	Number

(i) Medical Laboratory Technologists ^{Note 1}	_____ Note 2
(ii) Radiographers ^{Note 1}	_____ Note 2
(iii) Occupational Therapists ^{Note 1}	_____ Note 2
(iv) Physiotherapists ^{Note 1}	_____ Note 2
(v) Optometrists ^{Note 1}	_____ Note 2
(vi) Pharmacists ^{Note 1}	_____ Note 2
(vii) Others (such as Clinical Psychologists, Dietitians, Speech Therapists, etc. Please specify)	_____ Note 2
<i>Total</i>	_____ Note 3

Table (IV)	
Administration and supporting staff	Number
(i) Administration staff	_____ Note 2
(ii) Other supporting staff	_____ Note 2
<i>Total</i>	_____ Note 2

2. The manpower-to-bed ratios for in-house on-site 24 hours specialists, nurses and allied health professionals of the Hospital are as follows –

Table (V)	
(I) In-house on-site 24 hours specialist-to-bed ratio	____ In-house on-site 24 hours specialists per bed ^{Note 4}
(II) Nurse-to-bed ratio	____ nurses per bed ^{Note 4}
(III) Allied health professional -to-bed ratio	____ allied health professionals per bed ^{Note 4}

Notes

- (1) For the purpose of completing this Appendix -
- (i) “Specialists” shall mean doctors who are included in the Specialist Register of Medical Council of Hong Kong;
 - (ii) “Trainees/non-specialists” shall mean doctors who are under training for attaining the status of “Specialists” in (i);
 - (iii) “Registered Nurses” and “Enrolled Nurses” shall mean professionals who are registered or enrolled as a registered nurse or enrolled nurse respectively with the Nursing Council of Hong Kong; and;
 - (iv) “Medical Laboratory Technologists”, “Radiographers”, “Occupational Therapists”, “Physiotherapists”, “Optometrists” and

“Pharmacists” shall mean the professionals registered with the respective boards or councils in Hong Kong under the relevant Ordinances.

- (2) Numbers to be provided by the tenderers in the tables are for reference by the Government only. The Government reserves the right to decide at its absolute discretion whether to consider a tender which fails to provide such numbers.
- (3) Numbers to be provided by the tenderers will be used by the Government for verification of tenderers' proposals in Table V.
- (4) Numbers to be provided by a tenderer in Table V as accepted by the Government will be incorporated in the Service Deed as binding obligations as appropriate, if the tenderer is selected as the successful tenderer.

Appendix I

Form of Tenderer's proposal – Training Programmes / Facilities

Important note:

Please also refer to Annex I to Tender Notice and Explanatory Note 10 of the Marking Scheme when completing this Appendix I.

1. The training programmes/facilities to be provided by the Hospital are as follows –

	Training programmes /facilities	Description and other supporting information (including the duration of the training programmes)	Timing of introduction of the programmes /facilities
1.			Within _____ months from the date of commencement of Hospital operation
2.			Within _____ months from the date of commencement of Hospital operation
3.			Within _____ months from the date of commencement of Hospital operation

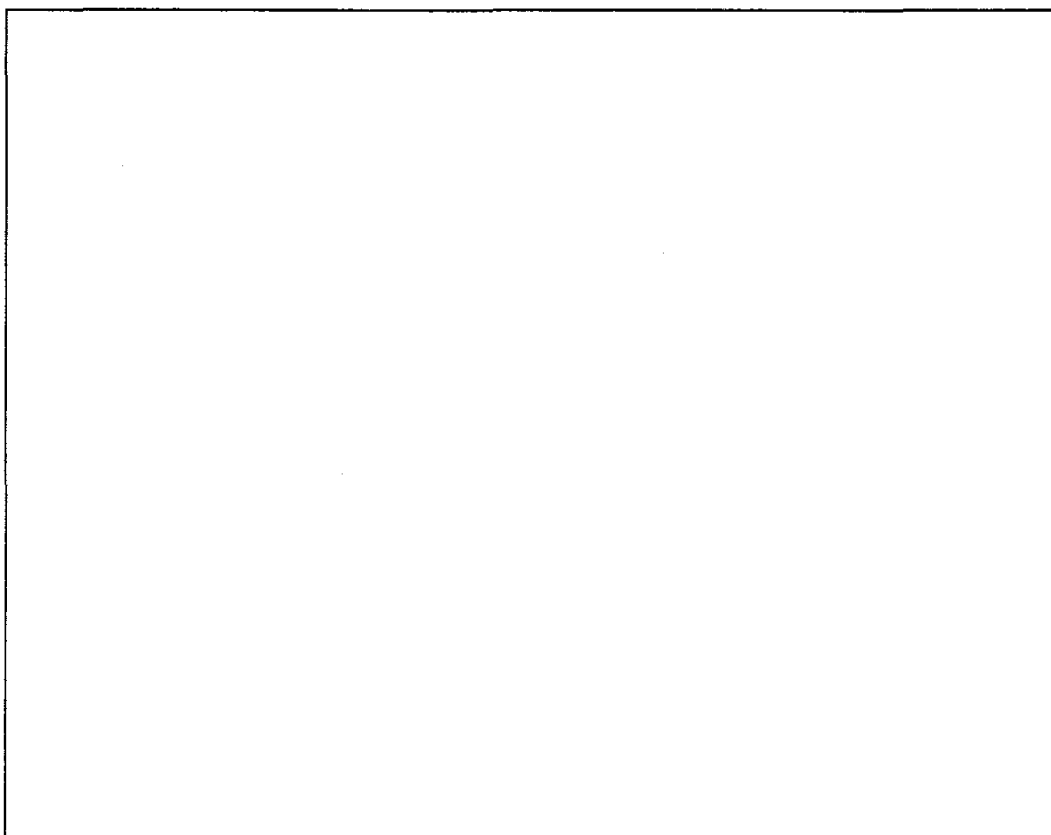
Appendix J

Form of Tenderer's proposal – Clinical Governance Structure

Important note:

Please also refer to Annex I to Tender Notice and Explanatory Note 11 of the Marking Scheme when completing this Appendix J.

1. The clinical governance structure of the Hospital is as follows –



[PARTY 1]

and

[PARTY 2]

SERVICE DEED

Contents

Clause		
Number	Heading	Page
	PART A: PRELIMINARY	1
1	INTERPRETATION	1
2	COMMENCEMENT AND DURATION	1
3	PRECEDENCE	2
	PART B: SERVICES	2
4	PURCHASER OBLIGATIONS	2
5	SCHEDULE OF DEVELOPMENT OF THE LOT	2
6	ACCREDITATION	3
7	KEY PERSONNEL	3
8	REPORTING AND REVIEW	4
9	AUDIT AND ACCESS	6
10	PURCHASER REPRESENTATIVE	7
	PART C: GENERAL PROVISIONS	7
11	WARRANTIES	7
12	INDEMNITY AND LIABILITY	8
13	LIMITATION OF LIABILITY	9
14	SUBCONTRACTING	9
	PART D: CHANGES IN LAW AND VARIATIONS	11

15	CHANGES IN LAW	11
16	VARIATIONS	11
	PART E: DEFAULT AND REMEDIES	11
17	BANK BOND AND PERFORMANCE GUARANTEE	11
18	LIQUIDATED DAMAGES	13
19	DEFAULTS CAPABLE OF REMEDY	14
20	STEP-IN RIGHTS	14
	PART F: TERMINATION	16
21	TERMINATION	16
22	EXIT MANAGEMENT PLAN AND CONSEQUENCES OF TERMINATION	17
23	FORCE MAJEURE	18
24	SURVIVAL	19
	PART G: DISPUTE RESOLUTION	20
25	ESCALATION AND DISPUTE RESOLUTION	20
	PART H: INTELLECTUAL PROPERTY, DATA PROTECTION AND CONFIDENTIALITY	20
26	INTELLECTUAL PROPERTY	20
27	CONFIDENTIALITY	20
28	DATA PROTECTION	21
	PART I: MISCELLANEOUS	22
29	PROBITY	22
30	GENERAL	23
	Schedule 1 – Definitions and Interpretation	27

Schedule 2 – Service Obligations	35
Schedule 2 Annexes	38
Schedule 3 – Escalation and Dispute Resolution	39
Schedule 4 – Subcontracting	43
Schedule 5 – Liquidated Damages	46

Date

2011

Parties [PARTY 1] of [specify address] ("**Government**")

[PARTY 2] of [specify address] ("**Purchaser**")

WHEREAS:

- A. The Government issued an invitation for an Expression of Interest to the public on 14 December 2009 ("**EOI**"). The EOI expressed the Government's desire to address the imbalance between hospital services in the public and private sectors, increase the overall capacity of the healthcare system, and support the development of medical services as one of the industries crucial for the development of Hong Kong's economy, by promoting and facilitating private hospital developments in Hong Kong.
- B. The Government, following consideration of responses to the EOI from interested parties, and Government's health policy objectives, invited proposals to undertake the Project pursuant to an invitation to tender issued on 13 April 2012 (as modified, amended or revised, the "**Tender Notice**").
- C. The Project, pursuant to the process described in the Tender Notice, has been awarded to the Purchaser, and *[insert further details as necessary based on the process up to execution and the mode the Purchaser has chosen to enter into the project agreements and undertake the Project]*.
- D. The Government has agreed to grant the Lot to the Purchaser pursuant to the terms of the grant registered in the Land Registry as New Grant No. [] ("**Land Grant**"), which is executed simultaneously with this Deed.
- E. The Purchaser and the Government wish to define their respective rights and obligations with respect to the Project, to the extent that they are not covered in the Land Grant, in this Deed.

NOW IT IS HEREBY AGREED as follows:

PART A: PRELIMINARY

1 INTERPRETATION

- 1.1 This Deed is interpreted according to the provisions of Schedule 1 (Definitions and Interpretation).

2 COMMENCEMENT AND DURATION

- 2.1 This Deed takes effect from the Effective Date and continues in full force and effect until the earlier of:
 - (a) the Expiry Date; or

- (b) the Termination Date,
(the "Term").

3 PRECEDENCE

- 3.1 To the extent there is any inconsistency or conflict between the terms of the Land Grant and this Deed, the terms of the Land Grant shall prevail.

PART B: SERVICES

4 PURCHASER OBLIGATIONS

- 4.1 The Purchaser shall:

- (a) comply with and perform its obligations in accordance with the terms of this Deed and the Land Grant;
- (b) comply with and perform its obligations in accordance with all Applicable Laws;
- (c) during the Service Period:
 - (i) provide the Services in accordance with the terms of this Deed (including the Service Obligations, Schedule 2 Annexes and Prudent Operating Practice);
 - (ii) without limiting clause 4.1(b):
 - (A) comply with the requirements set out in the Code of Practice and any other codes of practice relating to hospitals which are or may at any time be issued and specified by the Government in the provision of the Services; and
 - (B) operate the Hospital:
 - I in accordance with the *Hospitals, Nursing Homes and Maternity Homes Registration Ordinance* (Cap. 165 Laws of Hong Kong) and any regulations made under such legislation; and
 - II in all respects to the satisfaction of the Government.
 - (iii) in respect of professional staff employed at the Hospital who are required to be registered or licensed, only employ such professional staff as are duly registered or licensed under Applicable Laws in force in Hong Kong.

5 SCHEDULE OF DEVELOPMENT OF THE LOT

- 5.1 Without prejudice to the Land Grant, the Purchaser shall use its best endeavours to execute the Works in accordance with the Schedule of Development of the Lot.
- 5.2 The Government may at any time and from time to time request further information from the Purchaser in respect of the Schedule of Development of the Lot and the

Purchaser shall provide such further information to the satisfaction of the Government within five (5) Business Days of receiving such a request.

- 5.3 Nothing stated in the Schedule of Development of the Lot, and no approval by the Government of the Schedule of Development of the Lot or any amendments thereto, shall relieve the Purchaser from any of its other duties, obligations or liabilities under this Deed including its obligations to proceed with the Works and provide the Essential Services on or before the Scheduled Service Commencement Date.

6 ACCREDITATION

- 6.1 Within forty-eight (48) months from the Service Commencement Date, the Purchaser shall obtain accreditation for the Hospital from a qualified accreditation agent recognised by the International Society for Quality in Healthcare or such other organisation as approved by the Government.
- 6.2 The Purchaser shall maintain the accreditation obtained under clause 6.1 from the date of obtaining such accreditation until the end of the Service Period.

7 KEY PERSONNEL

- 7.1 During the period from the Effective Date until forty-eight (48) months following the Service Commencement Date ("**Key Personnel Period**"), the Purchaser shall procure, engage and deploy the Key Personnel in the execution of the Works and the provision of the Services. If, at any time during the Key Personnel Period, any of the Key Personnel cease to be engaged or deployed by the Purchaser to discharge the key responsibilities as specified for that individual in the Schedule 2 Annexes, then the Purchaser shall:

- (a) provide notice to the Government at least seven (7) Business Days prior to the cessation of engagement or deployment of such Key Personnel or, if prior notice is not possible, as soon as reasonably practicable after such cessation; and
- (b) subject to clauses 7.2 and 7.3, procure alternative personnel as soon as reasonably possible (which in any case shall be no more than six (6) months after providing the notice to the Government in accordance with clause 7.1(a)) who, unless otherwise agreed by the Government, are no less experienced, knowledgeable and qualified in the execution of the Works or provision of the Services than the Key Personnel for whom they are a replacement.

- 7.2 The Purchaser shall submit:

- (a) the curriculum vitae of the proposed alternative personnel to the Government; and
- (b) other information as reasonably requested by the Government from time to time,

for its approval of the proposed alternative personnel. Prior to submitting the information set out in clauses 7.2(a) and 7.2(b), the Purchaser shall make all reasonable investigations to ensure that such information is true and accurate.

- 7.3 The Purchaser shall not engage or deploy the alternative personnel in the execution of the Works or the provision of the Services unless and until it has received the written approval of the Government.

8 REPORTING AND REVIEW

Execution of the Works

- 8.1 The Purchaser shall report to the Government on the progress of the execution of the Works and its compliance with the Schedule of Development of the Lot at least once every six (6) months commencing from the Effective Date until the date specified in column 1 of paragraph (III)(iv) in Part B of the schedule to the Land grant or on request from the Government from time to time.
- 8.2 The Purchaser shall promptly inform the Government of any actual or anticipated material deviations from any dates stipulated in the Schedule of Development of the Lot.
- 8.3 In cases where:
- (a) any material problem, emergency, strike, security event, injury, work stoppage or legal problem be anticipated, or any unanticipated event occur which may adversely affect the Purchaser's ability to perform its obligations in connection with completion of the Works in a timely manner; or
 - (b) the Purchaser has reason to believe that there will be a material deviation in the Schedule of Development of the Lot that may result in the Purchaser failing to achieve the Scheduled Service Commencement Date
- (each a "**Material Incident**"), then, in addition to all other reports required under this Deed, the Purchaser shall promptly notify the Government of such event or failure and deliver a report to the Government in sufficient detail to enable the Government to understand the nature of such Material Incident, identifying:
- (i) the nature of the event or failure;
 - (ii) the reason for the event or failure;
 - (iii) the impact which such event or failure has had, or in the reasonable opinion of the Purchaser, is likely to have or will have, on its ability to achieve the Scheduled Service Commencement Date; and
 - (iv) the steps which the Purchaser (acting in accordance with the Prudent Operating Practice) has taken, is taking and will take to mitigate the adverse consequences of such event or failure.

Provision of Services

- 8.4 The Purchaser shall report to the Government on the Purchaser's compliance with the Service Obligations and items relating thereto in Schedule 2 Annexes and clause 6:
- (a) on a six (6) monthly basis, from the Service Commencement Date until the date specified in column 1 of paragraph (III)(iv) in Part B of the schedule to the Land Grant:

- (i) on or before the last day of August for the period from January to June during which the Services were performed in that Service Year; and
 - (ii) on or before the last day of February for the period from July to December during which the Services were performed in the preceding Service Year;
 - (b) on a yearly basis, from the date specified in column 1 of paragraph (III)(iv) in Part B of the schedule to the Land Grant until the Expiry Date or the Termination Date;
 - (i) on or before the last day of February for reports covering the period from January to December in the preceding Service Year; or
 - (ii) if the Expiry Date or Termination Date is earlier than 31 December in a Service Year, within two (2) months following the Expiry Date or Termination Date, whichever is the earlier.
- 8.5 The Purchaser shall submit to the Government such information as is requested or required by and in accordance with the Code of Practice, to be given by the time specified in the Code of Practice.
- 8.6 The Purchaser shall report to the Government the occurrence of the following as soon as practicable after its occurrence:
- (a) any unauthorised access or unauthorised or accidental disclosure of Personal Data held by the Hospital; or
 - (b) any Insolvency of the Purchaser.
- 8.7 The Purchaser shall, within such period or periods as may at any time be required by the Government (or such other extended period or periods as may be approved by the Government), provide any other information and submit all documents in connection with or relating to the Hospital to the Government, the Director of Health and/or a Government Representative as the Government may in its absolute discretion require from time to time.

Hospital Bed occupancy

- 8.8 During the Service Period, the Purchaser shall submit to the Government statements reporting on the occupancy of the Hospital Beds available in the Hospital during the preceding Service Year
- (a) within two (2) months after the end of each Service Year; or
 - (b) if the Expiry Date or Termination Date is earlier than 31 December in a Service Year, within two (2) months following the Expiry Date or Termination Date, whichever is the earlier.

Accommodation Facilities

- 8.9 In the event that Accommodation Facilities are provided by the Purchaser during the Service Period, the Purchaser shall submit to the Government statements on the occupancy, and detailed records on utilization, of the Accommodation Facilities for the same reporting periods and within the same time frame as those set out in clause 8.4.

Manner of reporting

- 8.10 The Purchaser shall report to the Government as required in this clause 8 in the format, manner and containing the information as may be specified by the Government from time to time.
- 8.11 The Government may amend any period of reporting specified in this clause 8 or other reporting periods specified by the Government from time to time on prior notice to the Purchaser.

9 AUDIT AND ACCESS

- 9.1 During the Term and for a period of six (6) years after the Termination Date, the Government may by itself or through an external auditor conduct audits for the following purposes:
- (a) to review the Purchaser's compliance with the Service Obligations and Schedule 2 Annexes;
 - (b) to review the Purchaser's compliance with Applicable Laws;
 - (c) to review any records created in connection with the provision of the Services;
 - (d) to review any books of account kept by the Purchaser in connection with the provision of the Services;
 - (e) to carry out the audit and certification of the Purchaser's accounts;
 - (f) to verify the accuracy and completeness of the reports delivered or required under clause 8 of this Deed; or
 - (g) to review the Purchaser's compliance with any other provision of this Deed.
- 9.2 The Government shall use its reasonable endeavours to ensure that the conduct of an audit pursuant to clause 9.1 does not unreasonably disrupt the Purchaser or delay the provision of the Services.
- 9.3 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 9, unless the audit identifies a breach by the Purchaser of its obligations under this Deed, in which case the Purchaser shall reimburse the Government for all the Government's reasonable costs incurred in the course of the audit.
- 9.4 On request from the Government, the Purchaser shall provide any Government Instrumentality or its advisors, agents or representatives with all reasonable access to the Lot, records, books of account, systems or any information relevant for the purpose of allowing the Government to:
- (a) monitor the Purchaser's compliance with this Deed; and
 - (b) conduct an audit pursuant to clause 9.1,
- and offer its co-operation and assistance to such Parties for the purposes of such monitoring or audit.

10 PURCHASER REPRESENTATIVE

- 10.1 The Purchaser shall, within ten (10) Business Days from the Effective Date, notify the Government of the individual it intends to appoint as its Purchaser Representative, and shall submit the curriculum vitae of such individual with such notification to the Government. The Purchaser shall not replace or remove the individual appointed as the Purchaser Representative, without notifying the Government at least ten (10) Business Days prior to such replacement or removal.
- 10.2 The Purchaser Representative shall have the authority to represent and act for the Purchaser at all times during the performance of this Deed.
- 10.3 The Purchaser Representative shall meet with the Government or a Government Representative at the request of the Government from time to time.

PART C: GENERAL PROVISIONS

11 WARRANTIES

- 11.1 The Purchaser warrants and represents to the Government that:

- (a) *[[Drafting note: if it is a company], it is a company incorporated and validly existing under the laws of Hong Kong or the laws of its place of incorporation and is not Insolvent;]* OR

[[Drafting note: if it is a partnership], this Deed is executed in the name of the partnership and is binding on all of the partners in the partnership and the partnership is not Insolvent]

- (b) it has all power, authority and capacity to enter into this Deed and to carry out the obligations contemplated under this Deed;
- (c) it has all the necessary Authorisations in order to lawfully enter into and exercise its rights and perform its obligations under this Deed;
- (d) the execution by the Purchaser of, the performance of the Purchaser of its obligations under, and the compliance of the Purchaser with the terms of, this Deed does not and will not:
- (i) contravene any Applicable Law to which the Purchaser is subject;
 - (ii) contravene any Authorisation obtained by the Purchaser;
 - (iii) require performance of an obligation before the appropriate Authorisation can be obtained;
 - (iv) contravene any undertaking or instrument binding on the Purchaser; and
 - (v) contravene any provision of the Purchaser's memorandum and articles of association;
- (e) it has:

- (i) conducted its own investigations and enquiries in relation to the Services, had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has entered into this Deed in reliance on its own investigations, enquiries and due diligence; and
 - (ii) received all information requested by it from the Government to enable it to determine whether it is able to provide the Services in accordance with the terms of this Deed and has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Government;
- (f) no litigation, arbitration, tax claim, dispute or administrative proceeding is current, pending or threatened against the Purchaser which will likely affect the Purchaser or its ability to perform its obligations under this Deed;
- (g) the information which Purchaser has provided to the Government in connection with the negotiation and preparation of this Deed (including evidence of the Purchaser's financial and technical ability to carry into effect and discharge its obligations under this Deed) is true and accurate in all material respects and is not misleading, whether by omission or otherwise;
- (h) it has, and the Key Personnel have, the required qualifications, resources, ability, experience, expertise, skills and capacity to execute the Works and perform the Services in a professional manner and in all respects as set out in this Deed; and
- (i) in relation to the tender submitted by the Purchaser in response to the Tender Notice, it had not up to the Effective Date:
- (i) communicated its land premium offer to any person other than the Government;
 - (ii) fixed its land premium offer by arrangement with any person;
 - (iii) made any arrangement with any person as to whether it or that other person was to submit a tender; or
 - (iv) colluded with any person in any manner whatsoever in the tendering process.

11.2 The Purchaser acknowledges and agrees that the Government has entered into this Deed in reliance on the warranties and representations in this clause 11. If, during the Term, any of the warranties and representations given to the Government in this clause 11 ceases to be true or accurate, the Purchaser shall promptly inform the Government of the same and provide the Government with any further information as may be reasonably requested by the Government in connection therewith.

12 INDEMNITY AND LIABILITY

12.1 The Purchaser shall indemnify and keep indemnified the Government at all times from and against any and all Claims (whether in tort or otherwise) and Losses suffered or incurred by the Government or for which the Government becomes liable (notwithstanding that any such Claims or Losses may have arisen from any act or thing that the Purchaser has warranted or represented or may be authorised or

obliged to do under this Deed or the Land Grant) arising as a result of or in connection with:

- (a) any act or omission (including negligence, recklessness, tortious acts, wilful misconduct, default, unauthorised acts or wilful omissions) of the Purchaser, its employees, agents, representatives, licensees, Subcontractors or any persons who provided or provide Services at or relating to the Hospital;
- (b) any breach of this Deed by the Purchaser, regardless of whether or not such breach was caused by the Purchaser or its employees, agents, licensees, representatives, licensees, Subcontractors or any persons who provided or provide Services at or relating to the Hospital;
- (c) the use or occupation of the Lot, the Hospital, the Non-Clinical Supporting Facilities or the Accommodation Facilities; or
- (d) any notice, claim or demand to pay, do, or perform any act, matter or thing to be paid, done or performed by the Purchaser.

12.2 If Purchaser is a partnership, each partner or participant of the partnership shall be jointly and severally liable to the Government for all of the Purchaser's obligations and liabilities to the Government under this Deed.

13 LIMITATION OF LIABILITY

General

13.1 To the maximum extent permitted by law, the Government shall not be liable to the Purchaser for any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities or payment of sums under other agreements, whether direct or indirect or for any indirect, special or consequential loss or damage in connection with this Deed.

13.2 For the avoidance of doubt, nothing in this Deed limits the Government's liability in respect of death or personal injury resulting from its negligence.

14 SUBCONTRACTING

14.1 Without prejudice to the provisions of the Land Grant and subject to clauses 14.2 and 14.3, the Purchaser may only subcontract the whole or any part of, its rights and obligations under this Deed with the consent of the Government and subject to the any terms and conditions the Government may at its absolute discretion impose.

14.2 The Purchaser may subcontract those Services listed in paragraph 1 of Schedule 4 (Subcontracting) without the consent of the Government.

14.3 If the Purchaser intends to subcontract any of its rights and obligations under clause 14.1, the Purchaser shall provide the Government with at least three (3) months prior notice (or a period of notice which may be shorter than three (3) months but is reasonable taking into account the circumstances for the change as the Government may agree) of any proposed change in Subcontractors, the Government's written consent in accordance with clause 14.1 being necessary for any such change.

14.4 The Purchaser:

- (a) warrants and represents to the Government that each Subcontractor has all the necessary Authorisations in order to lawfully enter into and exercise its rights and perform its obligations under any such Subcontract;
- (b) warrants and represents to the Government that each Subcontractor is qualified, experienced and knowledgeable in the provision of the Subcontracted Services and has the required ability, experience, expertise, skills and capacity to perform the Subcontracted Services in a professional manner;
- (c) shall remain responsible to the Government for the performance of its obligations under this Deed notwithstanding the appointment of any Subcontractor and be responsible for the acts, omissions and neglects of any Subcontractor; and
- (d) shall ensure that all Subcontracts between the Purchaser and any Subcontractor shall:
 - (i) be in writing;
 - (ii) be consistent, and in no way contrary to or inconsistent, with any of the terms or provisions of this Deed and the Land Grant;
 - (iii) contain a warranty that the Subcontractor is appropriately qualified, licensed, skilled, and experienced in respect of the performance of services they are contracted by the Purchaser to perform;
 - (iv) impose obligations on a Subcontractor which are equal to those imposed on the Purchaser as set out in this Deed to the extent such obligations are relevant to the Subcontracted Services;
 - (v) include the terms as set out in paragraph 2 of Schedule 4 (Subcontracting); and
 - (vi) contain provisions enabling the Subcontracted Services to be novated to the Government, its successors and assigns, upon the Government's written request, without further consent of the Subcontractor, in the event of termination of this Deed; and
- (e) shall procure that each Subcontractor complies with the terms referred to in 14.4(d).

14.5 In subcontracting any of its obligations under this Deed, the Purchaser shall not in any way be relieved of its duties, obligations or liabilities under this Deed nor be entitled to any greater protection than it otherwise would have been entitled to had such subcontracting not been effected.

14.6 The Government may at any time or times during the Term request the Purchaser to replace a Subcontractor in the following circumstances:

- (a) the Subcontractor ceases to have the necessary Authorisations to provide the Subcontracted Services;
- (b) the Subcontractor's acts or omissions result in the Purchaser being in breach of this Deed; or

- (c) the Subcontractor is in breach of the terms of a Subcontract which are equal to those imposed on the Purchaser as set out in this Deed, including the terms set out in paragraph 2 of Schedule 4 (Subcontracting).

For the avoidance of doubt, nothing in this clause requires the Government to monitor a Subcontractor's performance.

- 14.7 The Purchaser shall comply with any request of the Government pursuant to clause 14.6 within the period of time notified to the Purchaser in such request.

PART D: CHANGES IN LAW AND VARIATIONS

15 CHANGES IN LAW

- 15.1 The Purchaser agrees that it shall bear all costs and expenses incurred in connection with its compliance with any changes to any Applicable Laws which affects this Deed, the execution of the Works or the provision of the Services.

16 VARIATIONS

- 16.1 Subject to clauses 16.2 and 16.3, this Deed may not be varied except by agreement in writing signed by duly authorised representatives of the Parties.
- 16.2 The Purchaser acknowledges and agrees that the Government shall only consider variations to this Deed which would at least meet the Minimum Requirements.
- 16.3 During the period of six (6) years from the Service Commencement Date, the Purchaser may not request any changes to the Essential Services or the Specialty Services in paragraph 1 (Services Scope), paragraph 2 (Obstetric Beds) and paragraph 4 (Packaged Charging) of Schedule 2 (Service Obligations) and items relating thereto in Schedule 2 Annexes.
- 16.4 For the avoidance of doubt, subject to clause 16.1, the Government may at any time during the Term request any changes to the terms of this Deed.

PART E: DEFAULT AND REMEDIES

17 BANK BOND AND PERFORMANCE GUARANTEE

- 17.1 To secure the Purchaser's performance of its obligations under this Deed (including the Purchaser's obligation to pay Liquidated Damages or other costs and damages) the Purchaser shall deliver to the Government:
 - (a) the duly executed Bank Bond on or before the Effective Date in accordance with the requirements set out in [clause 20 and Annex V] of the Tender Notice; and
 - (b) the duly executed Performance Guarantee on or before the Effective Date in accordance with the requirements set out in [clause 20 and Annex IV] of the Tender Notice.
- 17.2 The Purchaser shall ensure that the Bank Bond is enforceable and in place from the date of issuance until six (6) years after the Expiry Date (the "**Bank Bond Validity**

Period") unless any disputed sums remains outstanding from the Purchaser to the Government, in which case the Bank Bond shall be extended at its full value until such time as such dispute has been finally settled or determined.

- 17.3 The Purchaser shall ensure that the Performance Guarantee is enforceable and in place from the date of issuance until all obligations, warranties, duties and undertakings now or hereafter to be carried out or performed by the Purchaser under this Deed and Land Grant shall have been satisfied or performed in full to the satisfaction of the Government.
- 17.4 In the event that the Bank Bond is issued with a fixed expiry date and such expiry date may occur prior to the end of the Bank Bond Validity Period, the Purchaser shall:
- (a) ensure that the expiry date under the Bank Bond is extended to the end of the Bank Bond Validity Period; or
 - (b) deliver a replacement Bank Bond to cover the remaining term of the Bank Bond Validity Period and such replacement Bank Bond shall be issued by a bank meeting the requirements of the Bank Bond as set out in [clause 20 and Annex V] of the Tender Notice and on the same terms as the replaced Bank Bond.

Such extended or replacement Bank Bond shall be duly executed and delivered to the Government no later than twenty (20) Business Days before the fixed expiry date. Any expiry of a Bank Bond or an extension or replacement thereof shall be without prejudice to existing claims made under the Bank Bond.

- 17.5 If the Purchaser fails to provide an extension to a Bank Bond or a replacement Bank Bond pursuant to clause 17.4, the Government has the right to draw the outstanding balance of the Bank Bond and hold the same on security for compliance by the Purchaser with its obligations and liabilities under this Deed. The Government shall be entitled to make deductions against any amounts so held in respect of any claim for which it would have been entitled to draw against an extended or replacement Bank Bond (had the Purchaser provided the same pursuant to clause 17.4) but shall otherwise return to the Purchaser the remaining balance of such amounts (without any interest) if the Purchaser provides the relevant extended or replacement Bank Bond or, if no extended or replacement Bank Bond is provided, six (6) years following the Termination Date or the Expiry Date, whichever is applicable.

Drawdown and Replacement Bank Bond Period

- 17.6 In the event the Bank Bond is drawn upon to pay for any payments due and payable from the Purchaser to the Government in accordance with this Deed, the Purchaser shall provide a replacement Bank Bond from a bank meeting the requirements set out in [clause 20 and Annex V] of the Tender Notice, immediately and in any event no later than five (5) Business Days following such drawing on the Bank Bond.
- 17.7 If a Bond Replacement Event occurs, the Purchaser shall provide a replacement Bank Bond from a bank meeting the requirements set out in [clause 20 and Annex V] of the Tender Notice no later than twenty (20) Business Days after the occurrence of that Bond Replacement Event.
- 17.8 All fees, taxes and expenses associated with procuring, preparing, completing, stamping (if applicable) and enforcing the Bank Bond or replacement Bank Bond shall be paid by the Purchaser.

- 17.9 Any draw downs or enforcement of the Bank Bond or the Performance Guarantee pursuant to this Deed is without prejudice to any other rights, remedies or claims available to the Government which have accrued under this Deed, the Land Grant or any other rights or remedies of the Government.

18 LIQUIDATED DAMAGES

Guaranteed Performance Levels

- 18.1 Without limiting any clause of this Deed, the Purchaser shall from the Service Commencement Date achieve the Performance Obligations.
- 18.2 If, following the Service Commencement Date until the Expiry Date or Termination Date, whichever is the earlier, the Purchaser does not meet any or all of the Performance Obligations, then without prejudice to its right to claim common law damages for breach, the Government shall be entitled to elect to require the Purchaser to pay the Government liquidated damages ("**Liquidated Damages**") at the rate specified in Schedule 5 (Liquidated Damages) for the period commencing from the date that the Government determines that the Purchaser's performance fell below its Performance Obligations until the date that the Government is satisfied that the Purchaser is performing at the Performance Obligations.

Payment

- 18.3 Any payments of the Liquidated Damages shall be made by the Purchaser to the Government within twenty (20) Business Days of the Purchaser's receipt of an invoice from the Government which sets forth the amounts of the Liquidated Damages which are then due and payable. If such payment is not made by the Purchaser, the Government may deduct an equivalent amount from the Bank Bond.
- 18.4 It is acknowledged and agreed by the Parties that:
- (a) this Deed is an arm's length contract (and the Parties have been, or have the facility to be, properly advised before entering into this Deed);
 - (b) the Government shall suffer loss and damages in the event of failure of the Purchaser to meet the Performance Obligations;
 - (c) any Liquidated Damages which are payable under this Deed are in the nature of liquidated damages, and not a penalty, and are fair and reasonable, and not extravagant or unconscionable (having regard to the greatest loss which the Parties could reasonably anticipate at the time this Deed was made that the Government would suffer); and
 - (d) payments of any such Liquidated Damages represent a genuine and reasonable estimate of fair compensation to the Government for the losses that may reasonably be anticipated from such failure.

Effect of Liquidated Damages

- 18.5 The payment or deduction of Liquidated Damages:
- (a) is without prejudice to the Government's other rights and remedies for breach, delay or performance failures of the Purchaser; and

- (b) shall not relieve the Purchaser from its obligation to execute the Works or provide the Services, or from any other of its obligations, duties or liabilities under this Deed and the Land Grant.

19 DEFAULTS CAPABLE OF REMEDY

- 19.1 If a Default occurs which in the sole opinion of the Government is a Default which is capable of being remedied, then the Government may give the Purchaser notice in writing specifying that the Default has occurred and the nature of the Default ("**Default Notice**").
- 19.2 On receipt of a Default Notice, the Purchaser shall promptly prepare and submit to the Government for its approval a draft plan describing the actions and measures the Purchaser shall diligently pursue for the remedying or curing of the Default subject to the Default Notice ("**Draft Cure Plan**").
- 19.3 Within a reasonable period after receipt of a Draft Cure Plan pursuant to clause 19.2, the Government shall notify the Purchaser either of its:
 - (a) approval of the Draft Cure Plan; or
 - (b) rejection of the Draft Cure Plan, and provide reasons to the Purchaser for its rejection.
- 19.4 If the Government approves a Draft Cure Plan in accordance with clause 19.3(a) ("**Approved Cure Plan**") the Purchaser shall remedy or cure the Default in accordance with the Approved Cure Plan within the period of time specified in the Approved Cure Plan ("**Applicable Cure Period**").
- 19.5 Without prejudice to any other rights or remedies the Government may have in relation to any loss that may have been suffered as a result of the Default, if the Purchaser remedies or cures the Default in accordance with clause 19.4, the Default shall be deemed to have been remedied or cured with effect from the date on which full compliance with clause 19.4 is met as confirmed in writing by the Government.
- 19.6 If the Government rejects a Draft Cure Plan pursuant to clause 19.3(b), the Purchaser, in consultation in good faith with the Government, shall amend the Draft Cure Plan to meet the requirements of the Government and submit the amended Draft Cure Plan to the Government for its approval within five (5) Business Days of the date of the rejection of the Draft Cure Plan, in which case clause 19.3 shall apply to the amended Draft Cure Plan.
- 19.7 If the Government approves the amended Draft Cure Plan submitted in accordance with clause 19.6, the provisions of clause 19.4 shall be applicable. If the Government does not approve the amended Draft Cure Plan, then the Default shall be deemed a Default not capable of being remedied for the purposes of clause 21.

20 STEP-IN RIGHTS

- 20.1 If:
 - (a) a Termination Event (other than the event specified in clause 21.1(i)) occurs and this Deed is not terminated; or

(b) the Government reasonably forms the opinion that unless the Government exercises some or all of its rights under this clause 20, there is or is likely to be:

- (i) a hazard to users of the Hospital or the public;
- (ii) a material risk of substantial damage to the Lot or the Hospital; or
- (iii) a material risk to the environment,

then the Government may elect to, and if it so elects the Purchaser shall assist the Government wherever and however possible to ensure that the Government or any third party designated by the Government is able to:

- (c) temporarily take or assume total or partial possession, management and control of the Hospital or the Services; and
- (d) take such other steps as in the reasonable opinion of the Government are necessary or desirable to continue the provision of the Services in accordance with the Service Obligations and Schedule 2 Annexes as required by this Deed or to minimise:
 - (i) a hazard to users of the Hospital or the public;
 - (ii) a material risk of substantial damage to the Lot or the Hospital; or
 - (iii) a material risk to the environment,

as applicable

(each a **"Step-in Right"**).

20.2 For the avoidance of doubt, the reference in clause 20.1(c) includes the right of the Government, or any third party designated by the Government, to use all or some of the Hospital Equipment, Hospital Facilities and Personal Data of employees and patients of the Hospital for the purpose of exercising a Step-in Right.

20.3 Unless it is not reasonably practical to do so, the Government shall give prior notice to the Purchaser of its decision to exercise a Step-in Right.

20.4 Upon the Government exercising any of its Step-in Rights, the Purchaser's rights and obligations under this Deed are suspended to the extent necessary to permit the Government to exercise such a Step-in Right.

20.5 The Purchaser:

- (a) irrevocably, and as security for the performance of the Purchaser's obligation under this Deed, appoints the Government, and such persons as are from time to time designated by the Government, jointly and severally as its attorney with full power and authority to exercise a Step-in Right; and
- (b) agrees to ratify and confirm whatever action an attorney appointed under clause 20.5(a) takes in accordance with that clause.

20.6 If the Government has exercised a Step-in Right, the Government may cease to exercise such a Step-in Right at any time and in any event shall cease to exercise a Step-in Right as soon as:

- (a) if the Government has exercised a Step-in Right pursuant to clause 20.1(a), the applicable Termination Event is cured or remedied or rectified or the Government ceases to pursue a cure or remedy of the relevant Default; or
- (b) if the Government has exercised a Step-in Right pursuant to clause 20.1(b), the relevant hazard or material risk is averted or overcome or, where it has materialised, its consequences have been mitigated or otherwise dealt with to the Government's reasonable satisfaction,

(each a **"Step-Out Event"**).

20.7 Unless it is not reasonably practical to do so, the Government shall give prior notice to the Purchaser of its decision to cease exercising a Step-In Right.

20.8 The Purchaser acknowledges and agrees that:

- (a) the Government shall not have any liability to the Purchaser, and the Purchaser shall not be entitled to make any Claim, arising out of or in connection with the exercise of a Step-in Right by the Government unless the Government acts in bad faith in the exercise of such a right;
- (b) the Government is not obliged to remedy or cure any Default or to overcome or mitigate any hazard, risk or hazard or risk consequences in respect of which the Government exercises a Step-in Right;
- (c) the exercise of a Step-in Right, subject to clause 20.8(d), does not limit any other right of the Government under this Deed, including any rights arising pursuant to the applicable Default; and
- (d) upon the Government ceasing to exercise a Step-in Right pursuant to clause 20.6:
 - (i) the Purchaser shall immediately recommence performance of the Purchaser's obligations which were suspended pursuant to clause 20.4; and
 - (ii) the Government shall, at the cost and expense of the Purchaser, give reasonable assistance to the Purchaser to ensure that the process of the Government ceasing to exercise such a Step-in Right and the Purchaser recommencing to perform its obligations is effected as smoothly as possible.

20.9 The exercise by the Government of a Step-in Right shall not obligate the Government in any way to provide any Services in accordance with the terms of this Deed including the Service Obligations and Schedule 2 Annexes.

PART F: TERMINATION

21 TERMINATION

21.1 At any time after the occurrence of the following events, the Government may terminate this Deed immediately on notice to the Purchaser:

- (a) a Default which is not capable of being remedied;

- (b) a Default which is subject to an Approved Cure Plan which is not remedied during the Applicable Cure Period;
- (c) the Land Grant Termination;
- (d) if the Purchaser becomes Insolvent;
- (e) a Change of Control in the Purchaser without the prior written consent of the Government;
- (f) the Purchaser wholly or substantially abandons the Hospital;
- (g) it becomes unlawful for the Purchaser to operate all or a material part of the Hospital;
- (h) as a result of a Force Majeure Event in accordance with clause 23.6;
- (i) a Step-Out Event has not occurred within three (3) months from the date of the event triggering a Step-in Right;
- (j) the Purchaser does not comply with its probity obligations under clauses 29.1 and 29.5;
- (k) the Purchaser is in breach of any of the warranties or representations in this Deed,

(**"Termination Events"**).

- 21.2 If this Deed is terminated by the Government pursuant to clause 21.1, such termination shall be at no loss or cost to the Government and the Purchaser hereby indemnifies the Government against any such losses or costs which the Government may suffer as a result of any such termination pursuant to clause 21.1.
- 21.3 Termination of this Deed pursuant to clause 21.1 is without prejudice to any other rights, remedies or claims available to the Government which have accrued under this Deed, the Land Grant or any other rights or remedies of the Government.

22 EXIT MANAGEMENT PLAN AND CONSEQUENCES OF TERMINATION

- 22.1 The Purchaser shall, at least one (1) year prior to the Scheduled Service Commencement Date, submit to the Government a draft Exit Management Plan to ensure the orderly cessation of operation and closure of the Hospital or transition of the Services from the Purchaser to the Government or any third party designated by the Government in the event of termination or expiry of this Deed for any reason. Following its review of the Exit Management Plan, the Government may either:

- (a) require amendments to the Exit Management Plan; or
- (b) approve the Exit Management Plan.

The Purchaser shall immediately make any amendments as reasonably required by the Government.

- 22.2 The Purchaser shall conduct a review on a two (2) yearly basis of the Exit Management Plan, and shall update and revise the Exit Management Plan:
 - (a) following a review of the Exit Management Plan, but only to the extent required to reflect any changes in the Services since the last review;

- (b) immediately on notice of termination of this Deed; and
 - (c) twelve (12) months prior to the Expiry Date.
 - 22.3 The Purchaser shall submit the revised Exit Management Plan to the Government for its review. Following its review of the revised Exit Management Plan, the Government may either:
 - (a) require amendments to the revised Exit Management Plan; or
 - (b) approve the revised Exit Management Plan.
- The Purchaser shall immediately make any amendments as reasonably required by the Government.
- 22.4 On the Termination Date or Expiry Date, whichever is the earlier, the Government may elect whether or not all or part of the Exit Management Plan shall be implemented. In the event that the Government elects the implementation of all or part of the Exit Management Plan, the Purchaser shall comply with the Exit Management Plan and co-operate fully with the Government to ensure an orderly cessation of operation and closure of the Hospital or transition of the Services and handover of the Hospital to the Government or, at the Government's request, a third party designated by the Government.
 - 22.5 On the Termination Date or Expiry Date, whichever is the earlier, the Government may exercise its rights under Special Condition No.19 [Termination] of the Land Grant.
 - 22.6 Within the twelve (12) month period after the Termination Date or Expiry Date, whichever is the earlier, the Government may, or a third party designated by the Government may, at the Government's option, elect to purchase or lease all or some of the Hospital Equipment or Hospital Facilities (other than those which are fixtures to the Lot or part thereof, which shall become Government's property upon the surrender, re-entry or Government's taking back of possession of the Lot or the part thereof concerned):
 - (a) at an amount calculated in accordance with clause 22.7; and
 - (b) on terms and conditions to be mutually agreed by the Parties.
 - 22.7 The amount of purchase price or rental of any Hospital Equipment or Hospital Facilities purchased or leased by the Government in accordance with clause 22.6 shall be determined by a independent professional valuer of such hospital equipment or facilities to be appointed by the Parties by mutual agreement. The cost of a valuation under this clause 22 shall be borne equally by the Government (or its designated third party) and the Purchaser.

23 FORCE MAJEURE

- 23.1 In the event that the Purchaser is delayed or prevented from performing its obligations under this Deed by a Force Majeure Event, the Purchaser shall:
 - (a) at the earliest possible opportunity, give notice in writing to the Government of the Force Majeure Event, stating the:
 - (i) nature and cause of the Force Majeure Event;

- (ii) commencement date of the Force Majeure Event;
 - (iii) manner in which its performance of its obligation under this Deed will be delayed or prevented; and
 - (iv) likely duration in which its performance of its obligations under this Deed will be delayed or prevented by such Force Majeure Event;
 - (b) use all reasonable endeavours to mitigate the effects of the Force Majeure Event on the performance of its obligations under this Deed; and
 - (c) resume performance of its obligations as soon as reasonably possible after the removal of the cause of the Force Majeure Event.
- 23.2 Within five (5) Business Days after the giving of notice in clause 23.1 of a Force Majeure Event, the Purchaser shall provide proof, in reasonable detail, of the matters set out in clause 23.1(a).
- 23.3 Notwithstanding any provision of this clause, the Purchaser cannot claim relief if the Force Majeure Event is:
- (a) attributable to its wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event; or
 - (b) one where a reasonable service provider in the position of the Purchaser should have foreseen and provided for the cause in question.
- 23.4 As soon as practicable following the Purchaser's notification of the Force Majeure Event, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate measures to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Deed, which includes taking or procuring the taking of all steps to overcome or minimise the consequences of the Force Majeure Event in accordance with best industry practice.
- 23.5 The Purchaser shall notify the Government as soon as practicable after the Force Majeure Event ceases or no longer causes the Purchaser to be unable to comply with its obligations under this Deed. Following such notification, this Deed shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the Parties.
- 23.6 The Government may, during the continuance of any Force Majeure Event, terminate this Deed by notice to the Purchaser if a Force Majeure Event occurs that affects all or a substantial part of the Services and which continues for more than twenty (20) Business Days.

24 SURVIVAL

- 24.1 All terms of this Deed that, by their nature, are intended to survive termination or expiration shall survive any termination or expiration, including without limitation the following clauses: clause 9 (Audit and Access), clause 12 (Indemnity and Liability), clause 13 (Limitation of Liability), clause 17 (Bank Bond and Performance Guarantee), clauses 21.2 and 21.3 (Termination), clause 22 (Exit Management Plan and Consequences of Termination), clause 26 (Intellectual Property), clause 27 (Confidentiality), clause 30 (General) and Schedule 1 (Definitions and Interpretation).

PART G: DISPUTE RESOLUTION

25 ESCALATION AND DISPUTE RESOLUTION

- 25.1 Except where expressly provided otherwise in this Deed, any dispute arising out of or in connection with this Deed shall be resolved in accordance with the procedure set out in Schedule 3 (Escalation and Dispute Resolution).

PART H: INTELLECTUAL PROPERTY, DATA PROTECTION AND CONFIDENTIALITY

26 INTELLECTUAL PROPERTY

- 26.1 The Purchaser acknowledges and agrees that the Government is the owner of all Intellectual Property Rights, whether existing as at the Effective Date or created afterwards, in and to any documents or other works provided to the Purchaser in connection with this Deed.
- 26.2 The Government acknowledges and agrees that the Purchaser is the owner of all Intellectual Property Rights, whether existing as at the Effective Date or created afterwards, in and to any documents or other works provided to the Government in connection with this Deed ("**Purchaser Works**"). The Purchaser hereby grants to the Government and its authorised users a non-exclusive, transferable, royalty-free, irrevocable, worldwide and perpetual licence to use, reproduce, modify, adapt and create derivative works of the Purchaser Works for the purposes contemplated in this Deed.
- 26.3 To the extent permissible by law, in relation to the Purchaser Works and the Disclosable Information to the extent it is created by or under the direction of the Purchaser, the Purchaser shall grant or procure from any author involved in the creation of the Purchaser Works :
- (a) a waiver or a consent in favour of the Government and its authorised users of all of the Purchaser's or any such author's rights in connection with its or their authorship of the Purchaser Works or the Disclosable Information (as the case may be), including any moral rights relating thereto;
 - (b) an agreement or consent to all acts and omissions by the Government and its authorised users which would otherwise infringe the Purchaser's or the author's moral or other rights in the Purchaser Works or the Disclosable Information (as the case may be); and
 - (c) an agreement not to assert any such moral or other rights in relation to the Purchaser Works or the Disclosable Information (as the case may be).

Such waiver, consent or agreement shall take effect from the grant of the licence for the Intellectual Property Rights pursuant to clauses 26.2 or 27.2 (as the case may be).

27 CONFIDENTIALITY

- 27.1 Subject to clauses 27.2 and 27.3, the Purchaser shall not use or disclose and shall keep confidential all matters relating to this Deed and shall use its best endeavours to prevent its employees, agents, representatives and Subcontractors from making any use or disclosure to any person of any matters relating hereto.

- 27.2 The Government reserves the right to disclose to any third party the Disclosable Information as it deems appropriate and the Purchaser grants to the Government a non-exclusive, transferable, royalty-free, irrevocable worldwide and perpetual licence to publish, distribute, make available and communicate the Disclosable Information for this purpose.
- 27.3 Clause 27.1 shall not apply to any disclosure of information:
- (a) required by any Applicable Law;
 - (b) that is reasonably required by any persons engaged by the Purchaser in the performance of the Purchaser's obligations under this Deed (provided such third person is itself subject to confidentiality obligations with respect to the information);
 - (c) where the Purchaser can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 27.1;
 - (d) to enable a determination to be made under Schedule 3 (Escalation and Dispute Resolution); or
 - (e) which is already lawfully in the possession of the Purchaser, prior to its disclosure by the Government.

28 DATA PROTECTION

- 28.1 The Purchaser shall (and shall procure that any of the Purchaser's personnel or Subcontractors involved in the provision of the Services):
- (a) comply with its obligations under the PDPO;
 - (b) only use the Personal Data as reasonably required in connection with the provision of the Services;
 - (c) comply with the procedures or processes notified to the Purchaser by the Government with respect to Personal Data from time to time;
 - (d) implement and maintain all reasonable technical and organizational measures to maintain security, prevent unauthorized or unlawful access to or processing of Personal Data and accidental loss or destruction of, or damage to, Personal Data; and
 - (e) give the Government notice as soon as the Purchaser becomes aware of any breach of its data protection obligations under this Deed, any enforcement proceeding against it under the PDPO or any unauthorised access to, or accidental disclosure of, any Personal Data.
- 28.2 Unless the Government requires in writing otherwise, the Purchaser shall not disclose the Personal Data to any third parties other than:
- (a) to employees and Subcontractors to whom the disclosure is necessary for the provision of the Services, provided it is made subject to obligations of confidentiality no less onerous than those imposed upon the Purchaser and is consistent with any procedures specified by the Government from time to time; or

- (b) to the extent required by any Government Instrumentality, provided the Purchaser gives notice to the Government of any such disclosure promptly after it becomes aware of that requirement.
- 28.3 At the time of collection of Personal Data from a data subject by the Purchaser or its Subcontractors, the Purchaser shall or shall ensure that:
 - (a) it notifies such data subjects; and
 - (b) each Subcontractor notifies such data subjects,that the data may be used or accessed by the Government or a third party in the event that the Government or a third party assumes the operation of the Hospital in accordance with this Deed for any reason.

PART I: MISCELLANEOUS

29 PROBITY

- 29.1 The Purchaser shall prohibit its employees, agents and Subcontractors who are involved in or in relation to this Deed from offering, soliciting or accepting any advantage as defined in the Prevention of Bribery Ordinance (Cap. 201 Laws of Hong Kong) when conducting business in connection with this Deed.
- 29.2 The Purchaser shall issue to each of its employees, agents and Subcontractors who are involved in or in relation to this Deed a copy of this clause on the Effective Date (or if such employees, agents or Subcontractors are engaged after the Effective Date, on the date of engagement).
- 29.3 The Purchaser shall give and shall ensure that the Government Representative is given all relevant information relating to the performance of the obligations set out in this clause 29 upon request.
- 29.4 If any part of this Deed is subcontracted to or by any person, the Purchaser shall ensure that the probity clause in Schedule 4 (Subcontracting) is included in all Subcontracts (whether or not the Purchaser is a party to such Subcontracts).
- 29.5 The Purchaser shall:
 - (a) procure any contracts pursuant to this Deed by a fair, transparent and competitive bidding process;
 - (b) during any procurement process pursuant to this Deed, follow procedures reasonably intended to identify Subcontractors and other professionals of appropriate quality, capabilities and calibre so that the services meet appropriate quality standards and are provided in a cost-efficient manner; and
 - (c) report to the Government on any agreements or transactions with its related companies/persons] in relation to the Services, this Deed or Land Grant, as and when required by the Government.
- 29.6 If this Deed is terminated in accordance with clause 21.1(j), due notice will be taken by the Government of the breach which may prejudice the standing, approval or eligibility of the Purchaser (as contractor or subcontractor) for inclusion or

consideration in any approved list or pre-qualification exercise for Government contracts.

30 GENERAL

Savings

- 30.1 The Government's obligations under this Deed as a commercial contracting party shall not fetter the powers, discretions and duties of any Government departments or officers under the Applicable Law.

Notices

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

If to Purchaser

Address:

Fax No:

Attention: [state position]

If to the Government

Address:

Fax No:

Attention: [state position]

- 30.3 Where any information or documentation is to be provided or submitted to the Purchaser Representative, it shall be provided or submitted by sending the same by post, facsimile or by hand, leaving the same at:

Address:

Fax No:

- 30.4 Either Party to this Deed may change its nominated address or facsimile number or recipient by prior notice to the other Party.

- 30.5 Notice given by post shall be effective upon the earlier of (i) actual receipt, and (ii) five (5) Business Days after mailing. Notices delivered by hand shall be effective upon delivery. 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 11am 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.

Assignment

- 30.6 The Purchaser may not assign, novate or otherwise dispose of any or all of its rights and obligations under this Deed without the prior written consent of the Government.

Releases and waivers

- 30.7 The rights, powers and remedies conferred on any Party by this Deed and remedies available to any Party are cumulative and are additional to any right, power or remedy which it may have under general law or otherwise.
- 30.8 Any 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 Deed by any 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.
- 30.9 Any relaxation, forbearance, indulgence or delay (together "indulgence") of any 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).

No Agency

- 30.10 Nothing in this Deed shall be construed as creating a partnership or as a contract of employment between the Government and Purchaser.
- 30.11 Save as expressly provided otherwise in this Deed, Purchaser shall not be, or be deemed to be, an agent of the Government and Purchaser shall not hold itself out as having the power to bind the Government in any way.

Entire Agreement

- 30.12 Except where expressly provided otherwise in this Deed, this Deed 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 Deed.

Severability

- 30.13 If any provision of this Deed shall be declared invalid, unenforceable or illegal by the courts of any competent jurisdiction to which it is subject or HKIAC as that term is defined in paragraph 1.1 of Schedule 3 (Escalation and Dispute Resolution), 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 Deed 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.

Counterparts

- 30.14 This Deed may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the Parties shall constitute a full original of this Deed for all purposes.

Costs and Expenses

30.15 Each Party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution of this Deed.

Governing Law and Jurisdiction

30.16 This Deed is governed by and construed in accordance with the laws of Hong Kong. The Purchaser waives all defences of lack of personal jurisdiction and forum non conveniens. The choice of jurisdiction set out in Schedule 3 (Escalation and Dispute Resolution) does not prevent either Party from seeking injunctive relief with respect to a violation of intellectual property rights or confidentiality in any appropriate jurisdiction.

Further Assurance

30.17 Each Party shall do all things and execute all further documents necessary to give full effect to this Deed.

Change of Control

30.18 The Purchaser shall not undergo a Change of Control without the prior written consent of the Government.

IN WITNESS WHEREOF this Deed has been executed by the Parties and is intended to be and is hereby delivered on the day and year first above written.

SIGNED, SEALED and DELIVERED)
by [NAME], [TITLE])
for and on behalf of)
The Government of the Hong Kong)
Special Administrative Region)
in the presence of:)

Witness
Signature: _____

Name: _____

Address: _____

SEALED with the COMMON SEAL of)
 [NAME OF THE PURCHASER])
 and SIGNED by [NAME], [TITLE])
 as a duly authorized signatory)
 in the presence of:)

Witnesses
Signature: _____
Name: _____
Address: _____

Schedule 1 – Definitions and Interpretation

1 Interpretation

1.1 In this Deed:

- (a) clause, schedule and paragraph headings do not affect the interpretation of this Deed;
- (b) the schedules and annexes which form part of this Deed have effect as if set out in full in the body of this Deed and any reference to this Deed includes the schedules and the annexes;
- (c) references to clauses and schedules are to the clauses and schedules of this Deed and references to paragraphs are to the paragraphs in the schedules;
- (d) words in the singular shall include the plural and vice versa;
- (e) a gender includes all genders;
- (f) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (g) a reference to a person includes a natural person, corporate or unincorporated body or statutory body (whether or not having separate legal personality) or any other entity and that person's legal and personal representatives, successors and permitted assigns;
- (h) a reference to this Deed is this Deed as amended, varied, supplemented, novated or replaced, except to the extent prohibited by this Deed;
- (i) a reference to a certain document (including legislation) in this Deed or to a provision of legislation includes a modification of such a document or re-enactment of the legislation, a legislative provision substituted for it and a regulation or statutory instrument issued or made under it;
- (j) a reference to writing or written includes faxes;
- (k) a reference to a time of a day shall be construed as a reference to Hong Kong time; and
- (l) any words following the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2 Definitions

2.1 In this Deed, words that are not defined have the meaning given to them in the Land Grant.

2.2 In this Deed:

- (a) **Applicable Law** means all applicable laws, bye-laws, regulations, policies and codes of conduct, including the Code of Practice.
- (b) **Approved Cure Plan** has the meaning given to it in clause 19.4.

- (c) **Applicable Cure Period** has the meaning given to it in clause 19.4.
- (d) **Authorisations** means permits, licences, approvals and authorisations of any nature.
- (e) **Bank Bond** means the bank bond in substantially the form set out in Annex [V] of the Tender Notice, and includes any replacement bank bonds in accordance with clause 17.7.
- (f) **Bank Bond Validity Period** has the meaning given to it in clause 17.2.
- (g) **Bond Replacement Event** means in respect of the Bank Bond (i) if the issuing bank becomes Insolvent; or (ii) the issuing bank ceases to be licensed under the Banking Ordinance (Cap. 155) or the issuing bank's licence issued pursuant to such Ordinance has been suspended in accordance with such Ordinance; or (iii) the Bank Bond becoming invalid or unenforceable.
- (h) **Business Day** means any day (other than a Saturday or Sunday) on which banks generally are open in Hong Kong.
- (i) **Change of Control** means:
 - (i) If the Purchaser is a company:
 - (A) a change in the shareholding or equity interest representing at least fifteen percentage (15%) of total issue share capital or total equity of the Purchaser;
 - (B) any other event such that a change occurs in the control (as described in (I), (II) or (III) below) of the Purchaser or any company which is a holding company of the Purchaser from that which existed at the Effective Date (whether occurring at one time or through a series or succession of transactions); or
 - (C) a change in the corporate structure of the Purchaser or any company which is a holding company of the Purchaser, which results in a person other than the shareholder of the Purchaser as at the Effective Date:
 - I controlling the composition of the board of directors of the Purchaser;
 - II controlling the voting power of the board of directors or any class of shareholders of the Purchaser, or both; or
 - III holding more than one half of the issued share capital (either beneficially or otherwise) of the Purchaser; or
 - (ii) if the Purchaser is a partnership, a change in any of the partners in the partnership.
- (j) **Claim** means all actions, proceedings, costs, claims and demands whatsoever.
- (k) **Code of Practice** means the Code of Practice for Private Hospitals, Nursing Homes and Maternity Homes issued by the Department of Health of the Government.

- (l) **Consolidation Order** has the meaning given to it in paragraph 2.9(a) of Schedule 3 (Escalation and Dispute Resolution).
- (m) **Deed** means this deed (including all schedules and annexes to it).
- (n) **Default** means a breach of this Deed.
- (o) **Default Notice** has the meaning given to it in clause 19.1.
- (p) **Director of Health** means the Director of Health of the Government.
- (q) **Disclosable Information** means :
 - (i) this Deed;
 - (ii) the Land Grant; and
 - (iii) any reports or information submitted to the Government in accordance with clause 8.
- (r) **Dispute** means a dispute, controversy, difference or claim between the Parties arising out of or in relation to this Deed.
- (s) **Draft Cure Plan** has the meaning given to it in clause 19.2.
- (t) **DRG System** means the International Refined Diagnosis Related Groups System, or any other Diagnosis Related Groups System as approved by the Government from time to time.
- (u) **Effective Date** means the date of this Deed.
- (v) **Eligible Person** means:
 - (i) a holder of a Hong Kong Identity Card; or
 - (ii) a child under eleven (11) years of age who is a resident of Hong Kong.
- (w) **Essential Services** means:
 - (i) general medicine with or without medical sub-specialities;
 - (ii) general surgery with or without surgical sub-specialities;
 - (iii) orthopaedics and traumatology; and
 - (iv) gynaecology.
- (x) **Exit Management Plan** means a plan for the orderly transition of Services from the Purchaser to the Government or a third party designated by the Government, or for ending operation and closure of the Hospital, in the event of termination or expiry of this Deed.
- (y) **Expiry Date** means the date of expiry of the term of the Land Grant.
- (z) **Force Majeure Event** means any cause affecting the performance of the Purchaser's obligations under this Deed arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding:

- (i) any industrial dispute relating to the Purchaser, the Purchaser's employees or any other failure in the Purchaser's supply chain; or
 - (ii) any widespread disease or epidemic.
- (aa) **Governmental Instrumentality** means the government of Hong Kong, and any bureau, department or political subdivision of the government of Hong Kong, and any individual or entity under the direct or indirect control of any such government exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government or any other governmental entity, instrumentality, agency, authority, board, corporation, committee or commission, trust or any independent regulatory authority, in each case within Hong Kong, and any successor to or any assignee of any of the foregoing.
- (bb) **Government Representative** means any representative of the Government or any public officer as designated by the Government from time to time for the purpose of this Deed.
- (cc) **HKIAC** has the meaning given to it in paragraph 1.1 of Schedule 3 (Escalation and Dispute Resolution).
- (dd) **Hong Kong** means Hong Kong, Special Administrative Region of the People's Republic of China.
- (ee) **Hong Kong Identity Card** means an identity card as those terms are defined in the Registration of Persons Ordinance (Cap. 177 Laws of Hong Kong).
- (ff) **Hospital Bed** or **Bed** means beds in the Hospital for accommodation of patients, including in-patients, day patients and babies, as determined by the Director of Health in his sole and absolute discretion.
- (gg) **Hospital Equipment** means the equipment in the Hospital required for the operation of the Hospital in accordance with this Deed.
- (hh) **Hospital Facilities** means the facilities in the Hospital required for the operation of the Hospital in accordance with this Deed.
- (ii) **In-Patient Bed Days** means for each Hospital Bed, a day on which that Hospital Bed was occupied at midnight by an in-patient (which, for the avoidance of doubt, shall not include day patients or out patients).
- (jj) **Insolvent** means the occurrence of any of the following events in relation to an entity:
 - (i) that the entity is unable or admits inability to pay its debts as they fall due or suspends making payments on any of its debts other than in connection with a bona fide dispute;
 - (ii) any appointment of a receiver or administrator in respect of the entity by a Government agency;
 - (iii) any corporate action, legal proceedings or other procedure or step in respect of the winding-up of the entity or the appointment of an insolvency practitioner to manage the entity or any of its affairs; or

- (iv) any corporate action, legal proceedings or other procedure or step taken in relation to:
 - (A) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, bankruptcy or reorganization (by way of voluntary arrangement, scheme of arrangement or otherwise) of the entity; or
 - (B) a composition, assignment or arrangement with any material creditor of the entity,
 or any analogous procedure or step taken in any jurisdiction.
- (kk) **Intellectual Property Rights** means any patents, copyrights (including derivative works), trade marks, moral rights, design rights and any other intellectual property or proprietary right arising at any time under the laws of any jurisdiction.
- (ll) **Key Personnel** means those personnel identified in the Schedule 2 Annexes and those persons substituted or replaced in accordance with clause 7.
- (mm) **Key Personnel Period** has the meaning given to it in clause 7.1.
- (nn) **Land Grant** has the meaning given to it in Recital D.
- (oo) **Land Grant Termination** means any of the following:
 - (i) the expiry of the term of the Land Grant;
 - (ii) the termination of the Land Grant pursuant to the terms thereof and/or Applicable Laws;
 - (iii) the re-entry of the Lot by the Government pursuant to the terms of the Land Grant and/or Applicable Laws;
 - (iv) the Land Grant being rescinded, avoided, annulled or otherwise ceasing to be valid or effective for any reason; or
 - (v) the Purchaser ceasing to have any estate, right, title, benefit or interest in the Lot as Purchaser under the Land Grant.
- (pp) **Liquidated Damages** has the meaning given to it in clause 18.2.
- (qq) **Loss** means any liability (including legal expenses) of any kind whatsoever and includes direct and indirect, consequential or special damage, loss of profits, loss of use, loss of revenue, anticipated revenue, interest or other such claim arising from any cause whatsoever whether or not such loss, damage or claim is based on contract, statute, warranty, tort (including negligence), indemnity or otherwise.
- (rr) **Material Incident** has the meaning given in clause 8.3.
- (ss) **Minimum Requirements** means those land and service related mandatory requirements, minimum acceptable levels and conditions in the conditions of sale and service deed with respect to the Hospital as set out respectively in Sections I, II and III in Annex I of the Tender Notice.

- (tt) **Obstetric Beds** means the Hospital Beds provided for maternity services. For the avoidance of doubt, Obstetric Beds excludes Hospital Beds for newborn babies.
- (uu) **Package Service** means the offering of the Essential Service and Specialty Services to a patient in a Standard Bed at an all-inclusive price. For the avoidance of doubt, a Package Service includes all costs relating to the clinical service and includes the costs of doctor's fees, maintenance fees, diagnostic procedures, surgical operations, laboratory testing, X-ray test, drugs and other miscellaneous items.
- (vv) **Parties** means the parties to this Deed and "**Party**" means any one of them.
- (ww) **Performance Guarantee** means the Performance Guarantee described in clause [IV] of the Tender Notice.
- (xx) **Performance Obligations** means those obligations of the Purchaser listed in column two of the table in Schedule 5 (Liquidated Damages).
- (yy) **Personal Data** has the meaning given to it in the PDPO.
- (zz) **PDPO** means the Personal Data (Privacy) Ordinance (Cap. 486 Laws of Hong Kong).
- (aaa) **Project** means (i) the development, financing, design, engineering, procurement, manufacture, factory testing, transportation, construction, erection, installation, equipping, completion, testing, commissioning, insurance, ownership, operation and maintenance of the Hospital and all necessary facilities and equipment related thereto, located at Aberdeen Inland Lot No. 458, Hong Kong (ii) provision of the Services, and (iii) all activities incidental to any of the foregoing, in accordance with this Deed and the Land Grant.
- (bbb) **Prudent Operating Practice** means those practices, methods, equipment, specifications and standards of safety and performance, (as the same may change from time to time) and that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in the same type of undertaking under the same or similar circumstances, and in any event, in line with internationally applicable medical services standards and practices.
- (ccc) **Purchaser Representative** means the individual notified to the Government as being the Purchaser Representative in accordance with clause 10.1 or any replacement individual.
- (ddd) **Purchaser Works** has the meaning given to it in clause 26.2.
- (eee) **Schedule 2 Annexes** means the annexes to Schedule 2 (Service Obligations).
- (fff) **Schedule of Development of the Lot** means the schedule for the Works set forth in the Schedule 2 Annexes, as amended from time to time in accordance with the terms of this Deed.
- (ggg) **Scheduled Service Commencement Date** means the date set out in column 2 of item (I) in Part B of the schedule to the Land Grant.

- (hhh) **Services** means any or all of the clinical and non-clinical services provided in connection with the Hospital, the Non-Clinical Supporting Facilities and the Clinical and Clinical Supporting Facilities, including the Essential Services and the Specialty Services, in accordance with the requirements of this Deed and the Land Grant.
- (iii) **Service Commencement Date** means the date of the Commencement Certificate.
- (jjj) **Service Obligations** means the obligations listed in Schedule 2 (Service Obligations).
- (kkk) **Service Period** means the period from the Service Commencement Date until the Termination Date or Expiry Date, whichever is the earlier.
- (lll) **Services Price List** has the meaning given to it in paragraph 3 of Schedule 2 (Service Obligations).
- (mmm) **Service Year** means a calendar year from 1 January to 31 December of a year, except that:
- (i) during the first year in which the Service Commencement Date occurs, from the Service Commencement Date to 31 December of that year; and
 - (ii) during the year in which the Termination Date or Expiry Date occurs, from 1 January of that year until the Termination Date or Expiry Date, whichever is the earlier.
- (nnn) **Shortfall Add-on** has the meaning given to it in paragraph 4.3 of Schedule 2 (Service Obligations).
- (ooo) **Specialty Services** means those services listed in the Schedule 2 Annexes under the heading "Specialty Services".
- (ppp) **Standard Bed** means, where more than one category or class of Hospital Beds are provided in the Hospital differentiated by the fees charged for the patient's occupancy, all in-patient beds in the category or class for which the lowest level of occupancy fee and related fees are charged. For the avoidance of doubt, if there is only one category or class of Hospital Beds provided by the Purchaser, such category or class of Hospital Beds shall be a Standard Bed.
- (qqq) **Step-in Right** has the meaning given to it in clause 20.1.
- (rrr) **Step-Out Event** has the meaning given to it in clause 20.6.
- (sss) **Subcontract** means any contract between the Purchaser and a third party pursuant to which the Purchaser agrees to source the provision of any of the Services from that third party.
- (ttt) **Subcontractor** means the contractors or service providers that enter into a Subcontract with the Purchaser.
- (uuu) **Subcontracted Services** means those Services to be provided pursuant to this Deed through a Subcontractor in accordance with clause 14.

(vvv) **Term** means the term of this Deed, as defined in clause 2.1.

(www) **Termination Date** means the date this Deed is terminated in accordance with clause 21.1.

(xxx) **Termination Event** means any of the events triggering termination set out in clause 21.1.

(yyy) **Tender Notice** has the meaning given to it in Recital B.

(zzz) **Tribunal** has the meaning given to it in paragraph 2.3 of Schedule 3 (Escalation and Dispute Resolution).

(aaaa) **Works** means all design, planning, engineering, procurement, supply, manufacturing, factory testing, transport, delivery, construction, erection, installation, completion, pre-commissioning, commissioning, testing, insurance, labour, supervision, training, services, facilities, equipment, supplies, tools, materials and spare parts, utilities and consumables to be furnished by the Purchaser or its Subcontractors or that may be required (i) to design, build, test and complete the Hospital and its related facilities, or (ii) meet other obligations set forth in this Deed and the Land Grant (other than provision of the Services), all in accordance with this Deed and the Land Grant.

Schedule 2 – Service Obligations

1 Services Scope

- 1.1 The Purchaser shall provide the Essential Services, the Specialty Services and the Clinical and Clinical Supporting Facilities.

2 Obstetric Beds

- 2.1 The number of Obstetric Beds shall not be more than the percentage designated in the Schedule 2 Annexes of the total number of Hospital Beds to be provided in the Hospital by the Purchaser as specified in the Land Grant during any Service Year.

3 Price Transparency

- 3.1 The Purchaser shall publish a comprehensive services price list, which provides charging information on:

- (a) Room or bed charges;
- (b) Diagnostic procedures;
- (c) Therapeutic services/procedures;
- (d) Nursing care;
- (e) Medication, consumables and equipment; and
- (f) other miscellaneous items as advised by the Government from time to time,

(**“Services Price List”**),

and shall provide to patients, at regular intervals, lists of chargeable items and their respective costs.

- 3.2 The Services Price List shall be made available to the public, including through publication on the Hospital website and by making printed material readily available and displaying the Services Price List at major facilities within the Hospital, including information desks, admission offices, shroffs and pharmacies.
- 3.3 The Services Price List shall be current, up-to-date, detailed, clear and easy-to-read and provide a detailed breakdown of the costs and charges that may be incurred by a patient during his or her admission at the Hospital.

4 Packaged Charging

- 4.1 In each Service Year, the Purchaser shall provide at least the Minimum Number of the In-Patient Bed Days in that Service Year through Standard Beds as a Package Service to Eligible Persons.

The Minimum Number of In-Patient Bed Days is the percentage of the total number of In-Patient Bed Days which is designated as the “Minimum Number” for packaged charging in the Schedule 2 Annexes.

The Actual Minimum Number is the actual minimum number of In-Patient Bed Days to be provided as Standard Beds as a Package Service to Eligible Persons in a Service Year and shall be calculated as follows:

Actual minimum number = [percentage designated as the "Minimum Number" for packaged charging in the Schedule 2 Annexes] x ([total In-Patient Bed Days in a Service Year])

For example, if 30% is the relevant percentage and there are 10000 total In-Patient Bed Days in a Service Year, the actual minimum number of In-Patient Bed Days to be provided through Standard Beds as a Package Service to Eligible Persons should be 3000.

- 4.2 When determining if the Minimum Number of In-Patient Bed Days to be provided through Standard Beds as a Package Service to Eligible Persons in a Service Year has been met, the number of In-Patient Bed Days provided as Obstetric Beds shall be disregarded.
- 4.3 In the event that the Purchaser fails to provide the Minimum Number of the In-Patient Bed Days in a Service Year (Year A) through Standard Beds as a Package Service to Eligible Persons, the Purchaser shall provide at least the following number of In-Patient Bed Days through Standard Beds as a Package Service to Eligible Person in the Service Year immediately following the Service Year in which the shortfall occurred (Year B):
- (a) two times (2 x) the number of In-Patient Bed Days that were in shortfall from the Actual Minimum Number in Year A ("**Shortfall Add-on**"); and
 - (b) the Actual Minimum Number in Year B.

For example, if the total number of In-Patient Bed Days in Year A is 10000 and only 2700 In-Patient Bed Days provided through Standard Beds as a Package Service to Eligible Persons, then there is a shortfall of 300 In-Patient Bed Days in Year A. Therefore, if in Year B there are again 10000 total In-Patient Bed Days, then in Year B, the Purchaser will need to provide:

(i) 600 In-Patient Bed Days (i.e. 2 x 300= 600) (the Year A Shortfall Add-on); plus

(ii) the 3000 In-Patient Bed Days as Standard Beds as a Package Service to Eligible Persons (i.e. 30% x 10000) (the Year B Minimum Number),

being a total of 3600 In-Patient Bed Days through Standard Beds as a Package Service to Eligible Persons.

- 4.4 In relation to the Shortfall Add-on:
- (a) any In-Patient Bed Days taken up through Standard Beds provided as a Package Service to Eligible Persons in Year B shall first offset any Year A Shortfall Add-on before being offset against the Actual Minimum Number in Year B;
 - (b) the Shortfall Add-on shall only be redeemable in the Service Year immediately following the Service Year in which the shortfall occurred, that is Year B; and
 - (c) if the number of In-Patient Bed Days taken up through Standard Beds provided as a Package Service to Eligible Persons in Year B fails to meet the Year A Shortfall Add-on, then Liquidated Damages shall be payable for the deficit of the Shortfall Add-on in accordance with clause 18.2 (Liquidated Damages).

For example, if the Shortfall Add-on in Year A is 600 In-Patient Bed Days and the total number of In-Patient Bed Days in Year B is also 10000, then 3600 In-Patient Bed Days shall be provided through Standard Beds as Package Service to Eligible Persons in Year B.

Scenario 1: If only 300 In-Patient Bed Days were provided through Standard Beds as a Package Service in Year B, there would be a deficit from the Shortfall Add-on of 300 In-Patient Bed Days (i.e. 300 (In-Patient Bed Days actually provided) – 600 (Shortfall Add-on) = -300 In-Patient Bed Days).

Therefore Liquidated Damages would be payable in respect of 300 In-Patient Bed Days at the end of Year B and the Year B Shortfall Add-on would be 6000 In-Patient Bed Days (2 x 3000).

Scenario 2: If 3000 In-Patient Bed Days were provided through Standard Beds as a Package Service to Eligible Persons in Year B, then the Year A Shortfall Add-on of 600 has been met and Liquidated Damages are not payable. However, as the number of In-Patient Bed Days provided through Standard Beds as a Package Service to Eligible Persons in Year B shall first offset the Year A Shortfall Add-on of 600 In-Patient Bed Days, only 2400 In-Patient Bed Days will offset against the Actual Minimum Number for Year B. Therefore, 1200 In-Patient Bed Days will be the Year B Shortfall Add-on ((3000-2400) x 2 = 1200).

- 4.5 The Purchaser shall offer the Package Service on the basis of the DRG System.

5 Services for Eligible Persons

- 5.1 The Purchaser shall ensure that more than fifty percent (50%) (or higher percentage if designated in the Schedule 2 Annexes) of the total In-Patient Bed Days in a Service Year shall be for Services to Eligible Persons. For the avoidance of doubt, the Minimum Number of the In-Patient Bed Days in a Service Year provided through Standard Beds as a Package Service to Eligible Persons can be counted as part of the foregoing requirement.

Schedule 2 Annexes

[Insert Tenderer's proposals accepted by the Government]

[Schedule 2 Annexes must include:

- *Specialty Services*
- *Percentage cap of the number of Obstetric Beds as against the total number of Hospital Beds to be provided in the Hospital*
- *"Minimum Number" of the In-Patient Bed Days in a Service Year provided through Standard Beds as a Package Service to Eligible Persons.*
- *Percentage of In-Patient Bed Days in a Service Year for Services to Eligible Persons.*
- *Schedule of Development of the Lot*
- *Key Personnel and their respective key responsibilities*
- *Any additional proposals by the Purchaser which are accepted by the Government, for example:*
 - *Patient-care related facilities;*
 - *Manpower-to-bed ratios;*
 - *Provision of training programmes/ facilities;*
 - *Clinical governance structure].*

Schedule 3 – Escalation and Dispute Resolution

1 Mediation

- 1.1 The Parties agree to attempt to resolve any Dispute (including, for the avoidance of doubt, any question as to the existence, validity, termination or interpretation of this Deed) by first referring the Dispute to mediation at the Hong Kong International Arbitration Centre (“**HKIAC**”) and in accordance with its then current mediation rules (“**Mediation Rules**”).
- 1.2 The Parties shall agree on the appointment of a mediator. If the Parties fail to agree on the appointment of a mediator within fourteen (14) days of the receipt of a request for mediation by one Party from the other, the HKIAC shall appoint a single accredited mediator.
- 1.3 Each Party shall bear its own costs of the mediation. The language of the mediation shall be English.
- 1.4 If the mediation is either (i) terminated by the agreement of the Parties or by reason of any of the matters set out in the Mediation Rules; or (ii) abandoned by the mediator; or (iii) otherwise concluded without the Dispute being resolved (“**Cessation of the Mediation**”), then such Dispute shall be referred to the Hong Kong courts for resolution, unless the Government decides in its absolute discretion to refer the Dispute to arbitration in accordance with paragraph 2 (Arbitration) herein, in which case the Governments shall notify the Purchaser of its election within 60 days of the Cessation of the Mediation and thereafter the Dispute shall be settled exclusively and finally in accordance with paragraph 2 (Arbitration).

2 Arbitration

- 2.1 Any Dispute that cannot be resolved by the Parties pursuant to paragraph 1 (Mediation) and which the Government has notified the Purchaser of its election to settle the Dispute by arbitration within 60 days of the Cessation of the Mediation as provided for in paragraph 1.4, shall be submitted by either Party to arbitration in accordance with this paragraph 2 (Arbitration) irrespective of the amount in Dispute or whether such Dispute would otherwise be considered justifiable or ripe for resolution by any court. This Deed and the rights and obligations of the Parties shall remain in full force and effect pending the award of such arbitration proceeding, which award, if appropriate, shall determine whether and when any termination shall become effective.
- 2.2 Each arbitration between the Parties shall be held and finally settled in the HKIAC in Hong Kong, and shall be conducted pursuant to the UNCITRAL Arbitration Rules in force at the time the arbitration commences. The seat of arbitration shall be Hong Kong. The appointing authority shall be the HKIAC.
- 2.3 The arbitration shall be conducted by an arbitration tribunal (“**Tribunal**”) consisting of three (3) arbitrators. Subject to paragraph 2.5, each Party shall appoint one (1) arbitrator with, in the case of a Dispute of a technical nature, knowledge and experience in such technical matters. The two (2) arbitrators so appointed shall, subject to paragraph 2.5, jointly nominate the third (3rd) arbitrator who shall serve as the chairperson of the Tribunal. If within thirty (30) days after the receipt of a Party’s notification of the appointment of an arbitrator the other Party has not notified the first

party of the arbitrator it has appointed, the first party may request the HKIAC to appoint the second arbitrator. Likewise, if within thirty (30) days after the confirmation of both arbitrators appointed, the two (2) arbitrators have not agreed on the choice of the third arbitrator (the chairperson), the third arbitrator (the chairperson), then such arbitrator shall, subject to paragraph 2.5, be appointed by the HKIAC.

- 2.4 Any arbitration commenced pursuant to paragraph 2 shall be completed within two hundred and forty (240) days of the confirmation of the composition of the Tribunal absent agreement of the Parties to an extension of such time limit or unless the Tribunal determines that the interest of justice or the complexity of the case requires that such limit be extended. The Parties shall be entitled to discovery of documents in accordance with the direction of the Tribunal. All direct testimony shall be offered by way of affidavit. The Party submitting an affidavit shall make the affiant available for cross-examination before the Tribunal. The Parties waive any claim to any damages in the nature of punitive, exemplary or statutory damages in excess of compensatory damages, and the Tribunal is specifically divested of any power to award such damages. The award of the Tribunal shall be final and binding on the Parties (i.e., not subject to appeal), and the Parties agree that an arbitration award may be entered in any court having jurisdiction thereof. The Tribunal shall have the right and authority to grant injunctive, declaratory and other equitable relief.
- 2.5 Only persons who are engineers, attorneys, financial advisors, former judges, managers, executives and other professionals with technical or legal experience related to the design, construction, financing, ownership, operation and/or maintenance of medical or healthcare facilities shall be appointed as arbitrators. No arbitrator shall be a present or former employee or agent of, or consultant or counsel to the Purchaser or its affiliates or any Governmental Instrumentality or a national of a state with which the domicile of any Party does not maintain diplomatic relations. The chairperson of the Tribunal shall not be a permanent resident of Hong Kong.
- 2.6 The arbitration shall be conducted in the English language and all documents submitted in connection with such proceeding shall be in the English language or, if in another language, accompanied by a certified English translation.
- 2.7 The Parties further undertake to carry out without delay the provisions of any arbitration award or decision, and each agrees that any such award or decision may be enforced by any court or tribunal having jurisdiction.
- 2.8 The Parties shall each pay one-half (½) of any advances on costs required under the UNCITRAL Arbitration Rules or as otherwise requested by the Tribunal. The costs of such arbitration shall be finally determined and allocated between the Parties by the Tribunal in its award.
- 2.9 The Parties consent to the consolidation of arbitrations commenced under this paragraph 2 as follows:
- (a) if two or more arbitrations are commenced under this paragraph 2, any Party named as claimant or respondent in any of these arbitrations may petition to any of the arbitral tribunals appointed in these arbitrations for an order that all or any of these arbitrations be consolidated in a single arbitration ("**Consolidation Order**"). The petition for a Consolidation Order shall be made as soon as practicable and the Party making such application shall give notice to the other Parties to the arbitrations sought to be consolidated;

- (b) in deciding whether to make a Consolidation Order, the arbitral tribunal petitioned shall consider any and all of the following:
 - (i) whether the several arbitrations raise common issues of fact and/or law which could result in conflicting awards or obligations;
 - (ii) whether any Dispute raises issues which are substantially the same as, or connected with issues, either based on facts or law, raised in a dispute which has already been referred to arbitration under any other agreement to which the Parties are also parties; and
 - (iii) whether to consolidate the several arbitrations would serve the interests of justice and efficiency;
- (c) where such a Consolidation Order is made, the arbitral tribunals involved may give such directions as the interests of fairness, economy and expedition require including:
 - (i) that the documents disclosed by the Parties in one arbitration shall be made available to the other Parties to the other arbitration upon such conditions as the tribunals may determine; and
 - (ii) that the evidence given in one arbitration shall be received and admitted in the other arbitration, subject to all Parties being given a reasonable opportunity to comment upon it and subject to such other conditions as the arbitral tribunals may determine;
- (d) on the making of a Consolidation Order, the arbitral tribunals involved may determine amongst themselves as to which arbitral tribunal is to have carriage of the consolidated arbitral proceeding, having regard to the facts or law in issue and the interests of justice and efficiency;
- (e) in the absence of an agreement between the arbitral tribunals under paragraph 2.9(d), the HKIAC shall determine which arbitral tribunal is to have carriage of the consolidated arbitral proceeding, having regard to the facts or law in issue and the interests of justice and efficiency;
- (f) on the making of a determination under paragraph 2.9(d) or 2.9(e), the appointments of those arbitral tribunal members that do not have carriage of the consolidated arbitral proceeding shall be considered terminated on the making of the determination. Such termination is without prejudice to:
 - (i) the validity of any acts done or orders made by them prior to the termination;
 - (ii) their entitlement to be paid their proper fees and disbursements; and
 - (iii) the date on which any claim or defence was raised for the purpose of applying any limitation period or any like rule or provision;
- (g) in any arbitration consolidated in accordance with this paragraph 2, the arbitral tribunal granted carriage of the consolidated arbitral proceeding may exercise jurisdiction with respect to all issues arising out of the arbitral proceedings so consolidated; and

- (h) each of the Parties waives any objections it may have as to the validity and/or enforcement of any arbitral awards made by the arbitral tribunal following the consolidation of arbitral proceedings in accordance with this sub-paragraph 2.9 to the extent such objections are based on the fact that consolidation of the same has occurred.

2.10 The provisions of schedule 2 of the Arbitration Ordinance (Cap. 609 Laws of Hong Kong) shall not apply to any arbitration commenced pursuant to this paragraph 2.

3 Obligations Continuing

Unless otherwise agreed in writing, the existence of a Dispute shall not relieve either Party from the performance of its obligations under this Deed which is not the subject of the Dispute.

Schedule 4 – Subcontracting

1 Services which may be subcontracted without consent

1.1 Services of a non-clinical nature provided at any of the following venues may be subcontracted without consent:

- Offices;
- Storerooms;
- Supplies rooms;
- Healthcare training facilities;
- Kitchens for providing meals to patients;
- Canteens;
- Retail shops;
- Food and beverage outlets;
- Automatic Teller Machines;
- Laundry
- Parking spaces;
- Accommodation Facilities;
- Staff Quarters.

2 Terms which shall be included in any Subcontract

2.1 Confidentiality

1 [A] Subject to clause 1[B], the Subcontractor shall not use or disclose and shall keep confidential all matters relating to this contract and shall use its best endeavours to prevent its employees, agents, representatives and subcontractors from making any use or disclosure to any person of any matters relating hereto.

1 [B] Clause 1[A] shall not apply to any disclosure of information:

(i) required by any Applicable Law;

(ii) that is reasonably required by persons engaged by the Subcontractor in the performance of the Subcontractor's obligations under this contract (provided such third person is itself subject to confidentiality obligations with respect to the information);

(iii) where the Subcontractor can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of this contract; or

(iv) which is already lawfully in the possession of the Subcontractor, prior to its disclosure by the Purchaser.

2.2 Probity

2 [A] The Subcontractor shall prohibit its employees, agents and subcontractors who are involved in or in relation to this contract from offering, soliciting or accepting any advantage as defined in the Prevention of Bribery Ordinance, (Cap. 201 Laws of Hong Kong) when conducting business in connection with this contract.

2 [B] The Subcontractor shall issue to each of its employees, agents and its subcontractors who are involved in or in relation to this contract a copy of this clause on the commencement date of this contract (or if such employees, agents or subcontractors are engaged after the commencement date of this contract, on the date of engagement).

2 [C] The Subcontractor shall give and shall ensure that each representative of the Purchaser (the "Representative") and any persons authorised by him in writing are given all relevant information relating to the performance of the obligations set out in this clause (Probity) on request.

2 [D] If the whole or any part of this contract is subcontracted to any person, the Subcontractor shall ensure that the terms of this clause (Probity) are included in all subcontracts at all levels (whether or not the Subcontractor is a party to such subcontracts).

2 [E] The Subcontractor shall:

- (a) procure any contracts pursuant to this contract by a fair, transparent and competitive bidding process;
- (b) during any procurement process pursuant to this contract, follow procedures reasonably intended to identify subcontractors and other professionals of appropriate quality, capabilities and calibre so that the services meet appropriate quality standards and are provided in a cost-efficient manner; and
- (c) report agreements or transactions with its related companies/persons in relation to the Services, this contract or Land Grant as when and required by the Government.

2 [F] If the Subcontractor commits a breach of any provision of 2 [A] or 2 [E] of this clause (Probity), the Purchaser shall have the right to terminate this contract by five (5) Business Days' prior notice in writing to the Subcontractor, without entitling the Subcontractor to any compensation whatsoever, and due notice will be taken by the Government of the breach which may prejudice the standing, approval or eligibility of the Subcontractor (as contractor or subcontractor) for inclusion or consideration in any approved list or pre-qualification exercise for Government contracts. The parties to this contract acknowledge and agree that damages may not be an adequate remedy for any breach of this clause (Probity), and that in the event of any such breach, specific performance shall be an appropriate remedy.

2 [G] The Purchaser declares that to the extent that any of its rights or interests arises out of, relates to or results from any of the provisions of clauses 2 [B], 2 [C], 2 [D] and 2 [F], it acquires, holds and maintains such rights and interests on its own behalf and on behalf of and for the benefit of the Government.

2.3 Data Protection

3 [A] The Subcontractor shall (and shall procure that any of its employees, agents and subcontractors involved in the provision of the services under this contract):

- (a) comply with its obligations under the PDPO;
- (b) only use the Personal Data as reasonably required in connection with the provision of the services;
- (c) comply with the procedures or processes notified to the Subcontractor by the Purchaser with respect to Personal Data from time to time;
- (d) implement and maintain all reasonable technical and organizational measures to maintain security, prevent unauthorized or unlawful access to or processing of Personal Data and accidental loss or destruction of, or damage to, Personal Data; and
- (e) give the Purchaser notice as soon as the Subcontractor becomes aware of any breach of its data protection obligations under the agreement or of any enforcement proceeding against it under the PDPO or any unauthorised access to, or accidental disclosure of, any Personal Data.

3 [B] Unless the Purchaser requires in writing otherwise, the Subcontractor shall not disclose the Personal Data to any third parties other than:

- (a) to employees and subcontractors to whom the disclosure is necessary for the provision of the services, provided it is made subject to obligations of confidentiality no less onerous than those imposed upon the Supplier and is consistent with any procedures specified by the Government from time to time; or
- (b) to the extent required by any regulatory authority, provided the Subcontractor gives notice to the Purchaser of any such disclosure promptly after it becomes aware of that requirement.

3 [C] At the time of collection of Personal Data from a data subject by the Subcontractor or its employees or subcontractors, the Subcontractor shall or shall ensure that:

- (a) it notifies such data subjects; and
- (b) each of its subcontractor notifies such data subjects,

that the data may be used or accessed by the Government or a third party in the event that the Government or a third party assumes the operation of the Hospital for any reason.

Schedule 5 – Liquidated Damages

Ref	Performance Obligation	Default	Amount
1	Limit the number of Obstetric Beds to the percentage designated in the Schedule 2 Annexes of the total number of Hospital Beds to be provided in the Hospital by the Purchaser as specified in the Land Grant for the relevant Service Year, in accordance with paragraph 2.1 of Schedule 2.	Making available Obstetric Beds in excess of the percentage cap as specified in Schedule 2 Annexes	For each Obstetric Bed made available exceeding the cap, the additional revenue generated through the provision of an Obstetric Bed when compared with the average revenue generated by other Hospital Beds.
2	Provide the number of In-Patient Bed Days equivalent to the Shortfall Add-on as In-Patient Bed Days through Standard Beds as a Package Service to Eligible Person in the Service Year immediately following the Service Year in which the original shortfall occurred (as further detailed in paragraph 4 of Schedule 2)	Failure to provide the number of In-Patient Bed Days equivalent to the Shortfall Add-on as In-Patient Bed Days through Standard Beds as a Package Service to Eligible Person in the Service Year immediately following the Service Year in which the original shortfall occurred	For each In-patient Bed Day in deficit of the Shortfall Add-on, the difference between the average revenue generated through the provision of non-packaged in-patient service per patient day and that of packaged in-patient service per patient day.
3	Provide more than fifty (50)% (or higher percentage if designated in the Schedule 2 Annexes) of In-Patient Bed Days taken up for service in a Service Year to Eligible Persons in accordance with paragraph 5 of Schedule 2.	Failure to provide more than 50% (or higher percentage if designated in the Schedule 2 Annexes) of In-Patient Bed Days taken up for Service in a Service Year to Eligible Persons.	For each In-Patient Bed Day in deficit of 50% or the designated percentage, the difference between average additional revenue generated for in-patient service for non-Eligible Persons per bed day and the prevailing unit cost of inpatient services per bed day of public hospital managed by Hospital Authority.

Form of Performance Guarantee

THIS PERFORMANCE GUARANTEE (the “**Guarantee**”) is made by way of deed the [] day of [], 2012.

By

[*INSERT NAME*] [a company incorporated] in accordance with the laws of [] whose registered office address is at [] (the “**Guarantor**”); and

IN FAVOUR OF

The Government of the Hong Kong Special Administrative Region as represented by [•] whose address is at [•] (the “**Government**”, which expression shall, where the context so permits, include its successors and permitted assigns).

WHEREAS:

- (A) By a service deed and all its schedules and annexures (the “**Service Deed**”, which term includes all amendments to, variations of or supplements to it from time to time in force), the Government agrees to engage [*INSERT NAME*], [a company incorporated in accordance with the laws of [] whose registered office address is at []] [[a [*INSERT TYPE*] partnership established in accordance with the laws of [] whose registered office address is at []] (the “**Tenderer**”) in connection with the design, planning, engineering, procurement, construction, completion, pre-commissioning, commissioning, testing, insurance, labour, operation and maintenance and other work necessary to develop, construct, operate and maintain a hospital and its related facilities at Nam Fung Path, Hong Kong (Aberdeen Inland Lot No. 458), in accordance with the terms of the Service Deed. The Service Deed together with the land grant relating to Aberdeen Inland Lot No. 458 and all its schedules and annexures (the “**Land Grant**”, which term includes all amendments to, variations of or supplements to it from time to time in force), are hereinafter collectively referred to as the “**Contract Documents**”.
- (B) It is a condition of awarding the Contract Documents that the Tenderer procures the execution and delivery to the Government of a guarantee in respect of the obligations of the Tenderer under the Service Deed from the Guarantor in the form of this Guarantee.
- (C) The Guarantor has agreed to guarantee due and prompt performance under the Service Deed by the Tenderer upon their execution.
- (D) It is the intention of the parties that this document be executed as a deed.

NOW IT IS HEREBY AGREED as follows:

- 1. In consideration of the Government entering into the Service Deed with the Tenderer, the Guarantor irrevocably and unconditionally:
 - (a) as primary obligor and not as surety guarantees to the Government the due and punctual performance by the Tenderer of each and all the obligations, warranties, duties and undertakings of the Tenderer under and pursuant to the Service Deed when and if such obligations, duties and undertakings shall become due and performable according to the terms of such contract; and

- (b) agrees, in addition to its obligations set out in Clause 1(a) above, to indemnify the Government against all losses, liabilities, damage and/or reasonable costs and expenses (including in-house and external legal costs) which the Government may incur by reason of any breach by the Tenderer of its obligations, warranties, duties and undertakings under and pursuant to the Service Deed save that this shall not be construed as imposing greater or different obligations or liabilities on the Guarantor than are imposed on the Tenderer under the Service Deed.
2. The Guarantor agrees that it shall not in any way be released from liability under this Guarantee by any act, omission, matter or other thing whereby (in absence of this provision) the Guarantor would or might be released in whole or in part from liability under this Guarantee including, without limitation, and whether or not known to the Guarantor:
- (a) any modification, amendment, alteration or variation in or to any of the conditions or provisions of any of the Contract Documents or the works or the services thereunder; or
 - (b) any arrangement made between the Tenderer and the Government; or
 - (c) any breach or breaches of any of the Contract Documents, whether by the Tenderer or by the Government, or any other default or defaults of the Tenderer or the Government, and whether the same is or are made or occur with or without the Guarantor's knowledge or consent;
 - (d) any waiver, compromise, indulgence, forbearance or forgiveness by the Government whether as to time, payment, performance or any other matter or thing afforded to the Tenderer under any of the Contract Documents; or
 - (e) the taking, variation, renewal or release of, the enforcement of or neglect to perfect or enforce, any right, guarantee, remedy or security from or against the Tenderer or any third party; or
 - (f) any unenforceability, illegality or invalidity of any of the Contract Documents or any of the provisions of any of the Contract Documents or any of the Tenderer's obligations under any of the Contract Documents, so that this Guarantee shall be construed as if there were no such unenforceability, illegality or invalidity; or
 - (g) any avoidance, suspension or termination of any of the Contract Documents; or
 - (h) the dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, bankruptcy, liquidation, winding-up, the appointment of an administrator or receiver, other failure or financial disability or any other analogous event affecting the Tenderer or the Guarantor; or
 - (i) any disability, incapacity or change in the constitution of any or all of the Tenderer, the Government and the Guarantor; or
 - (j) any dispute between the Government and the Tenderer under or in relation to any of the Contract Documents; or
 - (k) any other matter or things (whether similar to the foregoing or otherwise) whereby the obligations of the Guarantor hereunder might under any applicable law be discharged or affected,

and the Guarantor hereby waives notice of the foregoing.

The Guarantor shall be entitled to assert as a defence to any claim for payment or performance of any obligation that (i) such payment obligation has previously been discharged or is not due or (ii) such performance of an obligation is not due or has been performed or satisfied, in each case either as set out under the terms of the Service Deed or in accordance with the no double recovery provisions set out in Clause 4.

3. The Guarantor by this Guarantee authorises the Tenderer and the Government to make any addendum, variation or amendment to the Contract Documents, or the works or services thereunder, the due and punctual performance of which addendum and variation shall be likewise guaranteed by the Guarantor in accordance with the terms of this Guarantee.
4. This Guarantee shall be a primary obligation of the Guarantor but the Government shall be obliged before enforcing this Guarantee (save in the case of a payment default by the Tenderer under the Service Deed where the amount available to be drawn under the bank bonds provided by the Tenderer is insufficient to cover the amount of the payment in default) to give the Guarantor fifteen (15) Business Days notice in writing of its intention to enforce this Guarantee and the Government shall not enforce this Guarantee if within such fifteen (15) Business Day period the Guarantor or the Tenderer remedies the default for which the Government intended to enforce the Guarantee to the Government's satisfaction, as shall be evidenced by a settlement in writing between the Government and the Guarantor. The Government shall not be obliged to: (i) take any action in any court or arbitral proceedings or to obtain any judgment or award against the Tenderer; (ii) subject to the provisions above, grant any time or indulgence to the Tenderer; (iii) make any claim against or any demand of the Tenderer; (iv) enforce any other security held by it; or (v) pursue or exhaust any other right or remedy against the Tenderer or any other person in respect of the obligations of the Tenderer under the Service Deed. In the event that the Government brings proceedings against the Tenderer, the Guarantor will be bound by any findings of fact, interim or final award or judgment made by an arbitrator or the court in such proceedings. For the avoidance of doubt, the Government will not be entitled to double recovery in respect of the same portion of claim and any payments made by the Guarantor hereunder shall automatically release the Tenderer to the extent of such recovery from the Guarantor.
5. This Guarantee is a continuing guarantee and accordingly shall remain in full force and effect from the date first written above (notwithstanding the occurrence of any event set out in Clause 2) until all obligations, warranties, duties and undertakings now or hereafter to be carried out or performed by the Tenderer under the Service Deed shall have been satisfied or performed in full and is not revocable. This Guarantee is in addition to and not in substitution for and shall not merge with any other right, remedy, guarantee or security which the Government may at any time hold for the performance of such obligations and may be enforced without first having recourse to any such security. When all obligations, warranties, duties and undertakings now or hereafter to be carried out or performed by the Tenderer under the Service Deed shall have been satisfied and performed in full, pursuant to the Service Deed, this Guarantee shall become of no further effect and shall be returned to the Guarantor by the Government.
6. Until all amounts which may be or become payable under the Service Deed or this Guarantee have been irrevocably paid in full, the Guarantor shall not, as a result of this Guarantee or any payment or performance under this Guarantee, be subrogated to any right or security of the Government or claim or prove in competition with the Government against the Tenderer, demand or accept repayment of any monies or claim any right of contribution, set-off or indemnity from and against the Tenderer, and any sums received by the Guarantor or the amount of any set-off exercised by the Guarantor in breach of this provision shall be held by the Guarantor in trust for and shall be promptly paid to the Government.

7. Each payment to be made by the Guarantor under this Guarantee shall be made in full in Hong Kong Dollars, without any set off or counterclaim or restriction or condition whatsoever or howsoever arising and free and clear of all deductions or withholdings of any kind whatsoever or howsoever arising. If any deduction or withholding must be made by law (including double taxation treaties), the Guarantor will pay that additional amount which is necessary to ensure that the Government receives on the due date a net amount equal to the full amount which it would have received if the payment had been made by the Tenderer under the Service Deed. The Guarantor shall promptly deliver to the Government any receipts, certificates or other proof evidencing the amounts paid or payable in respect of any such deduction or withholding.
8. The Guarantor shall upon receipt of first written demand (the date of such receipt being the "**Due Date**") make payment in full to the Government of any amount due under this Guarantee. The Guarantor shall pay interest on any amount due under this Guarantee from the Due Date until the date of payment in full calculated on a daily basis at the rate of two (2) percent per annum above the average best lending rate announced by the prevailing note-issuing banks in Hong Kong, namely, the Hongkong and Shanghai Banking Corporation Limited, Standard Chartered Bank (Hong Kong) Limited and Bank of China (Hong Kong) Limited for the time being.
9. The Guarantor will reimburse the Government for all legal and other costs incurred by the Government in connection with the enforcement of this Guarantee.
10. The Government may appropriate any sum paid by the Tenderer, the Guarantor or any other person or recovered or received on account of the obligations which are the subject of this Guarantee as it sees fit and correct.
11. Any settlement or discharge between the Government and the Tenderer and/or the Guarantor shall be conditional upon no settlement with security or payment to the Government by the Tenderer or the Guarantor or any other person being avoided or set aside or ordered to be refunded or reduced by virtue of any provision of enactment relating to bankruptcy, insolvency or liquidation for the time being in force, and accordingly (but without limitation the Government's other rights hereunder), the Government shall be entitled to recover from the Guarantor, as if such settlement or discharge had not occurred, the value of such settlement or security or the amount of any such payment.
12. The Guarantor warrants that this Guarantee is its legally binding obligation and enforceable in accordance with its terms.
13. The Guarantor warrants that it has full power, authority and legal right to enter into and engage in the transactions contemplated by this Guarantee and has taken or obtained all necessary governmental and other consents and authorisations for the giving and implementation of this Guarantee.
14. The Guarantor warrants and confirms to the Government that it has not entered into this Guarantee in reliance upon, nor has it been induced to enter into this Guarantee by any representation, warranty or undertaking made by or on behalf of the Government (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this Guarantee or the Service Deed.
15. Any notice to or demand on the Guarantor to be served under this Guarantee may be delivered or sent by registered post or courier to the Guarantor at:

Address:

Attention:

Telephone: []

or at such other address as it may have notified to the Government in accordance with this Clause.

16. Any such notice or demand shall be deemed to have been served:
 - (a) if delivered by hand, at the time of delivery;
 - (b) if delivered by courier, at the time of delivery as established by a courier's receipt; or
 - (c) if posted, at the time of delivery as established by a postal receipt.
17. In proving service of a notice or demand, it shall be sufficient to prove that delivery was made in accordance with Clause 16.
18. For the purposes of this Guarantee, "**Business Day**" means a day (other than a Saturday or a Sunday) on which banks are generally open in Hong Kong for normal business.
19. No delay or omission of the Government in exercising any right, power or privilege under this Guarantee shall impair or be construed as a waiver of such right, power or privilege nor shall any single or partial exercise of any such right, power or privilege preclude any further exercise of such right, power or privilege or the exercise of any other right, power or privilege.
20. A waiver given or consent granted by the Government under this Guarantee will be effective only if given in writing and then only in the instance and for the purposes for which it is given in writing.
21. A waiver by the Government shall not constitute a continuing waiver and shall not prevent the Government from subsequently enforcing any of the provisions of this Guarantee.
22. If any provision of this Guarantee 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 Guarantee in that jurisdiction, but it shall not affect the validity, enforceability or legality of that provision in another jurisdiction.
23. The Guarantor shall pay all stamp duties and taxes, if any, to which the execution and delivery of this Guarantee may be subject in Hong Kong, or elsewhere and shall indemnify the Government against any and all liabilities arising from any delay or omission to pay any such duties and taxes.
24. This Guarantee is irrevocable. Further, this Guarantee and any rights and obligations of the Government and the Guarantor thereunder shall not be assigned or transferred by the Guarantor except with the prior approval in writing of the Government and on the conditions that:
 - (a) this Guarantee and all rights and obligations of the Government and the Guarantor thereunder shall be assigned or transferred as a whole; and
 - (b) the assignee shall covenant in writing with the Government to perform all the obligations of the Guarantor under this Guarantee.

The Guarantor shall ensure that notice in writing of any assignment or transfer of this Guarantee and all rights and obligations thereunder shall be given to the Tenderer.

25. The Guarantor agrees that any legal action or proceeding arising out of or relating to this Guarantee may be brought in the courts of Hong Kong and irrevocably submits to the jurisdiction of such courts. The Guarantor irrevocably appoints [] to receive for it and on its behalf, service of process issued out of the Hong Kong courts in any legal action or proceedings concerned. Nothing in this paragraph shall affect the right of the Government to join other parties in any proceedings to serve process in any other manner permitted by law but if the said process agent ceases to exist or have an office in Hong Kong, the Guarantor shall forthwith appoint another process agent which shall be a company incorporated in and having its registered office in Hong Kong. The Guarantor expressly consents to the enforcement of any judgment of the Hong Kong courts pursuant to this Clause in any court of any other competent jurisdiction.
26. This Guarantee shall be governed by the laws of Hong Kong.
27. This Guarantee may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument.

(the remaining part of this page has been intentionally left blank)

IN WITNESS WHEREOF, this Guarantee has been executed as a deed and has been delivered on the day and year first above written.

EXECUTED as a DEED by)
[NAME OF THE GUARANTOR])
acting by [NAME], [TITLE])
acting under the authority)
of that company, in the presence of:)

Witnesses

Signature: _____

Name: _____

Address: _____

Form of Bank Bond

[LETTERHEAD OF BANK]

To: [THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION]
[]

[]

Dear Sirs,

BANK BOND IN RESPECT OF THE PRIVATE HOSPITAL PROJECT AT NAM FUNG PATH, HONG KONG (ABERDEEN INLAND LOT No. 458)

THIS BANK BOND is given the [] day of [] by [NAME OF BANK] a company incorporated in [] and having its registered office at [] (the “Obligor”) in favour of the Government of the Hong Kong Special Administrative Region (the “Government”) and is supplemental to a service deed and all its schedules and annexes (the “Service Deed”, which term includes all amendments to, variations of or supplements to it from time to time in force), by and between

[INSERT NAME], [a company incorporated in accordance with the laws of [] whose registered office address is at []] [a [INSERT TYPE] partnership established in accordance with the laws of [] whose registered office address is at []] (the “Tenderer”), and the Government. The Service Deed together with the land grant relating to the captioned lot and all its schedules and annexes (the “Land Grant”, which term includes all amendments to, variations of or supplements to it from time to time in force), are hereinafter collectively referred to as the “Contract Documents”.

Under the Service Deed, the Tenderer agrees to design, carry out planning, engineering, procurement, construction, completion, pre-commissioning, commissioning, testing, insurance, labour and other work necessary to develop, construct, operate and maintain a hospital and its related facilities at Nam Fung Path, Hong Kong (Aberdeen Inland Lot No. 458) as more particularly described in the Service Deed (the “Project”) and to provide a bank bond in connection with its obligations under the Service Deed up to a maximum aggregate amount of fifty million Hong Kong Dollars (HK\$50,000,000) (the “Maximum Sum”).

The Obligor has agreed, at the request of the Tenderer, to enter into this on-demand Bank Bond with the Government as a security for the Tenderer’s performance of its obligations under the Service Deed (including the Tenderer’s obligation to pay for any liquidated damages and other damages and costs).

NOW IT IS HEREBY AGREED as follows:

1. In consideration of the Government entering into the Service Deed with the Tenderer, the Obligor hereby irrevocably and unconditionally undertakes and covenants to pay to the Government, as primary obligor and not merely as surety, on first written demand by way of the demand notice attached hereto without proof or condition, and waiving all rights of objection and defence, any sum or sums which from time to time may be demanded in writing by the Government, provided always that the Obligor shall only be liable to pay the sum or sums so demanded up to the Maximum Sum.

2. A written demand under Clause 1 above must be sent by hand, by registered post or by courier to the address of the Obligor stated above or at such other address as may be notified by the Obligor in writing to the Government from time to time. The Government may make one or more demands under this Bank Bond (subject always to Clause 1).
3. Any such notice or demand shall be deemed to have been served:
 - (a) if delivered by hand, at the time of delivery;
 - (b) if delivered by courier, at the time of delivery as established by a courier's receipt; or
 - (c) if posted, at the time of delivery as established by a postal receipt.
4. In proving service of a notice or demand, it shall be sufficient to prove that delivery was made in accordance with Clause 3.
5. Upon the Government making a written demand on the Obligor, the Obligor shall pay the sum so demanded to the Government unconditionally and immediately on demand without any reference to the Tenderer, and notwithstanding any dispute or difference which may have arisen under or in connection with the Service Deed, or in respect of any amount payable thereunder, and notwithstanding any defence which the Tenderer may have, or request or instruction which may be given to the Obligor by the Tenderer not to pay the same.
6. The Obligor hereby confirms and agrees that it shall not be required or permitted to enquire or make investigations into:
 - (a) the reason(s) or circumstance(s) of any demand hereunder;
 - (b) the respective rights, obligations, duties and/or liabilities of the Government and the Tenderer under the Service Deed; or
 - (c) the authenticity of the Government's written demand or the authority or entitlement of persons signing such demand for and on behalf of the Government,and the aforesaid written demand shall be conclusive of the Obligor's liability under this Bank Bond and as to the amount which the Obligor has to pay to the Government.
7. Payment of any sum demanded under this Bank Bond shall be made in full without any set-off or counterclaim whatsoever or howsoever arising and free and clear of all deductions or withholdings of any kind whatsoever or howsoever arising.
8. Payment of any sum demanded under this Bank Bond shall be made in Hong Kong Dollars to the account specified in the relevant demand.
9. For the avoidance of doubt, the Obligor agrees that its liability hereunder shall not be discharged, released, affected or impaired in any way by:
 - (a) any modification, amendment, alteration or variation in or to any of the conditions or provisions of any of the Contract Documents or the works or the services thereunder; or
 - (b) any arrangement made between the Tenderer and the Government; or
 - (c) any breach or breaches of any of the Contract Documents, whether by the Tenderer or by the Government, or any other default or defaults of the Tenderer or the Government, and whether the same is or are made or occur with or without the Obligor's knowledge or consent; or

- (d) any waiver, compromise, indulgence, forbearance or forgiveness by the Government whether as to time, payment, performance or any other matter or thing afforded to the Tenderer under any of the Contract Documents; or
- (e) the taking, variation, renewal or release of, the enforcement of or neglect to perfect or enforce, any right, guarantee, remedy or security from or against the Tenderer or any third party; or
- (f) any unenforceability, illegality or invalidity of any of the Contract Documents or any of the provisions of any of the Contract Documents or any of the Tenderer's obligations under any of the Contract Documents, so that this Bank Bond shall be construed as if there were no such unenforceability, illegality or invalidity; or
- (g) any avoidance, suspension or termination of any of the Contract Documents; or
- (h) the dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, bankruptcy, liquidation, winding-up, the appointment of an administrator or receiver, other failure or financial disability or any other analogous event affecting the Tenderer or the Obligor; or
- (i) any disability, incapacity or change in the constitution of any or all of the Tenderer, the Government and the Obligor; or
- (j) any dispute between the Government and the Tenderer under or in relation to any of the Contract Documents; or
- (k) any other matters or things (whether similar to the foregoing or otherwise) whereby the obligations of the Obligor hereunder might under any applicable law be discharged or affected,

and the Obligor hereby waives notice of the foregoing.

10. The Obligor confirms that its liability hereunder shall be a continuing liability and that this Bank Bond shall remain in full force and effect from the date first written above until the date (the "**Expiry Date**") when the first of the following events occurs:
 - (a) the original of this Bank Bond is returned by the Government to the Obligor accompanied by the Government's notice in writing that it is to be cancelled; or
 - (b) *[INSERT THE DATE]*; or
 - (c) the Maximum Sum has been duly paid to the Government unless the date for making such payment has been further renewed or extended by the Obligor in writing.
11. This Bank Bond shall expire as to any undrawn portion of the Maximum Sum at the close of normal banking business on the Expiry Date. "**Undrawn portion**" shall mean the Maximum Sum less the aggregate amount which shall have been the subject of the Government's demand or demands for payment as herein before provided. The expiry of this Bank Bond under Clause 10 above shall not affect or discharge the liability of the Obligor to make payment of any demand made in accordance with the provisions of Clauses 1 and 2 above and received by the Obligor on or before the Expiry Date.
12. This Bank Bond is irrevocable. Further, this Bank Bond and any rights and obligations of the Government and the Obligor thereunder shall not be assigned or transferred by the Obligor except with the prior approval in writing of the Government and on the conditions that:

- (a) this Bank Bond and all rights and obligations of the Government and the Obligor thereunder shall be assigned or transferred as a whole; and
- (b) the assignee shall covenant in writing with the Government to perform all the obligations of the Obligor under this Bank Bond.

The Obligor shall ensure that notice in writing of any assignment or transfer of this Bank Bond and all rights and obligations thereunder shall be given to the Tenderer.

- 13. Any waiver by the Government of the terms of this Bank Bond or any consent or approval given by the Government shall only be effective if given in writing and then only for the purpose and upon the terms and conditions if any on which it is given.
- 14. If any provision of this Bank Bond 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 Bank Bond in that jurisdiction, but it shall not affect the validity, enforceability or legality of that provision in another jurisdiction.
- 15. This Bank Bond shall be governed by and construed in accordance with the laws of Hong Kong and the Obligor hereby irrevocably agrees to submit to the jurisdiction of the courts of Hong Kong and agrees not to claim that such courts are not a convenient or proper forum. Such submission shall not (and shall not be construed to) limit the right of the Government to proceed against the Obligor in any other court of competent jurisdiction, and proceeding in any one or more jurisdictions shall not preclude proceedings in any other jurisdiction (whether concurrent or not) if and to the extent permitted by the applicable law.
- 16. The Obligor shall reimburse the Government for all legal and other costs incurred by the Government in connection with the enforcement of this Bank Bond. All sums payable by the Obligor pursuant to this Clause 16 shall not be regarded as part of the Maximum Sum and shall be payable in addition to the Maximum Sum.
- 17. The Obligor hereby represents and warrants that the undersigned has full authority to execute this Bank Bond on behalf of the Obligor.

IN WITNESS WHEREOF the Obligor has caused this Bank Bond to be executed as a deed on the day and year first above written.

EXECUTED as a DEED by)
[NAME OF THE OBLIGOR])
acting by *[NAME]*, *[TITLE]*)
acting under the authority)
of that company, in the presence of:)

Witnesses

Signature: _____

Name: _____

Address: _____

Form of Demand Notice

To: [OBLIGOR]
[ADDRESS]

Bank Bond Reference/No.: [INSERT DETAILS]

Dear Sirs,

Demand Notice

We refer to the above referenced Bank Bond. This is the demand notice referred to therein.

Capitalised terms used in this demand notice shall have the meaning given to such terms in the Bank Bond.

The Tenderer has failed to perform the Service Deed in accordance with its terms and conditions in particular in connection with [PLEASE SPECIFY IN WHAT ASPECT THE TENDERER HAS SO FAILED].

Pursuant to Clause 1 of the Bank Bond we hereby demand payment of [] Hong Kong Dollars (HK\$[•]) in immediately available funds to the following account: [INSERT ACCOUNT DETAILS].

Yours faithfully,

[AUTHORIZED SIGNATORY]

**Matters to be Contained in the Legal Opinion Required for a
Successful Tenderer and/or Performance Guarantor Incorporated or Established
Outside the Hong Kong Special Administrative Region**

1. Overview

- 1.1 Capitalised terms not otherwise defined herein shall have the meaning given in the Tender Notice.
- 1.2 In this Annex VI:
- (a) “**Successful Tenderer**” shall mean the successful tenderer receiving notification of award as referred to in paragraph 19.1 of the Tender Notice; and
 - (b) “**Performance Guarantor**” shall mean a performance guarantor meeting the requirements of the Tender Notice.

Drafting Notes:

Note 1 - refer to the Successful Tenderer and/or Performance Guarantor, as appropriate.

Note 2 - refer to the documents executed by the Successful Tenderer and/or Performance Guarantor, as appropriate.

Note 3 - adopt as appropriate depending on whether there is/are one or more executed documents.

2. Content of the Legal Opinions

- 2.1 The legal opinion[s] shall contain legal advice confirming that:
- (a) the [Successful Tenderer/Performance Guarantor] [Note 1] is duly incorporated or established, validly existing and in good standing under the laws of the place where it is incorporated or established (“**Place of Incorporation**”);
 - (b) the [Successful Tenderer/ Performance Guarantor] [Note 1] has the full power, authority and legal capacity to execute the [Memorandum of Agreement and the Service Deed/Performance Guarantee] [Note 2] ([each a] [Note 3] “**Relevant Document**”) and to incur the liabilities and to perform the obligations therein;
 - (c) the execution and delivery of [each/the] [Note 3] Relevant Document has been duly authorized by all necessary corporate action. Once the Relevant Document[s] [Note 3] are executed, [they/it] [Note 3] constitute[s] [Note 3] legal, valid and binding obligations of the [Successful Tenderer/Performance Guarantor] [Note 1] and are enforceable against the [Successful Tenderer/Performance Guarantor] [Note 1] in accordance with [its/their] [Note 3] terms;
 - (d) the execution, and delivery of the [each/the] [Note 3] Relevant Document and performance of all obligations under [each/the] [Note 3] Relevant Document:
 - (i) do not violate any provision of any applicable law, regulation or decree of the Place of Incorporation;

- (ii) do not violate any judgement, order, or decree by which the [Successful Tenderer/Performance Guarantor] *[Note 1]* is bound; and
- (iii) do not breach or conflict with, or constitute a default under, the constitutional documents of the [Successful Tenderer/Performance Guarantor] *[Note 1]*;
- (e) any arbitration awards or judgements obtained in connection with the provisions of the Relevant Document[s] *[Note 3]* will be enforceable in the Place of Incorporation and without any retrial of the issues which were the subject of such judgement, or any re-examination of the underlying claims;
- (f) any authorizations, consents or approvals required from any governmental authorities or agencies or other official bodies in the Place of Incorporation in connection with the execution of and delivery of the Relevant Document[s] *[Note 3]* or the performance of the obligations of the [Successful Tenderer/Performance Guarantor] *[Note 1]* under the Relevant Document[s] *[Note 3]*, have been fully obtained, and no consent, approval or authorization of, or registration, filing or declaration with any governmental authority of any kind, in connection with the execution, delivery or performance of the Relevant Document[s] *[Note 3]* is required;
- (g) [each/the] *[Note 3]* Relevant Document[s] *[Note 3]* does not need to be registered or filed in the Place of Incorporation [or any other jurisdiction] in order to secure its validity and/or priority or, if [it/they] *[Note 3]* do so need to be registered or filed, such registration or filing has been completed;
- (h) there is no restriction under the laws of the Place of Incorporation on the assumption and performance of the [Successful Tenderer's/Performance Guarantor's] *[Note 1]* obligations under the Relevant Document[s] *[Note 3]*;
- (i) the choice of the laws of Hong Kong to govern the [the Service Deed/ Performance Guarantee] *[Note 3]* is a valid choice of law and would be recognized and given effect to by the courts of the Place of Incorporation;
- (j) it is not necessary under the laws of the Place of Incorporation that the Government be licensed, qualified or otherwise registered in the Place of Incorporation in order to enable it to enforce its right under the Relevant Document[s] *[Note 3]*;
- (k) no taxes, duties or levies in the Place of Incorporation are imposed by withholding or otherwise on any payment to be made by the [Successful Tenderer/Performance Guarantor] *[Note 1]* under the Relevant Document[s] *[Note 3]* or are imposed on, or by virtue of, the execution or delivery of the Relevant Document[s] *[Note 3]* or any document or instrument to be executed or delivered thereunder;
- (l) the execution and delivery of the Relevant Document[s] *[Note 3]* will not, of itself, be subject to any tax, duty, levy or fee, including without limitation any stamp duty or similar levy, imposed by or within the Place of Incorporation, or any political subdivision or taxing authority thereof or therein;
- (m) there is no applicable usury or interest limitation law in the Place of Incorporation which would restrict the recovery of payments or the performance by the [Successful Tenderer/Performance Guarantor] *[Note 1]* of its obligations under the Relevant Document[s] *[Note 3]*;
- (n) the Government is not or will not be deemed to be resident, domiciled, carrying on a business or be subject to taxation in the Place of Incorporation by reason only of negotiation, preparation, execution, performance, enforcement of and/or receipt of

payment due from the [Successful Tenderer/Performance Guarantor] under the Relevant Document[s] [Note 3]; and

- (o) in any proceedings taken against the [Successful Tenderer/Performance Guarantor] [Note 1] by the Government in the Place of Incorporation in relation to the Relevant Document[s] [Note 3], the [Successful Tenderer/Performance Guarantor] [Note 1] will not be entitled to claim for itself or for any of its assets immunity from suit, execution, attachment or other legal process.

Annex VII to the Tender Notice

RESTRICTED

Undertakings to be submitted by each Key Personnel

To: The Government of the Hong Kong Special Administrative Region (the “Government”)

Re.: Tender for the grant of Aberdeen Inland Lot No.458 for private hospital development (“the Lot”)

I, *name and address*, refer to the tender (the “Tender”) to be submitted by *name of tenderer* (the “Tenderer”) in relation to the development of a private hospital at the Lot. In consideration of the Government agreeing to consider the Tender in accordance with the terms of the Tender Notice issued by the Government in relation to the Lot (the “Tender Notice”), I undertake, acknowledge and agree in favour of the Tenderer and the Government as follows:

1. I undertake to take up employment with the Tenderer and join the Project Team in the development of a private hospital at the Lot should the Government award the Memorandum of Agreement and Service Deed to the Tenderer; and
2. I am not subject to any restrictive covenants or otherwise restrained from taking up employment as described above pursuant to any existing agreement or arrangement.

Unless otherwise defined herein, capitalized terms herein shall have the meanings attributed to them in the Tender Notice.

Signed, and delivered)
by *name of individual*)
in the presence of:)

Name: *witness name*

Address: *witness address*

Annex VIII to Tender Notice

Schedule of Development of the Lot

Tenderers shall submit the proposed schedule of development of a private hospital to be developed at the Lot in accordance with Paragraph 9.1(vii) of the Tender Notice in this form. The schedule shall cover the period from the date of execution of the Memorandum of Agreement to the date specified in column 1 of paragraph (III)(iv) in Part B of the schedule annexed to the Land Grant. The items set out in the column "Major Milestones" in the table below are for reference only. Tenderers may suitably adjust these items in the table below with reference to its proposed schedule of development.

	Major Milestones (Note: Items listed below are for reference only)	Description of the milestones	Time of completion of the milestone
1.	Service planning		
2.	Site investigation and survey		
3.	Conduct of various impact assessment		
4.	Detailed design of hospital		
5.	Construction		
6.	Installation of equipment and furniture		
7.	Testing of building systems and defect rectifications		
8.	Recruitment of staff and training		
9.	Commissioning of hospital		

Annex IX to Tender Notice

Form of Tender Bond

[LETTERHEAD OF BANK]

BANK REF:[_____]

DATED: [_____]

To: THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION

[_____
_____]

Dear Sirs,

BANK GUARANTEE NO.: [_____]

TENDER BOND IN RESPECT OF THE PRIVATE HOSPITAL PROJECT AT NAM FUNG PATH, HONG KONG (ABERDEEN INLAND LOT No. 458)

- (A) The undersigned issuing bank (the “**Obligor**”) refers to the invitation to tender set out in the Tender Notice (the “**Invitation**”) issued by the Government of the Hong Kong Special Administrative Region (the “**Government**”) on [13 April 2012] in connection with the grant of a lot of land at Nam Fung Path, Hong Kong (Aberdeen Inland Lot No. 458) and developing and operating a private hospital thereat (the “**Project**”).
- (B) Under the Invitation, a tenderer is required to submit a tender deposit in the form of a tender bond which shall be irrevocable and unconditional in the amount of five million Hong Kong Dollars (HK\$5,000,000) (the “**Guaranteed Sum**”) issued in favour of the Government as a security for its proposal to undertake the Project in accordance with the terms and conditions of the Invitation.
- (C) In compliance with such requirement and at the request of our client(s), *[INSERT THE NAME OF THE PERSON(S) WHO WILL BE SUBMITTING THE TENDER]* (the “**Tenderer**”) who will be submitting a tender in response to the Invitation (the “**Tender**”), the Obligor hereby signs and issues this irrevocable and unconditional tender bond (this “**Tender Bond**”).

NOW IT IS HEREBY AGREED as follows:

1. In consideration of the Government considering the Tender, the Obligor hereby irrevocably and unconditionally undertakes and covenants to pay to the Government, as primary obligor and not merely as surety, on first written demand by way of the demand notice in the form attached hereto (“**Payment Demand**”) without proof or condition, and waiving all rights of objection and defence, the entire amount of the Guaranteed Sum.
2. The Payment Demand must be sent by hand, by registered post or by courier to the address of the Obligor stated above or at such other address as may be notified by the Obligor in writing to the Government from time to time.

3. The Payment Demand shall be deemed to have been served:
 - (a) if delivered by hand, at the time of delivery;
 - (b) if delivered by courier, at the time of delivery as established by a courier's receipt; or
 - (c) if posted, at the time of delivery as established by a postal receipt.
4. In proving service of the Payment Demand it shall be sufficient to prove that delivery was made in accordance with Clause 3.
5. Upon the Government making the Payment Demand on the Obligor, the Obligor shall pay the Guaranteed Sum in full to the Government unconditionally and immediately on demand without any reference to the Tenderer, and notwithstanding any dispute or difference which may have arisen under or in connection with the Tender and notwithstanding any defence which the Tenderer may have, or request or instruction which may be given to the Obligor not to pay the Guaranteed Sum or any part thereof.
6. The Obligor hereby confirms and agrees that it shall not be required or permitted to enquire or make investigations into:
 - (a) the reasons or circumstance(s) of the Payment Demand;
 - (b) the respective rights, obligations, duties and/or liabilities of the Government and the Tenderer under the Invitation; or
 - (c) the authenticity of the Government's written Payment Demand or the authority or the entitlement of persons signing such demand for and on behalf of the Government,and the aforesaid written demand shall be conclusive of the Obligor's liability under this Tender Bond as to the amount which the Obligor has to pay to the Government.
7. Payment of the Guaranteed Sum demanded under this Tender Bond shall be made in full without any set-off or counterclaim whatsoever and howsoever arising, and free and clear of all deductions or withholdings of any kind whatsoever or howsoever arising.
8. Payment of the Guaranteed Sum under this Tender Bond shall be made in Hong Kong Dollars to the Government to the account specified in the Payment Demand.
9. The undertakings in this Tender Bond constitute direct, unconditional and irrevocable obligations on the part of the Obligor. The Obligor shall not be exonerated from all or any part of such obligations for any reason or cause whatsoever, including but not limited to:
 - (a) any changes in the terms and conditions of the Invitation; or
 - (b) any changes in the scope of the Project or nature of the work or services required to be executed by the Tenderer; or
 - (c) the withdrawal of the Tender by the Tenderer; or
 - (d) any failure to perform or to carry out any act or procedure by the Government or by a third party that would or could exempt or release the Obligor from its obligations and liabilities stipulated in this Tender Bond.
10. The Obligor confirms that its liability hereunder shall be a continuing liability and this Tender Bond shall remain in full force and effect from the date first written above until the date (the "**Expiry Date**") when the first of the following events occurs:

- (a) the original of this Tender Bond is returned by the Government to the Obligor accompanied by the Government's notice in writing that it is to be cancelled; or
 - (b) the 26th day of July 2013; or
 - (c) the Guaranteed Sum has been duly paid to the Government.
11. The Payment Demand must be submitted during days and hours when the Obligor is open for business in Hong Kong. The Obligor agrees to pay the Guaranteed Sum to the Government in immediately available funds, using its own funds, no later than forty eight (48) hours after the hour in which the Payment Demand was submitted by the Government, excluding any hours during days on which the Obligor is not open for business in Hong Kong, and provided that the documentation presented satisfies the requirements contained in this Tender Bond. If the Payment Demand fails to comply with any of the requirements established in this Tender Bond, the Obligor will immediately notify the Government in writing at the address stated above for the Government. The Obligor shall explain in such notice in what respect the Payment Demand does not comply with the terms of this Tender Bond and shall return the Payment Demand to the Government. The Government may resubmit any Payment Demand so returned.
 12. This Tender Bond is irrevocable and shall not be assigned or transferred by the Obligor.
 13. Any waiver by the Government of the terms of this Tender Bond or any consent or approval given by the Government shall only be effective if given in writing and then only for the purpose and upon the terms and conditions if any on which it is given.
 14. If any provision of this Tender Bond 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 Tender Bond in that jurisdiction, but it shall not affect the validity, enforceability or legality of that provision in another jurisdiction.
 15. This Tender Bond shall be governed and construed in accordance with the laws of Hong Kong and the Obligor hereby irrevocably agrees to submit to the jurisdiction of the courts of Hong Kong and agrees not to claim that such courts are not a convenient or proper forum. Such submission shall not (and shall not be construed to) limit the right of the Government to proceed against the Obligor in any other court of competent jurisdiction, and shall not preclude proceedings in any other jurisdiction (whether concurrent or not) if and to the extent permitted by the applicable law.
 16. The Obligor shall reimburse the Government for all legal and other costs incurred by the Government in connection with the enforcement of this Tender Bond. All charges of the Obligor related to the issuance or performance of this Tender Bond (including, but not limited to, the negotiation and payment) shall be borne by the Tenderer and under no circumstances shall be charged to the Government by the Obligor.
 17. The Obligor hereby represents and warrants that the undersigned has full authority to execute this Tender Bond on behalf of the Obligor.

EXECUTED as a **DEED** by)
[NAME OF THE OBLIGOR])
acting by *[NAME]*, *[TITLE]*)
acting under the authority)
of that company, in the presence of:)

Signature: _____

Name: _____

Address: _____

Form of Payment Demand Notice

To: [OBLIGOR]
[ADDRESS]

BANK GUARANTEE NO.: []

Dear Sirs,

Payment Demand Notice

We refer to the above referenced Tender Bond. This is the Payment Demand notice referred to therein.

Pursuant to Clause 1 of the Tender Bond we hereby demand payment of five million Hong Kong Dollars (HK\$5,000,000) to the following account:

[INSERT ACCOUNT DETAILS]

Yours faithfully,

()

for Director of Lands

**CONDITIONS OF SALE
REFERRED TO IN THE FOREGOING TENDER NOTICE**

GENERAL CONDITIONS

- | | |
|--------------------------------|---|
| Completion of tender documents | 1. Within fourteen working days of the date of the letter referred to in paragraph 19.1 of the Tender Notice annexed hereto, the successful tenderer (hereinafter referred to as "the Purchaser") shall sign, or in the case of a limited company duly execute under its common seal, the Memorandum of Agreement annexed hereto, the sale plans annexed hereto and the Service Deed pursuant to paragraph 19.1 of the Tender Notice annexed hereto for completing the purchase according to these Conditions. |
| Completion of sale | 2. Within twenty eight days of the date of this Agreement, the Purchaser shall pay to the Government of the Hong Kong Special Administrative Region (hereinafter referred to as "the Government") in one lump sum the balance of the premium tendered by him. |
| Failure to pay premium | <p>3. If the Purchaser shall fail to pay the balance of the premium as provided in General Condition No. 2 hereof, the Government may either enforce or cancel the sale. On cancellation the tender deposit in the form of the tender bond forwarded by the defaulting Purchaser with his tender and in part payment of the premium tendered by him shall be wholly forfeited to the Government, and the Government shall be at liberty to resell the Lot at such time and place and in such manner as the Government shall deem fit, and all losses and expenses attending a resale or attempted resale, including :</p> <ul style="list-style-type: none">(a) interest equivalent to 2 (two) per centum per annum above the average Best Lending Rate announced by the current note-issuing banks in Hong Kong, namely, The Hongkong and Shanghai Banking Corporation Limited, Standard Chartered Bank (Hong Kong) Limited and Bank of China (Hong Kong) Limited for the time being (hereinafter referred to as "the Agreed Rate") on the balance of the premium for the period from the latest date upon which such balance should have been paid in accordance with General Condition No. 2 hereof up to and including the date upon which the balance of the premium upon a resale is paid,(b) any deficiency which may result on a resale, and(c) interest at the Agreed Rate on any such deficiency for the period from the date upon which the balance of the premium upon a resale is paid up to and including the date of payment of the deficiency, <p>shall be made good and paid by the defaulting Purchaser and be recoverable by the Government as liquidated damages. Any increase of price on a resale shall belong to the Government.</p> |
| Rent | 4. Rent as specified in the Particulars of the Lot in the Tender Notice annexed hereto shall commence and be payable from the date of this Agreement until the expiry of the term hereby agreed to be granted, and shall be governed by the provisions of the Government Rent (Assessment and Collection) Ordinance, any regulations made thereunder and any amending legislation and also subject to a minimum rent of \$1 per annum (if demanded). |
| Acknowledgement by Purchaser | <p>5. (a) The Purchaser hereby expressly acknowledges :</p> <ul style="list-style-type: none">(i) that the Government shall be under no liability whatsoever to the Purchaser (which expression shall for the purpose of this General Condition only include his successors, assigns, mortgagees, tenants or |

other occupiers of the Lot whether lawful or otherwise) for any loss or damage howsoever arising in connection with or as a consequence of his purchase of the Lot and its subsequent development;

- (ii) that he has purchased the Lot based upon his own evaluation of land records and available geotechnical information whether obtained from Government sources or otherwise and has satisfied himself as to the state and condition of the Lot in relation to the purposes for which the Lot is to be developed or redeveloped;
- (iii) that he takes the Lot, whether on, above or below the surface of the ground, in the state and condition as it exists on the date on which possession of the Lot is deemed to be given in accordance with Special Condition No. (1) of these Conditions; and
- (iv) that he shall not be entitled to revoke, withdraw, cancel or resile in any way whatsoever from this Agreement nor be entitled in any way whatsoever to compensation or a reduction in the sale price or any other compromise whatsoever should he subsequently determine that the Lot is not fit for the purposes for which he purchased the Lot.

Exclusion of warranty

- (b) (i) The Government has given no warranty, express or implied, as to the suitability or fitness of the Lot or any part thereof for development whether in accordance with these Conditions or otherwise. The Purchaser for himself, his successors or assigns undertakes not to make any claim against the Government for any loss or damage whatsoever which he may suffer as a result of or arising from the state and condition of the Lot making it either unfit for the purpose for which he purchased the Lot or rendering it impossible to achieve the scale of development originally intended.
- (ii) The Government in no way warrants the accuracy or correctness in any way whatsoever of any information made available or obtained, and in particular does not warrant that the Lot is fit and suitable for any particular purpose.

Indemnity by Purchaser

(c) The Purchaser hereby indemnifies and shall keep indemnified the Government against all actions, proceedings, liabilities, demands, costs, expenses, losses (whether financial or otherwise) and claims whatsoever and howsoever arising from any breach of these Conditions or any damage or soil and groundwater contamination caused to adjacent or adjoining land or to the Lot where such damage or soil and groundwater contamination has, in the opinion of the Director of Lands (hereinafter referred to as "the Director", and whose opinion shall be final and binding upon the Purchaser), arisen out of any use of the Lot, or any development or redevelopment of the Lot or part thereof or out of any activities carried out on the Lot or out of any other works carried out thereon by the Purchaser whether or not such use, development or redevelopment, activities or works are in compliance with these Conditions or in breach thereof.

Setting out

6. (a) The Director shall, at such time as he thinks fit or upon the application of the Purchaser, set out the Lot on the ground, and the Purchaser or his authorized representative after such setting out when called upon by the Director shall attend at the Lot to inspect the survey marks delineating the Lot on the ground and shall be given a plan showing the positions and descriptions of each such mark. The Purchaser shall not commence any operations for building on the Lot until it shall have been so set out by the Director. The Purchaser shall take or cause to be taken all proper care and precautions to safeguard the said survey marks from disturbance or removal. If, before commencing any operations for building on the Lot, any of the said survey marks are disturbed or removed,

the Purchaser shall apply in writing to the Director for replacement by survey and shall pay on demand to the Government in advance the prescribed fee therefor.

Encroachment upon
Government land

(b) In the event that the Purchaser is found to have encroached upon and to be occupying Government land, the Director may in his absolute discretion either require the Purchaser to demolish any building or part of any building standing on such Government land, to reinstate such Government land to his satisfaction and deliver vacant possession of the same to the Government or pay to the Government such sum as the Director in his absolute discretion shall determine as the premium in respect of such Government land. A certificate under the hand of the Director shall be conclusive as to the extent of any such encroachment and as to the amount of the premium payable in respect thereof. If the Purchaser fails to demolish any building as required by the Director as above, it shall be lawful for the Director to demolish such building and the Purchaser shall pay on demand to the Government the amount certified by the Director as the cost of such demolition. In the event that the Director exercises his discretion to require the payment of premium as aforesaid, upon the payment of such premium, the area of Government land encroached upon shall be deemed in all respects to be part of the Lot and shall be included in the lease of the Lot when issued.

Maintenance

7. (a) The Purchaser shall throughout the tenancy having built or rebuilt (which word refers to redevelopment as contemplated in sub-clause (b) of this General Condition) in accordance with these Conditions:

- (i) maintain all buildings in accordance with the approved design and disposition and any approved building plans without variation or modification thereto; and
- (ii) maintain all buildings erected or which may hereafter be erected in accordance with these Conditions or any subsequent contractual variation of them, in good and substantial repair and condition and in such repair and condition deliver up the same at the expiration or sooner determination of the tenancy.

(b) In the event of the demolition at any time during the tenancy of any building then standing on the Lot or any part thereof, the Purchaser shall replace the same either by sound and substantial building or buildings of the same type and of no less gross floor area or by building or buildings of such type and value as shall be approved by the Director. In the event of demolition as aforesaid, the Purchaser shall within one calendar month of such demolition apply to the Director for consent to carry out building works for the redevelopment of the Lot and upon receiving such consent shall within three calendar months thereof commence the necessary works of redevelopment and shall complete the same to the satisfaction of and within such time limit as is laid down by the Director.

Boundary stones

8. The Purchaser shall permit boundary stones properly cut and marked with the number of the Lot to be fixed at each angle thereof and either in or on the land itself or in or on any building erected thereon as may be required by the Director and shall pay the fees prescribed by him therefor as well as the prescribed fees for the refixing of such boundary stones which, through being lost, damaged or removed, need replacing.

Private streets, roads
and lanes

9. Any private streets, roads and lanes which by these Conditions are required to be formed shall be sited to the satisfaction of the Director and included in or excluded from the area to be leased as may be determined by him and in either case shall be surrendered to the Government free of cost if so required. If the said streets, roads and lanes are surrendered to the Government, the surfacing, kerbing, draining (both foul and storm water sewers), channelling and road lighting thereof shall be carried out by the Government at the expense of the Purchaser and thereafter they shall be maintained at public expense. If the said private streets, roads and lanes remain part of the area to be

leased, they shall be lighted, surfaced, kerbed, drained, channelled and maintained by and at the expense of the Purchaser in all respects to the satisfaction of the Director and the Director may carry out or cause to be carried out the installation and maintenance of road lighting for the sake of public interest as required. The Purchaser shall bear the capital cost of installation of road lighting and allow free ingress and egress to and from the area to be leased to workmen and vehicles for the purpose of installation and maintenance of the road lighting.

Right to inspect

10. (a) The Purchaser shall throughout the tenancy, at all reasonable times, permit the Director or his authorized representatives, with or without notice, to enter in or upon the Lot or any part thereof or any building or part of any building erected on the Lot for the purpose of inspecting the same so as to ascertain that there is no breach of or failure to observe any of these Conditions.

Right to inspect for
assessing
contamination

(b) The Purchaser shall throughout the tenancy, at all reasonable times, permit the Director and the Director of Environmental Protection or his or their authorized representatives, upon serving reasonable verbal or written notice on the Purchaser, to enter into or upon the Lot or any part thereof or any building or part of any building erected on the Lot for the purpose of carrying out site investigation works to assess the extent of contamination within the Lot, which works shall include but not be limited to conducting site inspections, taking soil and water samples and any other works and operations relating or ancillary to such contamination assessment.

Breach of lease
conditions

(c) The fulfilment by the Purchaser of his obligations under these Conditions shall be a condition precedent to the grant or continuance of the tenancy, and in the event of any default by the Purchaser in complying therewith, such default shall be deemed to be a continuing breach and the subsequent acceptance by or on behalf of the Government of any rent or rates or other payment whatsoever shall not (except where the Government has notice of such breach and has expressly acquiesced therein) be deemed to constitute any waiver or relinquishment or otherwise prejudice the enforcement of the Government's right of re-entry for or on account of such default or any other rights, remedies or claims of the Government in respect thereof under these Conditions which shall continue in force and shall apply also in respect of default by the Purchaser in the fulfilment of his obligations under these Conditions within any extended or substituted period as if it had been the period originally provided.

Re-entry

11. (a) Upon any failure or neglect by the Purchaser to perform, observe or comply with any of these Conditions, the Government shall be entitled to re-enter upon and take back possession of the Lot or any part thereof and all or any buildings, erections and works erected or to be erected on the Lot or any such part thereof or any part of such buildings, erections or works and thereupon this Agreement and the rights of the Purchaser hereunder shall absolutely cease and determine (in respect of such part if the re-entry is upon a part only) but without prejudice nevertheless to the rights, remedies and claims of the Government in respect of any breach, non-observance or non-performance of the terms and conditions hereof.

No refund of premium
on re-entry

(b) In the event of re-entry by the Government for or in respect of or arising out of the breach, non-observance or non-performance by the Purchaser of the provisions of these Conditions, the Purchaser shall not be entitled to any refund of the premium paid by him or any part thereof or to any payment or compensation whatsoever whether in respect of the value of the land or any part thereof or any building or buildings erected or to be erected on the land or any part thereof or part of any such building or buildings or any amount expended by the Purchaser in the preparation, formation or development of the Lot or any part thereof or otherwise.

Lease

12. (a) When these Conditions have been complied with to the satisfaction of the Director, the Purchaser shall subject to approval of his title by the Director be entitled to

a lease of the Lot as described in the Particulars of the Lot in the Tender Notice annexed hereto for the term stated in the preamble to the said Tender Notice.

(b) The Purchaser shall execute and take up the lease for the Lot when called upon to do so by the Director and shall pay the prescribed fees therefor. In the event of more than one building being erected on the Lot, the Purchaser may be required to take up a separate lease for the site of each separate building and shall pay the prescribed fees for every additional lease so required to be taken up.

(c) Pending the issue of the lease, the tenancy of the Lot shall be deemed to be upon and subject to and such lease when issued shall be subject to and contain all exceptions, reservations, covenants, clauses and conditions as are now inserted in the leases issued by the Government of similar lots in the Hong Kong Special Administrative Region (hereinafter referred to as "Hong Kong") as varied, modified or extended by these Conditions.

Definitions

13. (a) The expression "Purchaser" shall in these Conditions include the person entering into and executing this Agreement and where the context so admits or requires his executors, administrators and assigns and in the case of a corporation its successors and assigns, and the expression "Lot", except where the context otherwise requires, means the lot stated in the Particulars of the Lot in the Tender Notice annexed hereto. Where the context so admits or requires, words importing the masculine gender shall be deemed to include females and corporations, and words in the singular shall be deemed to include the plural.

(b) The foregoing General Conditions shall be read and construed as varied or modified by the Special Conditions hereinafter contained, and the expression "these Conditions" whenever used shall mean and include the General and Special Conditions.

Marginal notes

14. The marginal notes to these Conditions shall not be deemed to be part of these Conditions and shall not affect the interpretation or construction thereof.

SPECIAL CONDITIONS

Possession

(1) (a) Subject to payment of the balance of the premium as provided in General Condition No. 2 hereof and subject to the provisions of General Condition No. 1 hereof:

- (i) possession of those parts of the Lot shown coloured pink and pink hatched black on the plan marked PLAN I annexed hereto (hereinafter collectively referred to as "the Possession Area 1") shall be deemed to have been given to the Purchaser on the date of this Agreement;
- (ii) possession of those parts of the Lot shown coloured pink hatched green and pink hatched black hatched green on the plan marked PLAN I annexed hereto (hereinafter collectively referred to as "the Possession Area 2") shall be deemed to have been given to and taken by the Purchaser on such date or dates to be specified in a letter or letters from the Director to the Purchaser and such date or dates shall not be later than the 2nd day of July 2013; and
- (iii) possession of those parts of the Lot shown coloured pink stippled green and pink hatched black stippled green on the plan marked PLAN I annexed hereto (hereinafter collectively referred to as "the Possession Area 3") shall be deemed to have been given to and taken by the Purchaser on such date or dates to be specified in a letter or letters from the Director to the Purchaser and such date or dates shall not be later than the 31st day of January 2015.

(b) The Purchaser acknowledges and agrees that the Government, the Director and his authorized officers shall have no liability in respect of any damage or loss whatsoever caused to or suffered by the Purchaser arising out of or in connection with the deferred possession of the Possession Area 2 and the Possession Area 3 and no claim whatsoever for compensation or otherwise shall be made against the Government, the Director or his authorized officers by the Purchaser in respect of any such damage or loss.

Indemnify Government against existing piles

(2) The Purchaser acknowledges that as at the date of this Agreement, there are some piles existing on the Lot. The Purchaser shall have the sole responsibility to determine whether to demolish and remove the said piles and shall at his own cost and expense maintain and repair the said piles prior to their demolition and removal. In the event that the Purchaser decides to demolish and remove the said piles, the Purchaser shall bear all the cost and expense for, arising out of or in connection with the said demolition and removal. The Government shall be under no responsibility, obligation or liability to the Purchaser or any other person in respect of the presence, maintenance, repair, demolition or removal of the said piles or for any damage, nuisance or disturbance caused to or suffered by the Purchaser or any other person by reason of or arising out of or incidental to the presence, maintenance, repair, demolition or removal of the said piles. No claim for compensation shall be made against the Government from and against, and the Purchaser hereby indemnifies and shall keep indemnified the Government from and against all liabilities, claims, costs, demands, actions or other proceedings whatsoever arising whether directly or indirectly out of or in connection with the presence, maintenance, repair, demolition or removal of the said piles.

Formation of the Green Area (time limit, manner and purpose)

(3) (a) The Purchaser shall :

- (i) on or before the date set out in column 2 of item (I) in Part B of the Schedule annexed hereto (or such later date or dates as may be approved by the Director), at his own expense, in such manner, with such materials and to such standards, levels, alignment and design as the Director shall approve and in all respects to the satisfaction of the Director:

- (I) lay and form those portions of the future public roads shown coloured green and green hatched black on the plan marked PLAN I annexed hereto (hereinafter collectively referred to as "the Green Area"); and

- (II) provide and construct such bridges, tunnels, over-passes, under-passes, culverts, viaducts, flyovers, pavements, roads or such other structures as the Director in his sole discretion may require (hereinafter collectively referred to as "the Structures")

so that building, vehicular and pedestrian traffic may be carried on the Green Area.

- (ii) on or before the date set out in column 2 of item (I) in Part B of the Schedule annexed hereto (or such later date or dates as may be approved by the Director), at his own expense and to the satisfaction of the Director, surface, kerb and channel the Green Area and provide the same with such gullies, sewers, drains, fire hydrants with pipes connected to water mains, street lights, traffic signs, street furniture and road markings as the Director may require; and

- (iii) maintain at his own expense the Green Area together with the Structures and all structures, surfaces, gullies, sewers, drains, fire hydrants, services, street lights, traffic signs, street furniture, road markings and plant constructed, installed and provided thereon or therein to the satisfaction of the Director until such time as possession of the Green Area has been re-delivered to the Government in accordance with Special Condition No. (4) hereof.

Formation of the Green Area (non-fulfilment)

(b) In the event of the non-fulfilment of the Purchaser's obligations under sub-clause (a) of this Special Condition, the Government may carry out the necessary works at the cost of the Purchaser who shall pay to the Government on demand a sum equal to the cost thereof, such sum to be determined by the Director whose determination shall be final and shall be binding upon the Purchaser.

No compensation on works on the Green Area

(c) The Government shall have no liability in respect of any loss, damage, nuisance or disturbance whatsoever caused to or suffered by the Purchaser or any other person whether arising out of or incidental to the fulfilment of the Purchaser's obligations under sub-clause (a) of this Special Condition or any exercise of the rights by the Government under sub-clause (b) of this Special Condition or otherwise, and no claim whatsoever shall be made against the Government by the Purchaser in respect of any such loss, damage, nuisance or disturbance.

Possession of the Green Area

(4) (a) For the purpose only of carrying out the necessary works specified in Special Condition No. (3) hereof, the Purchaser shall:

- (i) on the date of this Agreement be granted possession of the area shown coloured green on the plan marked PLAN I annexed

hereto; and

- (ii) on such date or dates to be specified in a letter or letters from the Director to the Purchaser be granted possession of the area shown coloured green hatched black on the plan marked PLAN I annexed hereto and such date or dates shall not be later than the 31st day of January 2015.

(b) The Green Area shall be re-delivered to the Government by the Purchaser on such date or dates to be specified in a letter or letters from the Director to the Purchaser. The Purchaser shall at all reasonable times while he is in possession of the Green Area allow free access over and along the Green Area for all Government and public vehicular and pedestrian traffic and shall ensure that such access shall not be interfered with or obstructed by the carrying out of the works whether under Special Condition No. (3) hereof or otherwise.

Restriction on use of the Green Area

- (5) The Purchaser shall not without the prior written consent of the Director use the Green Area for the purpose of storage or for the erection of any temporary structure or for any purposes other than the carrying out of the works specified in Special Condition No. (3) hereof.

Access to the Green Area for inspection

- (6) (a) The Purchaser shall at all reasonable times while he is in the possession of the Green Area or any part thereof :

- (i) permit the Government, the Director, his officers, contractors and agents and any other persons authorized by the Director, the right of ingress, egress and regress to, from and through the Lot and the Green Area for the purpose of inspecting, checking and supervising any works to be carried out in compliance with Special Condition No. (3)(a) hereof and the carrying out, inspecting, checking and supervising of the works under Special Condition No. (3)(b) hereof and any other works which the Director may consider necessary in the Green Area;
- (ii) permit the Government and the relevant public utility companies authorized by the Government the right of ingress, egress and regress to, from and through the Lot and the Green Area as the Government or the relevant public utility companies may require for the purpose of any works to be carried out in, upon or under the Green Area or any adjoining land including but not limited to the laying and subsequent maintenance of all pipes, wires, conduits, cable-ducts and other conducting media and ancillary equipment necessary for the provision of telephone, electricity, gas (if any) and other services intended to serve the Lot or any adjoining or neighbouring land or premises, and the Purchaser shall co-operate fully with the Government and also with the relevant public utility companies authorized by the Government on all matters relating to any of the aforesaid works to be carried out within the Green Area; and
- (iii) permit the officers of the Water Authority and such other persons as may be authorized by them the right of ingress, egress and regress to, from and through the Lot and the Green Area as the officers of the Water Authority or such authorized persons may require for the purpose of carrying out any works in relation to the operation, maintenance, repairing, replacement and alteration of any other waterworks installations within the Green Area.

(b) The Government, the Director and his officers, contractors and agents and any persons or public utility companies authorized under sub-clause (a) of this Special Condition shall have no liability in respect of any loss, damage, nuisance or disturbance whatsoever caused to or suffered by the Purchaser or any other person arising out of or incidental to any exercise of the rights by the Government, the Director and his officers, contractors and agents and any other persons or public utility companies authorized under sub-clause (a) of this Special Condition.

User

(7) (a) The Lot or any part thereof or any building or structure or part of any building or structure erected or to be erected thereon shall not be used for any purpose other than for the following purposes:

- (i) for the purpose of a hospital of the number of hospital beds as set out in column 2 of item (II) in Part B of the Schedule annexed hereto (which number of hospital beds may be varied after a period of six years from the date of the Commencement Certificate (as defined in Special Condition No (9)(b)(i) hereof) with the prior written approval of the Director of Health for the purpose of registration of the hospital under the Hospitals, Nursing Homes and Maternity Homes Registration Ordinance (Cap.165), any regulations made thereunder and any amending legislation, and subject to the prior written consent of the Director who may, in granting consent, impose any conditions at his absolute discretion) (such number of hospital beds as may be varied is hereinafter referred to as "the Total Number of Hospital Beds") in all respects to the satisfaction of the Director of Health providing (subject to Special Condition No. (14)(c)(ii) hereof) all the Clinical and Clinical Supporting Facilities (as defined in sub-clause (d)(ii) of this Special Condition) in all respects to the satisfaction of the Director of Health (which purpose is hereinafter referred to as "the Hospital Purpose"); and
- (ii) in addition to the Hospital Purpose, subject to sub-clause (b) of this Special Condition and Special Condition Nos. (8)(b) and (14)(c)(iii) hereof, for the purpose of the Non-Clinical Supporting Facilities (as defined in Special Condition No. (8)(b) hereof).

(b) The Non-Clinical Supporting Facilities (as defined in Special Condition No. (8)(b) hereof) shall, in the opinion of the Director of Health (whose determination shall be final and binding on the Purchaser), be ancillary or essential to support the operation of the hospital referred to in sub-clause (a)(i) of this Special Condition. No part of the Non-Clinical Supporting Facilities (as defined in Special Condition No. (8)(b) hereof), excluding the spaces provided in accordance with Special Condition No. (22) hereof and the other areas referred to in Special Condition No. (21) hereof, shall be used for any purpose other than:

- (i) as to the Accommodation Facilities (as defined in sub-clause (d)(iv) of this Special Condition), as accommodation facilities (subject to Special Condition No. (14)(c)(iv) hereof) for occupation by any person duly registered as a patient attending the hospital referred to in sub-clause (a)(i) of this Special Condition for treatment (hereinafter referred to as "Registered Patient") and the bona fide carers of such Registered Patient (hereinafter referred to as "Carers", and any reference to a

“Carer” shall be construed accordingly);

- (ii) as to the Staff Quarters (as defined in sub-clause (d)(v) of this Special Condition), as residential quarters for the occupation by such staff employed at the hospital referred to in sub-clause (a)(i) of this Special Condition and their family members (hereinafter collectively referred to as “Permitted Occupants”, and any reference to a “Permitted Occupant” shall be construed accordingly); and
- (iii) as to the Ancillary Facilities (as defined in sub-clause (d)(iii) of this Special Condition), for the purposes of offices, canteens, retail shops, storerooms, food and beverage outlets, automatic teller machines, healthcare training facilities, kitchens for providing meals to patients, laundry and supplies rooms and any other facilities as the Director of Health may at his absolute discretion approve or require, as referred to in sub-clause (d)(iii) of this Special Condition.

(c) Without prejudice to the generality of the restrictions and provisions under sub-clauses (a) and (b) of this Special Condition, the Lot or any part thereof or any building or structure or part of any building or structure erected or to be erected thereon shall not be used for any purposes other than the purposes for which it is designed, constructed, intended and as designated to be used in accordance with these Conditions and the approved design and disposition under Special Condition No. (14)(g) hereof.

(d) For the purposes of these Conditions:

- (i) “Hospital” shall mean the hospital referred to in sub-clause (a)(i) of this Special Condition together with the Non-Clinical Supporting Facilities (as defined in Special Condition No. (8)(b) hereof) provided within the Lot in accordance with these Conditions;
- (ii) “Clinical and Clinical Supporting Facilities” shall mean in-patient wards, diagnostic facilities, therapeutic facilities, outpatient and day care facilities, central sterilization facilities, laboratory, blood bank, mortuary, pharmacy, utility facilities and such other clinical and clinical supporting facilities as the Director of Health may at his absolute discretion approve or require;
- (iir) “Ancillary Facilities” shall mean offices, canteens, retail shops, storerooms, food and beverage outlets, automatic teller machines, healthcare training facilities, kitchens for providing meals to patients, laundry and supplies rooms and any other facilities as the Director of Health may at his absolute discretion approve or require, provided within the Non-Clinical Supporting Facilities (as defined in Special Condition No. (8)(b) hereof), all of which are, in the opinion of the Director of Health (whose determination shall be final and binding on the Purchaser), ancillary or essential to support the operation of the hospital referred to in sub-clause (a)(i) of this Special Condition;
- (iv) “Accommodation Facilities” shall mean any accommodation facilities as set out in column 1 of item (II) in Part A of the

Schedule annexed hereto provided within the Non-Clinical Supporting Facilities (as defined in Special Condition No. (8)(b) hereof), which are, in the opinion of the Director of Health (whose determination shall be final and binding on the Purchaser), ancillary or essential to support the operation of the hospital referred to in sub-clause (a)(i) of this Special Condition; and

- (v) "Staff Quarters" shall mean any residential quarters provided within the Non-Clinical Supporting Facilities (as defined in Special Condition No. (8)(b) hereof), which are, in the opinion of the Director of Health (whose determination shall be final and binding on the Purchaser), ancillary or essential to support the operation of the hospital referred to in sub-clause (a)(i) of this Special Condition.

(e) For the purposes of these Conditions, the Director of Health shall have the sole and absolute discretion to determine :

- (i) what constitutes a hospital bed in the hospital referred to in sub-clause (a)(i) of this Special Condition;
- (ii) what constitutes or forms part of the Hospital, the hospital referred to in sub-clause (a)(i) of this Special Condition, the Clinical and Clinical Supporting Facilities, the Non-Clinical Supporting Facilities (as defined in Special Condition (8)(b) hereof), the Accommodation Facilities, the Staff Quarters or the Ancillary Facilities;
- (iii) what constitutes or forms part of the Hospital Purpose, the purpose permitted under sub-clause (a)(ii) of this Special Condition, or the purposes specified in sub-clause (b) of this Special Condition;
- (iv) whether the use to which the hospital referred to in sub-clause (a)(i) of this Special Condition or any part thereof is to be put is a use for the Hospital Purpose;
- (v) whether the use to which the Non-Clinical Supporting Facilities (as defined in Special Condition No. (8)(b) hereof) or any part thereof is to be put is a use for the purpose permitted under sub-clause (a)(ii) of this Special Condition;
- (vi) whether the use to which the Accommodation Facilities or any part thereof is to be put is a use for the purpose permitted under sub-clause (b)(i) of this Special Condition;
- (vii) whether the use to which the Staff Quarters or any part thereof is to be put is a use for the purpose permitted under sub-clause (b)(ii) of this Special Condition;
- (viii) whether the use to which the Ancillary Facilities or any part thereof is to be put is a use for the purpose permitted under sub-clause (b)(iii) of this Special Condition;
- (ix) whether a person is duly registered as a patient attending the hospital referred to in sub-clause (a)(i) of this Special Condition

for treatment and whether a person is a Registered Patient;

- (x) whether a person is a Carer; and
- (xi) whether a person is a member of staff employed at the hospital referred to in sub-clause (a)(i) of this Special Condition and whether a person is a Permitted Occupant,

and such determination shall be final and binding on the Purchaser.

Type of building

(8) (a) Upon development or redevelopment (which term refers solely to redevelopment contemplated in General Condition No. 7 hereof) of the Lot or any part thereof, the Purchaser shall at his own cost and expense and in accordance with these Conditions and all Ordinances, regulations and by-laws relating to building, sanitation and planning which are or may at any time be in force in Hong Kong erect, construct and maintain upon the Lot the hospital referred to in Special Condition No. (7)(a)(i) hereof.

(b) The Purchaser shall not erect, construct or maintain or permit or suffer to be erected, constructed or maintained upon the Lot any building or structure or buildings or structures other than the hospital referred to in Special Condition No. (7)(a)(i) hereof, the spaces provided in accordance with Special Condition No. (22) hereof and the other areas referred to in Special Condition No. (21) hereof, provided that upon development or redevelopment of the Lot or any part thereof, the Purchaser may at his own cost and expense and in accordance with these Conditions and all Ordinances, regulations and by-laws relating to building, sanitation and planning which are or may at any time be in force in Hong Kong, erect, construct and maintain upon the Lot:

- (i) the Ancillary Facilities;
- (ii) the Staff Quarters; and
- (iii) the Accommodation Facilities,

which shall, in the opinion of the Director of Health (whose determination shall be final and binding on the Purchaser), be ancillary or essential to support the operation of the hospital referred to in Special Condition No. (7)(a)(i) hereof. For the purposes of these Conditions, "the Non-Clinical Supporting Facilities" shall mean collectively the Ancillary Facilities, the Staff Quarters, the Accommodation Facilities, the spaces provided in accordance with Special Condition No. (22) hereof and the other areas referred to in Special Condition No. (21) hereof.

(c) The Lot shall not be developed or redeveloped except in accordance with these Conditions and the approved design and disposition under Special Condition No. (14)(g) hereof and in all respects to the satisfaction of the Director, and no building which is not shown in the approved design and disposition under Special Condition No. (14)(g) hereof shall be erected, constructed or provided on the Lot or any part thereof.

Commence and continue to operate

(9) (a) The Purchaser shall at his own cost and expense, in accordance with these Conditions, all Ordinances, regulations and by-laws relating to hospitals which are or may at any time be in force in Hong Kong and the Service Deed (as defined in Special Condition No. (19) hereof):

- (i) (I) on or before the date as set out in column 2 of item (I) in Part B of the Schedule annexed hereto, provide

services for the specialties of general medicine (with or without medical sub-specialties), general surgery (with or without surgical sub-specialties), orthopaedics and traumatology and gynaecology on a scale, in a manner and in all respects to the satisfaction of the Director of Health;

- (II) on or before the date as set out in column 2 of item (I) in Part B of the Schedule annexed hereto, provide not less than the total number of hospital beds as set out in column 2 of item (III)(i) in Part B of the Schedule annexed hereto in all respects to the satisfaction of the Director of Health; and
- (III) subject to sub-clauses (a)(ii), (a)(iii) and (a)(iv) of this Special Condition, continue to provide not less than the total number of hospital beds as set out in column 2 of item (III)(i) in Part B of the Schedule annexed hereto in all respects to the satisfaction of the Director of Health;
- (ii) on or before the date as set out in column 1 of item (III)(ii) in Part B of the Schedule annexed hereto, provide, and continue to provide subject to sub-clauses (a)(iii) and (a)(iv) of this Special Condition, not less than the total number of hospital beds as set out in column 2 of item (III)(ii) in Part B of the Schedule annexed hereto in all respects to the satisfaction of the Director of Health;
- (iii) on or before the date as set out in column 1 of item (III)(iii) in Part B of the Schedule annexed hereto, provide, and continue to provide subject to sub-clause (a)(iv) of this Special Condition, not less than the total number of hospital beds as set out in column 2 of item (III)(iii) in Part B of the Schedule annexed hereto in all respects to the satisfaction of the Director of Health; and
- (iv) on or before the date as set out in column 1 of item (III)(iv) in Part B of the Schedule annexed hereto, provide, and continue to provide throughout the term hereby agreed to be granted the Total Number of Hospital Beds in all respects to the satisfaction of the Director of Health,

and shall, throughout the term hereby agreed to be granted, at the Purchaser's own cost and expense continue to operate the Hospital for the purposes as specified in Special Condition No. (7) hereof on a scale, in a manner and in all respects to the satisfaction of the Director of Health and conduct the Hospital in all respects to the satisfaction of the Director of Health and in accordance with these Conditions, all Ordinances, regulations and by-laws relating to hospitals which are or may at any time be in force in Hong Kong and the Service Deed (as defined in Special Condition No. (19) hereof).

(b) For the purposes of these Conditions:

- (i) the Purchaser shall not be regarded as having complied with his obligations under sub-clauses (a)(i)(I) and (a)(i)(II) of this Special Condition and Special Condition No. (22)(g) hereof unless and until the Director of Health shall have issued to the Purchaser a certificate to such effect (which certificate is

hereinafter referred to as "the Commencement Certificate");
and

- (ii) the Director of Health shall have the sole and absolute discretion to determine:
 - (I) what constitutes the specialties of general medicine, general surgery, orthopaedics and traumatology and gynaecology;
 - (II) whether services for the specialties of general medicine, general surgery, orthopaedics and traumatology and gynaecology are provided in accordance with sub-clause (a)(i)(I) of this Special Condition;
 - (III) whether and when the Purchaser's obligations under sub-clause (a) of this Special Condition and Special Condition No. (22)(g) hereof are complied with;
 - (IV) when the Commencement Certificate is to be issued; and
 - (V) whether hospital beds are provided in such number as respectively required, and in accordance with the respective provisions stipulated, in sub-clauses (a)(i)(II), (a)(i)(III), (a)(ii), (a)(iii) and (a)(iv) of this Special Condition,

and such determination shall be final and binding on the Purchaser.

(c) It is acknowledged and declared that any issue of the Commencement Certificate by the Director of Health under sub-clause (b)(i) of this Special Condition shall not be taken as any agreement, whether express or implied, on the part of the Government that any licence, permit, certificate, consent or approval required from relevant authorities or under any Ordinance, regulation, by-law or any amending legislation in connection with the use and occupation of the Lot and any buildings thereon for the purposes as specified in Special Condition No. (7) hereof can be or will be given. For the avoidance of doubt, any issue of the Commencement Certificate shall not in any way relieve the Purchaser of or release, discharge or reduce the Purchaser's obligations (whether under any Ordinance, regulation, by-law or any amending legislation or otherwise), at his own expense, to obtain and maintain in force all requisite licences, permits, certificates, consent and approvals in connection with the use and occupation of the Lot and any buildings thereon for the purposes as specified in Special Condition No. (7) hereof and to comply with the terms and conditions thereof in all respects.

Cessation of user

(10) (a) The Purchaser acknowledges that the Lot is granted on the terms and for the purposes set out in these Conditions and agrees that throughout the term hereby agreed to be granted, the Lot must be used in accordance with these Conditions.

(b) The Purchaser agrees that it shall be a breach of Special Condition No. (9) hereof and this Special Condition if, at any time during the term hereby agreed to be granted, the Director is of the opinion that the Lot or any part or parts thereof or any building or structure or part of any building or structure on it has ceased to be used for the purposes specified in Special Condition No. (7) hereof (as to which, and without prejudice to the rights of the Director under these Conditions, the non-user of the Lot or any part or parts thereof for the purposes specified in Special Condition No. (7) hereof

for a total period of six calendar months shall be conclusive evidence) or the extent of the user of the Lot or any part or parts thereof or any building or structure or part of any building or structure on it for the purposes specified in Special Condition No. (7) hereof has so diminished to the extent that the Lot or any part or parts thereof is, in the opinion of the Director, either not being used or adequately used for the purposes for which it is granted; and it shall be lawful for the Government to re-enter upon and take back possession of the Lot or any part or parts thereof, or any interest in it and all or any buildings, structures, erections and works on it without notice, whether under the Government Rights (Re-entry and Vesting Remedies) Ordinance, Cap. 126, any regulations made thereunder and any amending legislation, or at common law, or otherwise. Upon the exercise of this power by the Government, the rights of the Purchaser under this Agreement shall absolutely cease and determine but without prejudice nevertheless to the rights, remedies and claims of the Government in respect of any breach, non-observance or non-performance of any of these Conditions or otherwise, and the Purchaser shall not be entitled to any refund of the premium paid by him or any part thereof or to any payment or compensation whatsoever whether in respect of the value of the Lot or any part or parts thereof or any building or buildings or structure or structures thereon or any amount expended by the Purchaser in the preparation, formation or development of the Lot or any part or parts thereof or otherwise.

(c) The Purchaser hereby acknowledges and agrees that for the purpose of this Special Condition, the opinion of the Director will be unfettered, conclusive and binding on the Purchaser.

Access for inspection

(11) (a) The Purchaser shall throughout the term hereby agreed to be granted, at all reasonable times, permit the Government, the Director, the Director of Health, their officers, contractors and workmen and any other persons authorized by them, with or without notice, the right of ingress, egress and regress to, from and through the Lot and any building or buildings or structure or structures erected or to be erected thereon for the purpose of inspecting the Hospital.

(b) The Government, the Director, the Director of Health, their officers, contractors and workmen and any other persons authorized under sub-clause (a) of this Special Condition shall have no liability in respect of any loss, damage, nuisance or disturbance whatsoever caused to or suffered by the Purchaser or any other person whether arising out of or incidental to any exercise of the rights under sub-clause (a) of this Special Condition and no claim whatsoever shall be made against the Government, the Director, the Director of Health, their officers, contractors and workmen and any other persons authorized under sub-clause (a) of this Special Condition by the Purchaser in respect of any such loss, damage, nuisance or disturbance.

Preservation of trees

(12) No tree growing on the Lot or adjacent thereto or the Green Cross-hatched Black Area as defined in Special Condition No. (28)(a) hereof or adjacent thereto shall be removed or interfered with without the prior written consent of the Director who may, in granting consent, impose such conditions as to transplanting, compensatory landscaping or replanting as he may deem appropriate.

Landscaping

(13) (a) The Purchaser shall at his own expense submit to the Director for his approval a landscape master plan indicating the location, disposition and layout of the landscaping works to be provided within the Lot in compliance with the requirements stipulated in sub-clause (b) of this Special Condition. No site formation works shall be commenced on the Lot or any part thereof until the landscape master plan has been approved in writing by the Director and consent, if required, has been granted in respect of the proposals for the preservation of trees under Special Condition No. (12) hereof.

- (b) (i) The landscape master plan shall be at a scale of 1:500 or larger and shall contain information on the landscaping proposals including a survey and treatment of existing trees, site layout and formation levels, conceptual form of building development, illustrative layout of hard and soft landscaping areas and such other information as the Director may require;
- (ii) Not less than 30% of the area of the Lot shall be planted with trees, shrubs or other plants and not less than 50% of the said 30% (hereinafter referred to as "the Greenery Area") shall be provided at such location or level as may be determined by the Director at his sole discretion so that the Greenery Area shall be visible to pedestrians or accessible by any person or persons entering the Lot. The decision of the Director on which landscaping works proposed by the Purchaser constitutes the said 30% shall be final and binding on the Purchaser. The Director at his sole discretion may accept other non-planting features proposed by the Purchaser as an alternative to planting trees, shrubs or other plants.

(c) The Purchaser shall at his own expense landscape the Lot in accordance with the approved landscape master plan in all respects to the satisfaction of the Director and no amendment, variation, alteration, modification or substitution of the approved landscape master plan shall be made without the prior written consent of the Director.

(d) The Purchaser shall thereafter at his own expense keep and maintain the landscaped works in a safe, clean, neat, tidy and healthy condition all to the satisfaction of the Director.

Development conditions	(14)	Subject to these Conditions, upon development or redevelopment of the Lot or any part thereof:
Compliance with the Buildings Ordinance	(a)	any building or buildings erected or to be erected on the Lot shall in all respects comply with the Buildings Ordinance, any regulations made thereunder and any amending legislation;
Compliance with Town Planning Ordinance	(b)	no building or buildings may be erected on the Lot or any part thereof or upon any area or areas outside the Lot specified in these Conditions, nor may any development or use of the Lot or any part thereof, or of any area or areas outside the Lot specified in these Conditions take place, which does not in all respects comply with the requirements of the Town Planning Ordinance, any regulations made thereunder and any amending legislation.
Total gross floor area	(c)	<ul style="list-style-type: none">(i) the total gross floor area of any building or buildings erected or to be erected on the Lot shall not be less than 28,050 square metres and shall not exceed 46,750 square metres;(ii) the proportion (expressed in percentage) which the total gross floor area of the building or buildings erected or to be erected on the Lot designed and constructed for the Clinical and Clinical Supporting Facilities bears to the total gross floor area of the building or buildings erected or to be erected on the Lot shall not be less than the percentage as set out in column 2 of item (I) in Part A of the Schedule annexed hereto in respect of all the Clinical and Clinical Supporting Facilities;

- (iii) the proportion (expressed in percentage) which the total gross floor area of the building or buildings erected or to be erected on the Lot designed and constructed for the Non-Clinical Supporting Facilities bears to the total gross floor area of the building or buildings erected or to be erected on the Lot shall not exceed the percentage as set out in column 2 of item (IV) in Part A of the Schedule annexed hereto in respect of all the Non-Clinical Supporting Facilities;
 - (iv) the proportion (expressed in percentage) which the total gross floor area of the building or buildings erected or to be erected on the Lot designed and constructed for the Accommodation Facilities bears to the total gross floor area of the building or buildings erected or to be erected on the Lot shall not exceed the percentage as set out in column 2 of item (II) in Part A of the Schedule annexed hereto in respect of all the Accommodation Facilities; and
 - (v) the Government does not guarantee that the maximum gross floor area stipulated in sub-clause (c)(i) of this Special Condition can be attained upon the development or redevelopment of the Lot and no claim for compensation and no refund of premium whatsoever shall be made or claimed against the Government in the event that the said maximum gross floor area cannot be attained.
- Maximum site coverage
- (d) the total site coverage of any building or buildings erected or to be erected on the Lot shall not exceed 30% of the area of the Lot;
- Height
- (e) no part of any building or other structure erected or to be erected on the Lot together with any addition or fitting (if any) to such building or structure may in the aggregate exceed a height of 50 metres above the Hong Kong Principal Datum, provided that with the prior written approval of the Director, machine rooms, air-conditioning units, water tanks, stairhoods and similar roof-top structures may be erected or placed on the roof of the building so as to exceed the above height limit;
- Building separation
- (f)
 - (i) except with the prior written approval of the Director, any building or group of buildings erected or to be erected on the Lot shall not have any projected façade length of 60 metres or more;
 - (ii) for the purposes of sub-clause (f) of this Special Condition:
 - (I) the decision of the Director as to what constitutes a building shall be final and binding on the Purchaser;
 - (II) any two or more buildings shall be treated as a group of buildings if the shortest horizontal distance between any two buildings erected or to be erected on the Lot is less than 15 metres;
 - (III) the decision of the Director as to what constitutes the projected façade length of a building or a group of buildings erected or to be erected on the Lot shall be final and binding on the Purchaser; and

- (IV) in calculating the projected façade length referred to in sub-clause (f)(i) of this Special Condition, the gap between any two buildings shall be taken into account and the Director's decision as to the calculation shall be final and binding on the Purchaser; and

Design and disposition	(g)	the design and disposition of any building or buildings erected or to be erected on the Lot shall be subject to the approval in writing of the Director and no building works (other than site formation works and the demolition works referred to in Special Condition No. (2) hereof) shall be commenced on the Lot until such approval shall have been obtained.
Non-building Area	(15)	Except with the prior written consent of the Director, no building or structure or support for any building or structure other than boundary walls or fences or both shall be erected or constructed on, over, under, above, below or within the areas shown coloured pink hatched black, pink hatched black hatched green and pink hatched black stippled green on the plan marked PLAN I annexed hereto.
Restriction on alienation	(16)	<p>(a) Except with the prior written consent of the Director and in conformity with any conditions imposed by him at his absolute discretion or as provided in sub-clause (b) of this Special Condition, the Purchaser shall not, throughout the term hereby agreed to be granted:</p> <p>(i) assign, mortgage, charge, underlet, part with possession of or otherwise dispose of the Lot or any part thereof or any interest therein or any building or part of any building thereon, or grant any licence or right whatsoever to use or occupy or to have possession of the Lot or any part thereof or any building or part of any building thereon, whether by way of direct or indirect reservation, the grant of any right of first refusal, option or power of attorney, or any other method, arrangement or document of any description, or enter into any agreement so to do; or</p> <p>(ii) solicit or accept, whether directly or indirectly or through a solicitor, agent, contractor or trustee or through a company in which the Purchaser or its nominee is directly or indirectly the owner of shares or which is the owner of shares in the Purchaser or otherwise, any money, money's worth or other valuable consideration of any description pursuant to any transaction, present or future, conditional or unconditional whereby the Lot or any part thereof or any interest therein or any building or part of any building thereon is or may be sold, assigned, mortgaged, charged, underlet or otherwise disposed of or affected, or made subject to a licence or any right whatsoever to use or occupy or to have possession of the Lot or any part thereof or any building or part of any building thereon, or enter into any agreement so to do.</p>
Building mortgage as a whole prior to compliance	(b)	<p>(i) Prior to compliance with these Conditions in all respects to the satisfaction of the Director, the Purchaser may mortgage or charge the Lot only as a whole (but not a part thereof or any interest therein) for the sole purpose of the development thereof in accordance with these Conditions and then only by way of a building mortgage or enter into any agreement so to do, it being agreed that for this purpose a building mortgage shall be one:</p>

- (I) whereby the Lot is mortgaged or charged in favour of a licensed bank or a registered deposit-taking company authorized under section 16 of the Banking Ordinance to secure monies (and interest thereon) advanced or to be advanced to the Purchaser for the purpose only of developing the Lot in accordance with these Conditions and for the payment of legal and other professional fees in connection with such development and the mortgage (provided that such fees do not, in the aggregate, exceed 5% of the total amount secured by the mortgage), and for no other purpose;
 - (II) under which such advances (in the case of work done) are to be made to the Purchaser only in amounts to be certified from time to time by the Authorized Person (appointed by the Purchaser under the Buildings Ordinance for the development of the Lot) as having been incurred by the Purchaser for the development of the Lot; and
 - (III) which provides that the mortgagee or chargee shall not exercise any right or power (whether under statute or the mortgage or otherwise) to foreclose, take possession, sell, assign, mortgage, charge, underlet, part with possession or otherwise dispose of the Lot or any part thereof or any interest therein or any building or part of any building thereon, or grant any licence or right whatsoever to use or occupy or to have possession of the Lot or any part thereof or any building or part of any building thereon, or enter into any agreement so to do, except with the prior written consent of the Director and in conformity with any conditions imposed by him at his absolute discretion (which may include, without prejudice to the rights and discretion of the Director under these Conditions, the execution by the Purchaser and such other persons as may be required by the Director with the Government of a deed of novation (in such form as may be required by the Director) of the Service Deed (as defined in Special Condition No. (19) hereof), or a new service deed (in such form as may be required by the Director) in relation to the operation and management of the Hospital on such terms and conditions as may be required by the Director of Health, or such other documents as may be required by the Director).
- (ii) After these Conditions shall have been complied with in all respects to the satisfaction of the Director:
- (I) the Purchaser may mortgage or charge in favour of a licensed bank or a registered deposit-taking company authorized under section 16 of the Banking Ordinance the Lot and all the buildings thereon only as a whole (but not a part thereof or any interest therein or any building or part of any building thereon) or enter into any agreement so to do and then only by way of a

Mortgage as a whole after compliance

mortgage or charge which provides that the mortgagee or chargee shall not exercise any right or power (whether under statute or the mortgage or charge or otherwise) to foreclose, take possession, sell, assign, mortgage, charge, underlet, part with possession or otherwise dispose of the Lot or any part thereof or any interest therein or any building or part of any building thereon, or grant any licence or right whatsoever to use or occupy or to have possession of the Lot or any part thereof or any building or part of any building thereon, or enter into any agreement so to do, except with the prior written consent of the Director and in conformity with any conditions imposed by him at his absolute discretion (which may include, without prejudice to the rights and discretion of the Director under these Conditions, the execution by the Purchaser and such other persons as may be required by the Director with the Government of a deed of novation (in such form as may be required by the Director) of the Service Deed (as defined in Special Condition No. (19) hereof), or a new service deed (in such form as may be required by the Director) in relation to the operation and management of the Hospital on such terms and conditions as may be required by the Director of Health, or such other documents as may be required by the Director);

Assignment as a whole after compliance

- (II) the Purchaser may, with the prior written consent of the Director and in conformity with any conditions imposed by him at his absolute discretion (which may include, without prejudice to the rights and discretion of the Director under these Conditions, the execution by the Purchaser and such other persons as may be required by the Director (including the purchaser or assignee, or the mortgagee or chargee who exercises the right or power of foreclosure or taking possession) with the Government of a deed of novation (in such form as may be required by the Director) of the Service Deed (as defined in Special Condition No. (19) hereof), or a new service deed (in such form as may be required by the Director) in relation to the operation and management of the Hospital on such terms and conditions as may be required by the Director of Health, or such other documents as may be required by the Director), assign the Lot and all the buildings thereon only as a whole (but not a part thereof or any interest therein or any building or part of any building thereon) or enter into any agreement so to do.

Underletting of the Ancillary Portion

- (iii) At any time whether prior to or after compliance with these Conditions in all respects to the satisfaction of the Director, the Purchaser may underlet any part of any building on the Lot for the purpose of providing any of the following Ancillary Facilities:

- (I) canteens,
- (II) retail shops,
- (III) food and beverage outlets; and
- (IV) automatic teller machines

and such other Ancillary Facilities as the Director of Health may at his absolute discretion approve (any such part of the building on the Lot for the purpose of providing the Ancillary Facilities referred to in the foregoing provisions of this sub-clauses (b)(iii) and such other Ancillary Facilities approved as aforesaid are hereinafter collectively referred to as the "Ancillary Portion") subject to and upon the following terms and conditions:

- (1) the lease or tenancy shall be granted for the purpose of and in the course of normal operation of a hospital and in accordance with these Conditions;
- (2) the lease or tenancy shall be subject to any terms and conditions as the Director of Health may at any time at his absolute discretion impose;
- (3) the term of the lease or tenancy shall not exceed 10 years in the aggregate including any right of renewal;
- (4) the lease or tenancy shall not commence until after the issue by the Building Authority of an occupation permit or a temporary occupation permit under the Buildings Ordinance, any regulations made thereunder and any amending legislation, covering the building or that part of the building to which the lease or tenancy relates;
- (5) no premium, fine, key money or similar payment shall be paid by the tenant;
- (6) the rent payable shall not exceed a rack rent;
- (7) no rent shall be payable in advance for a period greater than 12 calendar months;
- (8) the user permitted in the lease or tenancy agreement or any agreement therefor shall comply with these Conditions; and
- (9) none of the terms and conditions in the lease or tenancy agreement or any agreement therefor shall contravene these Conditions.

Licences

- (iv) At any time whether prior to or after compliance with these Conditions in all respects to the satisfaction of the Director, the Purchaser may grant licence (hereinafter referred to as "Licence") to any person to use or occupy any part (but not the whole) of the Hospital subject to and upon the following terms and conditions:

- (A) such Licence shall be granted for the purpose of and in the course of normal operation of a hospital and in accordance with these Conditions;
- (B) such Licence shall be subject to any terms and conditions as the Director of Health may at any time at his absolute discretion impose;
- (C) any consent of the Director of Health required under clause 14.1 of the Service Deed (as defined in Special Condition No. (19) hereof) shall have been obtained before such Licence is granted;
- (D) such Licence shall not commence until after the issue by the Building Authority of an occupation permit or a temporary occupation permit under the Buildings Ordinance, any regulations made thereunder and any amending legislation, covering the building or that part of the building to which such Licence relates;
- (E) the user permitted in such Licence or any agreement therefor shall comply with these Conditions; and
- (F) none of the terms and conditions in such Licence or any agreement therefor shall contravene these Conditions

(all such terms and conditions are hereinafter collectively referred to as "the Prescribed Requirements") PROVIDED THAT:

Proviso (I):
Licence for the Ancillary
Facilities

- (I) no licence may be granted in respect of the Ancillary Facilities or any part thereof except that the Purchaser may, subject to compliance with the Prescribed Requirements, grant Licence, which complies with the following terms and conditions, to use or occupy any part of the Ancillary Facilities:
 - (1) the term of the Licence shall not exceed 10 years in the aggregate including any right of renewal;
 - (2) no premium, fine, key money or similar payment shall be paid by the licensee;
 - (3) the licence fee payable shall not exceed the prevailing market fee; and
 - (4) no licence fee shall be payable in advance for a period greater than 12 calendar months;

Proviso (II):
Licence for the
Accommodation Facilities

- (II) no Licence may be granted in respect of the Accommodation Facilities or any part thereof except that:

Licence to one management
agent only for the whole
Accommodation Facilities

- (1) the Purchaser may, without prejudice to Special Condition No. (7) hereof and subject

to compliance with the Prescribed Requirements, grant no more than one Licence at any one time to any person as the management agent of the Purchaser to use the Accommodation Facilities as a whole (but not a part thereof) for the sole purpose of managing on behalf of the Purchaser the Accommodation Facilities as a whole (but not a part thereof) in compliance and in conformity with these Conditions, in particular Special Condition No. (7)(b)(i) hereof, on condition that:

- (aa) the Licence complies with the same terms and conditions as stipulated in sub-clause (I) of this sub-clause (b)(iv);
- (bb) the Accommodation Facilities may only be used as accommodation facilities for occupation by any Registered Patient or his Carer in accordance with Special Condition No. (7) hereof; and
- (cc) the Licence shall not be transferable and the Purchaser shall not allow the licensee to, nor may the licensee, assign, mortgage, charge or otherwise dispose of the licence granted under the Licence or any interest therein or enter into any agreement so to do;

Licence to Registered
Patient or his Carers

- (2) notwithstanding the grant of Licence by the Purchaser in respect of the Accommodation Facilities as a whole under sub-clause (II)(1) of this sub-clause (b)(iv), the Purchaser may, subject to compliance with the Prescribed Requirements, grant Licence to any Registered Patient or his Carers to occupy any part of the Accommodation Facilities, on condition that the Licence complies with the following terms and conditions:
 - (aa) the term of the Licence shall not exceed 30 days in the aggregate including any right of renewal;
 - (bb) no premium, fine, key money or similar payment shall be paid by the licensee;
 - (cc) the licence fee payable shall not exceed the prevailing market fee;
 - (dd) no licence fee shall be payable in advance for a period greater than 30 days;

- (ee) the term of the Licence for a Carer of a Registered Patient shall coincide with the period of occupation of the Registered Patient at the Accommodation Facilities or the period during which the Registered Patient is admitted to the hospital referred to in Special Condition No. (7)(a)(i) hereof (as the case may be), and in any event shall not exceed 30 days in the aggregate, including any right of renewal; and
- (ff) for each Registered Patient granted Licence under sub-clause (II)(2) of this sub-clause (b)(iv) to occupy any part of the Accommodation Facilities or each Registered Patient admitted to the hospital referred to in Special Condition No. (7)(a)(i) hereof (as the case may be), no more than two Carers of any such Registered Patient shall be granted Licence under sub-clause (II)(2) of this sub-clause (b)(iv);

Proviso (III):
Licence for parking spaces

- (III) (1) no Licence may be granted in respect of the spaces provided in accordance with Special Condition No. (22)(a) hereof or any part thereof except that the Purchaser may, subject to compliance with the Prescribed Requirements, grant Licence, which complies with the following terms and conditions, to use or occupy any part of the spaces provided in accordance with Special Condition No. (22)(a) hereof:
 - (aa) the term of the Licence shall not exceed 1 calendar month in the aggregate including any right of renewal;
 - (bb) no premium, fine, key money or similar payment shall be paid by the licensee;
 - (cc) the licence fee payable shall not exceed the prevailing market fee; and
 - (dd) no licence fee shall be payable in advance for a period greater than 1 calendar month;

Licence to one management
agent only for spaces

- (2) notwithstanding the restriction under sub-clause (III)(1) of this sub-clause (b)(iv) against granting Licence in respect of the spaces provided in accordance with Special Condition No. (22)(a) hereof or any part

thereof, the Purchaser may, subject to compliance with the Prescribed Requirements, grant Licence to any person as the management agent of the Purchaser to use the spaces provided in accordance with Special Condition No. (22) hereof and the other areas referred to in Special Condition No. (21) hereof, or any part thereof, for the sole purpose of managing on behalf of the Purchaser the said spaces and the said other areas, or any part thereof, in compliance with these Conditions on condition that the Licence complies with the following terms and conditions:

- (aa) the term of the Licence shall not exceed 3 years in the aggregate including any right of renewal;
- (bb) no premium, fine, key money or similar payment shall be paid by the licensee;
- (cc) the licence fee payable shall not exceed the prevailing market fee; and
- (dd) no licence fee shall be payable in advance for a period greater than 12 calendar months,

and further on condition that at any one time no more than one management agent may be granted Licence under sub-clause (III)(2) of this sub-clause (b)(iv) and that the Licence shall not be transferable and the Purchaser shall not allow the licensee to, nor may the licensee, assign, mortgage, charge or otherwise dispose of the licence granted under the Licence or any interest therein or enter into any agreement so to do.

(c) For the purposes of these Conditions, the Director of Health shall have the sole and absolute discretion to determine:

- (i) what constitutes or forms part of the Ancillary Portion;
- (ii) what constitutes the purpose of normal operation of a hospital or the course of normal operation of a hospital;
- (iii) whether any lease or tenancy is granted, or any part of the Ancillary Portion is underlet, for the purpose of and in the course of normal operation of a hospital in accordance with sub-clause (b)(iii) of this Special Condition;
- (iv) whether any licence is granted for the purpose of and in the course of normal operation of a hospital; and
- (v) whether sub-clause (II) in sub-clause (b)(iv) of this Special

Condition is complied with,

and such determination shall be final and binding on the Purchaser.

Restriction on assignment
and mortgage except as a
whole

(d) Without prejudice to the restrictions and requirements under sub-clause (a) of this Special Condition, the Purchaser shall not throughout the term hereby agreed to be granted, in any event, be allowed to assign, mortgage or charge the Lot or any part thereof or any interest therein or any building or part of any building thereon or enter into any agreement so to do except the Lot and the buildings thereon as a whole provided that any assignment, mortgage or charge of the Lot and all the buildings thereon as a whole or any agreement so to do shall be subject to sub-clauses (b)(i) and (b)(ii) of this Special Condition.

(e) Without prejudice to the generality of General Condition No. 13 hereof and the provisions of Special Condition No. (40) hereof and section 40 of the Conveyancing and Property Ordinance:

(i) the expression "the Purchaser" in this Special Condition No. (16) shall be deemed to include any mortgagee or chargee (whether equitable or legal) of the Lot or any part thereof or any interest therein or any building or part of any building thereon (including the mortgagee or chargee under the building mortgage referred to in sub-clause (b)(i) of this Special Condition); and

(ii) the provisions of this Special Condition No. (16) shall apply to the exercise by any such mortgagee or chargee of any right or power (whether under statute or the relevant mortgage or charge or otherwise) to foreclose, take possession, sell, assign, mortgage, charge, part with possession, underlet or otherwise dispose of the Lot or any part thereof or any interest therein or any building or part of any building thereon, or grant any licence or right whatsoever to use or occupy or to have possession of the Lot or any part thereof or any building or part of any building thereon, or enter into any agreement so to do, and the exercise by any such mortgagee or chargee of the right or power to foreclose any interest shall be deemed to be the exercise of the right or power to assign such interest to such mortgagee or chargee.

(f) Notwithstanding sub-clause (e) of this Special Condition, no mortgagee or chargee (whether equitable or legal) of the Lot or any part thereof or any interest therein or any building or part of any building thereon (including the mortgagee or chargee under the building mortgage referred to in sub-clause (b)(i) of this Special Condition) may invoke the provisions of sub-clause (b) of this Special Condition or any of them except with the prior written consent of the Director and in conformity with any conditions imposed by him at his absolute discretion.

Restriction on partitioning

(17) Notwithstanding anything to the contrary herein contained, throughout the term hereby agreed to be granted, the Purchaser shall not partition (whether by way of assignment or other disposal or by any other means) the Lot or any part thereof or enter into any agreement so to do.

Registration

(18) Every assignment, mortgage, charge, underletting for more than three years or other alienation of the Lot or any part thereof or any interest therein shall be registered at the Land Registry.

Termination

(19) (a) It is hereby agreed that upon termination of the service deed dated _____ made between the Government and the Purchaser (such service deed together with any amendment thereof as may be agreed between the Government and the Purchaser, or any new service deed entered into in accordance with the requirements of the Director pursuant to these Conditions, or such service deed or any new service deed together with any deed of novation entered into in accordance with such requirements of the Director pursuant to these Conditions, is referred to in these Conditions as "the Service Deed") by the Government in accordance with the provisions of the Service Deed the Government shall be entitled to re-enter upon and take back possession of the Lot or any part or parts thereof and all or any buildings, structures, erections and works thereon without notice and upon the exercise of this power by the Government the rights of the Purchaser under this Agreement shall absolutely cease and determine but without prejudice nevertheless to the rights, remedies and claims of the Government in respect of any breach, non-observance or non-performance of any of these Conditions or otherwise, and the Purchaser shall not be entitled to any refund of the premium paid by him or any part thereof or to any payment or compensation whatsoever whether in respect of the value of the Lot or any part or parts thereof or any building or buildings or structure or structures erected or to be erected on the Lot or any part or parts thereof or part of any such building or buildings or structure or structures or any amount expended by the Purchaser in the preparation, formation or development of the Lot or any part or parts thereof or otherwise.

(b) Save as provided in these Conditions, nothing in the Service Deed shall affect the interpretation, operation and enforcement of any of these Conditions and nothing in these Conditions shall affect the interpretation, operation and enforcement of any of the provisions in the Service Deed.

(c) For the avoidance of doubt, the rights, remedies and claims available to the Government under the Service Deed (including the rights, remedies and claims of the Government in respect of any breach, non-observance or non-performance of any of the provisions under the Service Deed) shall not prejudice any of the rights, remedies and claims available to the Government under these Conditions or in respect of any breach, non-observance or non-performance by the Purchaser of any of these Conditions or any other rights or remedies of the Government.

Vehicular access

(20) The Purchaser shall have no right of ingress or egress to or from the Lot for the passage of motor vehicles except between the points X and Y through Z shown and marked on the plan marked PLAN I annexed hereto or at such other points as may be approved in writing by the Director. Upon development or redevelopment of the Lot, a temporary access for construction vehicles into the Lot may be permitted in such position and subject to such conditions as may be imposed by the Director. Upon completion of the development or redevelopment, the Purchaser shall at his own expense within the time limit specified by the Director and in all respects to the satisfaction of the Director, reinstate the area or areas upon which the temporary access was constructed.

Deposit of car park layout plan

(21) The Purchaser shall on or before the date as set out in column 2 of item (I) in Part B of the Schedule annexed hereto deposit with the Director a plan approved by the Director indicating the layout of all the parking spaces and lay-bys to be provided within the Lot in accordance with Special Condition No. (22) hereof or a copy of such plan certified by an Authorized Person (as defined in the Buildings Ordinance, any regulations made thereunder and any amending legislation). The said parking spaces and lay-bys indicated on the said approved plan shall not be used for any purpose other than for the purposes set out respectively in Special Condition No. (22) hereof. The Purchaser shall maintain the parking spaces and lay-bys and other areas, including but not restricted to the lifts, landings, and manoeuvring and circulation areas,

in accordance with the said approved plan and shall not alter the layout except with the prior written consent of the Director. Except for the parking spaces indicated on the said approved plan, no part of the Lot or any building or structure thereon shall be used for parking purposes.

Parking requirements

(22) (a) The Purchaser shall provide within the Lot and to the satisfaction of the Director spaces for the parking of motor vehicles at the rate of one space for every five hospital beds or part thereof unless the Director consents to another rate, and the spaces so provided shall not be used for any purpose other than for the parking of motor vehicles licensed under the Road Traffic Ordinance, any regulations made thereunder and any amending legislation, and belonging to the Purchaser, the staff employed at the hospital referred to in Special Condition No. (7)(a)(i) hereof, the patients attending the said hospital for treatment or visitors to the Hospital. Each of the spaces provided under this sub-clause shall measure 2.5 metres in width and 5.0 metres in length with a minimum headroom of 2.4 metres.

(b) (i) Out of the spaces provided under sub-clause (a) of this Special Condition, the Purchaser shall reserve and designate not less than five spaces for the parking of motor vehicles by disabled persons as defined in the Road Traffic Ordinance, any regulations made thereunder and any amending legislation.

(ii) The spaces so reserved and designated under sub-clause (b)(i) of this Special Condition shall be located at such position and level as shall be approved in writing by the Director and each of the spaces shall measure 3.5 metres in width and 5.0 metres in length with a minimum headroom of 2.4 metres. Such spaces shall not be used for any purpose other than for the parking of motor vehicles by disabled persons as defined in the Road Traffic Ordinance, any regulations made thereunder and any amending legislation, and belonging to the Purchaser, the staff employed at the hospital referred to in Special Condition No. (7)(a)(i) hereof, the patients attending the said hospital for treatment, or visitors to the Hospital.

Ambulance parking spaces

(c) The Purchaser shall provide within the Lot and to the satisfaction of the Director eight spaces for the parking of ambulances in the event the hospital referred to in Special Condition No. (7)(a)(i) hereof comprises an Accident and Emergency department or three spaces for the parking of ambulances in the event the said hospital does not comprise an Accident and Emergency department. The spaces so provided shall not be used for any purpose other than for the parking of ambulances. Each of the spaces provided under this sub-clause shall measure 3.0 metres in width and 9.0 metres in length with a minimum headroom of 3.6 metres.

Provision of spaces as lay-bys

(d) The Purchaser shall provide within the Lot and to the satisfaction of the Director:

(i) spaces as lay-bys for the picking up and setting down of passengers from motor vehicles and taxi, each measuring 2.5 metres in width and 5.0 metres in length with a minimum headroom of 2.4 metres, at the rate of one space for every 80 hospital beds or part thereof in the event the hospital referred to in Special Condition No. (7)(a)(i) hereof comprises an Accident and Emergency department unless the Director consents to another rate or one space for every 160 hospital beds or part thereof in the event the said hospital does not comprise an Accident and Emergency department unless the

Director consents to another rate; such spaces shall not be used for any purpose other than for the picking up and setting down of passengers from motor vehicles and taxis licensed under the Road Traffic Ordinance, any regulations made thereunder and any amending legislation;

- (ii) spaces as lay-bys for the picking up and setting down of passengers from public light buses, each measuring 3.0 metres in width and 8.0 metres in length with a minimum headroom of 3.3 metres, at the rate of one space for every 200 hospital beds or part thereof in the event the hospital referred to in Special Condition No. (7)(a)(i) hereof comprises an Accident and Emergency department unless the Director consents to another rate or one space for every 400 hospital beds or part thereof in the event the said hospital does not comprise an Accident and Emergency department unless the Director consents to another rate; such spaces shall not be used for any purpose other than for the picking up and setting down of passengers from public light buses licensed under the Road Traffic Ordinance, any regulations made thereunder and any amending legislation;
- (iii) two spaces as lay-bys for picking up and setting down to and from ambulances, each measuring 3.0 metres in width and 9.0 metres in length with a minimum headroom of 3.6 metres; such spaces shall not be used for any purpose other than as lay-bys for picking up and setting down to and from ambulances; and
- (iv) three spaces as lay-bys for the loading and unloading of goods to and from medium goods vehicles and heavy goods vehicles, each measuring 3.5 metres in width and 11.0 metres in length with a minimum headroom of 4.7 metres; such spaces shall not be used for any purpose other than for the loading and unloading of goods to and from medium goods vehicles and heavy goods vehicles licensed under the Road Traffic Ordinance, any regulations made thereunder and any amending legislation.

The spaces so provided shall not be used for any purpose other than the purposes respectively stipulated in sub-clauses (d)(i), (d)(ii), (d)(iii) and (d)(iv) of this Special Condition.

(e) The spaces provided under sub-clauses (d)(i) and (d)(iii) of this Special Condition shall be covered spaces as to which the decision of the Director shall be final and binding on the Purchaser.

(f) The spaces provided under this Special Condition shall not be used for any purposes other than those respectively stipulated in this Special Condition and, in particular, the said spaces shall not be used for the storage, display or exhibition of motor vehicles for sale or otherwise or for provision of car cleaning and beauty services.

(g) The Purchaser shall on or before the date as set out in column 2 of item (I) in Part B of the Schedule annexed hereto provide:

- (i) not less than one space (out of the spaces required to be provided under sub-clause (b)(i) of this Special Condition) for the parking of motor vehicles by disabled persons in accordance with sub-

clause (b) of this Special Condition;

- (ii) all such spaces as required to be provided for the parking of ambulances in accordance with sub-clause (c) of this Special condition; and
- (iii) all such lay-bys as required to be provided for the picking up and setting down of passengers, for the picking up and setting down to and from ambulances and for the loading and unloading of goods respectively in accordance with sub-clause (d) of this Special Condition.

and shall thereafter maintain, subject to sub-clauses (a), (b)(i), (d)(i) and (d)(ii) of this Special Condition, not less than the number of spaces and lay-bys set out above in all respects to the satisfaction of the Director.

Parking spaces etc.
excluded from gross floor
area calculation

(23) (a) For the purpose of calculating the total gross floor area stipulated in Special Condition No. (14)(c) hereof,

- (i) there shall not be taken into account
 - (I) the spaces provided in accordance with Special Condition Nos. (22)(a), (22)(b) and (22)(c) hereof if they are provided below ground level;
 - (II) the spaces provided in accordance with Special Condition Nos. (22)(d)(i), (22)(d)(ii), (22)(d)(iii) and (22)(d)(iv) hereof if they are provided at or below ground level; and
- (ii) if the spaces provided in accordance with Special Condition Nos. (22)(a), (22)(b) and (22)(c) hereof are provided at or above ground level or the spaces provided in accordance with Special Condition Nos. (22)(d)(i), (22)(d)(ii), (22)(d)(iii) and (22)(d)(iv) hereof are provided above ground level, 50% of such spaces together with 50% of the other areas including but not limited to lift lobbies, landings, pedestrian access routes, manoeuvring and circulation areas, and plant rooms serving such spaces shall be taken into account for the calculation of the total gross floor area stipulated in Special Condition No. (14)(c)(iii) hereof for the Non-Clinical Supporting Facilities (excluding the total gross floor area stipulated in Special Condition No. (14)(c)(iv) hereof for the Accommodation Facilities) as to which the decision of the Director shall be final and binding on the Purchaser.

(b) Notwithstanding sub-clause (a)(ii) of this Special Condition, the Director at his sole discretion may subject to the payment by the Purchaser of any premium and administrative fee as shall be determined by the Director exclude any spaces and other areas referred to in sub-clause (a)(ii) of this Special Condition from the calculation of total gross floor area stipulated in Special Condition No. (14)(c) hereof as to which the decision of the Director shall be final and binding on the Purchaser.

(c) For the purpose of this Special Condition, the decision of the Director as to what constitutes ground level or whether any space is at, above or below ground level shall be final and binding on the Purchaser.

Set back

(24) The Purchaser shall not cut away, remove or set back any Government land adjacent to or adjoining the Lot or carry out any building-up, filling-in or any slope

treatment works of any kind whatsoever on any Government land except with the prior written consent of the Director who may, at his sole discretion, give his consent subject to such terms and conditions as he sees fit, including the grant of additional Government land as an extension to the Lot at such premium as he may determine.

Cutting away

(25) (a) Where there is or has been any cutting away, removal or setting back of any land, or any building-up or filling-in or any slope treatment works of any kind whatsoever, whether with or without the prior written consent of the Director, either within the Lot or on any Government land, which is or was done for the purpose of or in connection with the formation, levelling or development of the Lot or any part thereof or any other works required to be done by the Purchaser under these Conditions, or for any other purpose, the Purchaser shall at his own expense carry out and construct such slope treatment works, retaining walls or other support, protection, drainage or ancillary or other works as shall or may then or at any time thereafter be necessary to protect and support such land within the Lot and also any adjacent or adjoining Government or leased land and to obviate and prevent any falling away, landslip or subsidence occurring thereafter. The Purchaser shall at all times during the term hereby agreed to be granted maintain at his own expense the said land, slope treatment works, retaining walls or other support, protection, drainage or ancillary or other works in good and substantial repair and condition to the satisfaction of the Director.

(b) Nothing in sub-clause (a) of this Special Condition shall prejudice the Government's rights under these Conditions, in particular Special Condition No. (24) hereof.

(c) In the event that as a result of or arising out of any formation, levelling, development or other works done by the Purchaser or owing to any other reason, any falling away, landslip or subsidence occurs at any time, whether in or from any land within the Lot or from any adjacent or adjoining Government or leased land, the Purchaser shall at his own expense reinstate and make good the same to the satisfaction of the Director and shall indemnify the Government, its agents and contractors from and against all costs, charges, damages, demands and claims whatsoever which shall or may be made, suffered or incurred through or by reason of such falling away, landslip or subsidence.

(d) In addition to any other rights or remedies herein provided for breach of any of these Conditions, the Director shall be entitled by notice in writing to call upon the Purchaser to carry out, construct and maintain the said land, slope treatment works, retaining walls, or other support, protection, and drainage or ancillary or other works or to reinstate and make good any falling away, landslip or subsidence, and if the Purchaser shall neglect or fail to comply with the notice to the satisfaction of the Director within the period specified therein, the Director may forthwith execute and carry out any necessary works and the Purchaser shall on demand repay to the Government the cost thereof, together with any administrative and professional fees and charges.

No rock crushing

(26) No rock crushing plant shall be permitted on the Lot without the prior written approval of the Director.

Anchor maintenance

(27) Where prestressed ground anchors have been installed, upon development or redevelopment of the Lot or any part thereof, the Purchaser shall at his own expense carry out regular maintenance and regular monitoring of the prestressed ground anchors throughout their service life to the satisfaction of the Director and shall supply to the Director such reports and information on all such monitoring works as the Director may from time to time in his absolute discretion require. If the Purchaser shall neglect or fail to carry out the required monitoring works, the Director may forthwith execute and carry out the monitoring works and the Purchaser shall on demand repay to

the Government the cost thereof.

Natural terrain

(28) (a) The Purchaser hereby acknowledges that the Lot may be affected by landslip hazards including boulder falls arising from the area shown coloured green cross-hatched black on the plan marked PLAN I annexed hereto (hereinafter referred to as "the Green Cross-hatched Black Area") due to the nature of the natural terrain. The Purchaser shall within 36 calendar months from the date of this Agreement or such other extended period or periods as may be approved by the Director at his own expense carry out and complete to the satisfaction of the Director geotechnical investigation (hereinafter referred to as "the Investigation") within the Lot and on the Green Cross-hatched Black Area for such hazards and propose mitigation and stabilization measures for the hazards so identified. Subject to sub-clause (h) of this Special Condition, no ground investigation shall be carried out on any Government land outside the Green Cross-hatched Black Area without the prior written consent of the Director.

(b) On completion of the Investigation, the Purchaser shall on or before the date as set out in column 2 of item (I) in Part B of the Schedule annexed hereto or such later date or dates as may be approved by the Director at his own expense and in all respects to the satisfaction of the Director:

- (i) carry out and complete all necessary mitigation and stabilization works within the Lot as the Director in his absolute discretion shall require (hereinafter referred to as "the Mitigation and Stabilization Works") to protect any building or buildings erected or to be erected on the Lot or any part thereof and any residents or occupiers therein and their bona fide guests, visitors and invitees from landslip hazards including boulder falls arising from the Green Cross-hatched Black Area; and
- (ii) carry out and complete all necessary mitigation and stabilization works on any Government land including the Green Cross-hatched Black Area (hereinafter referred to as "the Outside Areas") (such mitigation and stabilization works are hereinafter referred to as "the Outside Works") as the Director in his absolute discretion shall require. The Purchaser shall register at his own expense in the Land Registry against the Lot a record plan accepted by the Director indicating the location and extent of the Outside Areas and the nature and scope of the Outside Works.

(c) The Purchaser shall at all times during the term hereby agreed to be granted maintain at his own expense the Mitigation and Stabilization Works and the Outside Works in good substantial repair and condition to the satisfaction of the Director to ensure the continuing functioning of the Mitigation and Stabilization Works and the Outside Works. In addition to any rights or remedies the Government may have against the Purchaser for breach of the Purchaser's obligations to maintain the Mitigation and Stabilization Works and the Outside Works as herein provided, the Director shall be entitled by notice in writing to call upon the Purchaser to carry out such maintenance works as the Director shall in his absolute discretion deem fit. If the Purchaser shall neglect or fail to comply with such notice to the satisfaction of the Director within the period specified therein, the Director may forthwith execute and carry out the required maintenance works and the Purchaser shall on demand repay the Government the cost thereof, together with any administrative and professional fees and charges.

(d) The Investigation, the Mitigation and Stabilization Works and the Outside Works shall in all respects be in compliance with the Buildings Ordinance, any

regulations made thereunder and any amending legislation, and any other relevant legislation.

(e) For the purpose only of carrying out the Investigation and carrying out, inspecting and maintaining the Mitigation and Stabilization Works and the Outside Works, the Purchaser shall have the right of ingress or egress to and from the Outside Areas subject to such terms and conditions as may be imposed by the Director at his sole discretion.

(f) In the event that as a result of or arising out of the Investigation, the Mitigation and Stabilization Works or the Outside Works, any damage is done to any Government land including the Outside Areas or any land outside the Lot, the Purchaser shall make good such damage at his own expense and in all respects to the satisfaction of the Director.

(g) The Purchaser shall indemnify and shall keep indemnified the Government from and against all actions, proceedings, liabilities, claims, costs and demands whatsoever arising out of or incidental to any works being carried out or having been carried out pursuant to the terms of this Special Condition or any omission, neglect or default by the Purchaser in carrying out any such works or any landslip hazard including boulder falls from the Outside Areas including but without limitation to any damage to or loss of properties, loss of life and personal injuries.

(h) Part of the Green Cross-hatched Black Area which is located to the north of the pecked purple line as shown on the plan marked PLAN I annexed hereto falls within the Aberdeen Country Park designated under Section 14 of the Country Parks Ordinance (Cap. 208). The Purchaser shall comply with the Country Parks Ordinance, any regulations made thereunder and any amending legislation whenever he carries out any work within the Aberdeen Country Park.

No excavation

(29) No excavation shall be permitted within the area shown edged orange on the plan marked PLAN I annexed hereto without the prior written consent of the Director.

Spoil or debris

(30) (a) In the event of earth, spoil, debris, construction waste or building materials (hereinafter referred to as "the waste") from the Lot, or from other areas affected by any development of the Lot being eroded, washed down or dumped onto public lanes or roads or into or onto road-culverts, foreshore or seabed, sewers, storm-water drains or nullahs or other Government properties (hereinafter referred to as "the Government properties"), the Purchaser shall at his own expense remove the waste from and make good any damage done to the Government properties. The Purchaser shall indemnify the Government against all actions, claims and demands arising out of any damage or nuisance to private property caused by such erosion, washing down or dumping.

(b) Notwithstanding sub-clause (a) of this Special Condition the Director may (but is not obliged to), at the request of the Purchaser remove the waste from and make good any damage done to the Government properties and the Purchaser shall pay to the Government on demand the cost thereof.

Damage to Services

(31) The Purchaser shall take or cause to be taken all proper and adequate care, skill and precautions at all times, and particularly when carrying out construction, maintenance, renewal or repair work (hereinafter referred to as "the Works"), to avoid causing any damage, disturbance or obstruction to any Government or other existing drain, waterway or watercourse, water main, road, footpath, street furniture, sewer, nullah, pipe, cable, wire, utility service or any other works or installations being or running upon, over, under or adjacent to the Lot or the Green Area or the Green Cross-

hatched Black Area or any part or parts thereof (hereinafter collectively referred to as "the Services"). The Purchaser shall prior to carrying out any of the Works make or cause to be made such proper search and enquiry as may be necessary to ascertain the present position and levels of the Services, and shall submit his proposals for dealing with any of the Services which may be affected by the Works in writing to the Director for his approval in all respects, and shall not carry out any work whatsoever until the Director shall have given his written approval to the Works and to such aforesaid proposals. The Purchaser shall comply with and at his own expense meet any requirements which may be imposed by the Director in respect of the Services in granting the aforesaid approval, including the cost of any necessary diversion, relaying or reinstatement. The Purchaser shall at his own expense in all respects repair, make good and reinstate to the satisfaction of the Director any damage, disturbance or obstruction caused to the Lot or the Green Area or the Green Cross-hatched Black Area or any part or parts thereof or any of the Services in any manner arising out of the Works (except for nullah, sewer, storm-water drain or water main, the making good of which shall be carried out by the Director, unless the Director elects otherwise, and the Purchaser shall pay to the Government on demand the cost of such works). If the Purchaser fails to carry out any such necessary diversion, relaying, repairing, making good and reinstatement of the Lot or the Green Area or the Green Cross-hatched Black Area or any part or parts thereof or of any of the Services to the satisfaction of the Director, the Director may carry out any such diversion, relaying, repairing, making good or reinstatement as he considers necessary and the Purchaser shall pay to the Government on demand the cost of such works.

Construction of drains
and channels

(32) (a) The Purchaser shall construct and maintain at his own expense and to the satisfaction of the Director such drains and channels, whether within the boundaries of the Lot or on Government land, as the Director may consider necessary to intercept and convey into the nearest stream-course, catchpit, channel or Government storm-water drain all storm-water or rain-water falling or flowing on to the Lot, and the Purchaser shall be solely liable for and shall indemnify the Government and its officers from and against all actions, claims and demands arising out of any damage or nuisance caused by such storm-water or rain-water.

Connecting drains and
sewers

(b) The works of connecting any drains and sewers from the Lot to the Government storm-water drains and sewers, when laid and commissioned, may be carried out by the Director who shall not be liable to the Purchaser for any loss or damage thereby occasioned and the Purchaser shall pay to the Government on demand the cost of such connection works. Alternatively, the said connection works may be carried out by the Purchaser at his own expense to the satisfaction of the Director and in such case any section of the said connection works which is constructed within Government land shall be maintained by the Purchaser at his own cost and upon demand be handed over by the Purchaser to the Government for future maintenance thereof at the expense of the Government and the Purchaser shall pay to the Government on demand the cost of the technical audit in respect of the said connection works. The Director may, upon failure of the Purchaser to maintain any section of the said connection works which is constructed within Government land, carry out such maintenance works as he considers necessary and the Purchaser shall pay to the Government on demand the cost of such works.

Railway protection

(33) (a) (i) There is excepted and reserved to the Government those portions of the airspace, land and stratum of the Lot within the area bounded by pecked black lines and marked RESERVED AREA on the plan marked PLAN I annexed hereto and delineated and shown coloured blue on the respective plans marked PLAN II, PLAN III, PLAN IV and PLAN V annexed hereto with detailed locations, scales, dimensions, levels and references to Hong Kong Principal Datum indicated thereon (hereinafter referred to

as "the Reserved Area") as to which the Purchaser shall have no right of or title to the ownership, possession or use nor any right or claim to compensation whatsoever in respect thereof.

- (ii) There is excepted and reserved to the Government, its agents, licensees and those authorized by it the exclusive right and liberty throughout the term hereby agreed to be granted to construct, operate and maintain the railway as defined under Section 2 of the Mass Transit Railway Ordinance, Chapter 556 (hereinafter referred to as "the MTR Ordinance") and any extension thereto (hereinafter referred to as "the Railway") at such level and to such depths as it sees fit within the Reserved Area and the Railway when constructed may be used by such person or persons, by such vehicles, at such times and in such manner as the Government may see fit.

(b) The Purchaser shall satisfy himself as to the extent of the Railway constructed or to be constructed within the Reserved Area and shall not make any claim against the Government or any of its officers, agents, lessees, tenants or those authorized by its servants, for any damage, nuisance, annoyance, loss or detriment of any kind whatsoever either to the Lot or to the Purchaser caused by or arising out of the construction, maintenance, presence or operation of the Railway.

(c) Prior to the commencement of any works whatsoever on the Lot including but not limited to site investigation works, piling or other foundation works and other civil engineering and building works, the Purchaser shall consult the MTR Corporation Limited (hereinafter referred to as "the Corporation") so as to ensure that any such works do not damage, interfere with or endanger any railway works, structures, facilities or installations or the safe operation of the Railway (as to which the decision of the Director shall be conclusive) and if required by the Director the Purchaser shall, at his own expense, take such precautions as may be required by the Corporation to ensure the safety of any railway works, structures, facilities or installations and the operation of the Railway.

(d) The Purchaser shall comply with all Ordinances, By-laws and Regulations relating to the Railway.

(e) The Purchaser shall not interfere in any way with the construction, use and operation of the Railway.

(f) The Purchaser shall at his own expense comply with all special requirements of the Building Authority, the Director of Fire Services and all other relevant Government and statutory authorities in connection with the construction (including the materials to be used) repair and maintenance of any part or parts of the building or buildings connected or in close proximity to the Railway.

(g) The Purchaser shall, permit the Director, the Corporation and their duly authorized officers, servants and contractors the right of ingress, egress and regress to, from and through the Lot and any building or buildings erected thereon at all times with or without tools, vehicles, machinery or equipment to carry out works, and for the purposes of any survey, inspection, examination, maintenance, improvement or development in connection with the Railway. The Director and his duly authorized officers, servants and contractors shall have no liability in respect of any loss, damage, nuisance or disturbance whatsoever caused to or suffered by the Purchaser arising out of or incidental to the exercise of the rights conferred under this sub-clause and no claim or objection shall be made against him or them by the Purchaser.

(h) In the event the Corporation ceases to operate the Railway or any part of the Railway affecting the Lot upon the expiry of the franchise (including any extension thereto) granted under section 4 of the MTR Ordinance or otherwise, any reference to the Corporation in this Special Conditions shall where appropriate mean the Government, its nominee or a third party designated by the Government.

Noise impact assessment

(34) (a) The Purchaser shall within six calendar months from the date of this Agreement or such other extended periods as may be approved by the Director at his own expense and in all respects to the satisfaction of the Director submit or cause to be submitted to the Director for his written approval an assessment report (hereinafter referred to as "the Noise Impact Assessment") in respect of the noise impact on the Lot generated or arising from the nearby road network including but not limited to Aberdeen Tunnel Approach Road and Wong Chuk Hang Road, which shall include detailed proposals of the noise mitigation measures to be provided within the Lot.

(b) The Purchaser shall at his own expense and within such time limit as may be imposed by the Director but not later than the date as set out in column 2 of item (I) in Part B of the Schedule annexed hereto implement the approved mitigation measures in the Noise Impact Assessment as approved by the Director in all respects to the satisfaction of the Director.

(c) No works (other than site formation works) shall be commenced on the Lot or any part thereof until the Noise Impact Assessment has been approved in writing by the Director.

Salt water supply
for flushing purposes

(35) A salt water supply from Government mains will be given for flushing purposes. Provided always that where the Purchaser provides or agrees to provide at his own expense a private salt water supply for any heating, cooling, humidification or other purposes, the Government will not grant the aforesaid salt water supply from Government mains for flushing purposes.

No grave or
columbarium permitted

(36) (a) No grave or columbarium shall be erected or made on the Lot, nor shall any human remains or animal remains whether in earthenware jars, cinerary urns or otherwise be interred therein or deposited thereon. For the avoidance of doubt, a mortuary as part of the Clinical and Clinical Supporting Facilities referred to in Special Condition No. (7)(d)(ii) hereof shall be permitted to be provided within the hospital referred to in Special Condition No. (7)(a)(i) hereof.

(b) No memorial tablets shall be placed on the Lot or in any building or buildings erected or to be erected on the Lot.

(37) Wherever in these Conditions it is provided that :

Supervisory and overhead
charges

(a) the Government or its duly authorized officers shall or may carry out works of any description on the Lot or any part thereof or outside the Lot (whether on behalf of the Purchaser or on the failure of the Purchaser to carry out such works or otherwise) at the cost of the Purchaser or that the Purchaser shall pay or repay to the Government or to its duly authorized officers on demand the cost of such works, such cost shall include such supervisory and overhead charges as may be fixed by the Government or by its duly authorized officers; or

Prior approval or consent

(b) the prior approval or consent of the Government or its duly authorized officers is required, they may give the approval or consent on such terms and conditions as they see fit or refuse it at their absolute discretion.

Payment for approval or consent

(38) Without prejudice to the generality of Special Condition No. (37)(b) hereof, it is hereby acknowledged and declared that any premium paid under paragraph 16 of the Tender Notice and General Condition No. 2 hereof or any part thereof does not represent any premium or any other payments that may be payable by the Purchaser for any approval or consent of the Government or its authorized officers, including the Director and the Director of Health, which may be granted under, or is referred to in, these Conditions or the Service Deed.

Definitions of gross floor area and site coverage

(39) (a) For the purposes of these Conditions, the expression "gross floor area" means the area contained within the external faces of the external walls (or in the absence of such walls the external perimeters) of any building or buildings erected or to be erected on the Lot measured at each floor level (including any floor below the level of the ground), together with the area of each balcony in such building or buildings, which shall be calculated from the overall dimensions of the balcony (including the thickness of the sides thereof) and the expression "site coverage" means the area of the Lot or part of the Lot that is covered by any building or buildings or part of such buildings erected thereon.

(b) Notwithstanding sub-clause (a) of this Special Condition, the Director at his sole discretion may:

(i) in calculating the gross floor area or the site coverage of any building or buildings erected or to be erected on the Lot (in addition to any floor space which may be excluded by Special Condition No. (23) hereof), subject to sub-clause (c) of this Special Condition exclude:

(I) any sunshade, reflector, any floor space that he is satisfied is constructed or intended to be used solely for the parking or for the loading or unloading of motor vehicles or occupied solely by machinery or equipment for any lift, air-conditioning or heating system or any similar service and any space for refuse disposal;

(II) any structure or floor space, including, but not limited to, acoustic fin, noise barrier, wing wall, wind catcher or funnel, non-structural prefabricated external wall the thickness of which does not exceed 150 millimetres, or any part thereof (all hereinafter referred to as "environmentally friendly or innovative features") and any other structure or floor space which in the opinion of the Building Authority is an environmentally friendly or innovative feature (as to which the opinion of the Building Authority shall be conclusive) and which, for that reason, has been excluded by the Building Authority from calculation of gross floor area or site coverage under the Buildings Ordinance, any regulations made thereunder and any amending legislation; and

(III) any structure or feature, including but not limited to transfer plate, covered driveway, elevated garden/lawn/terrace and external staircase and staircase/walkway within podium structure from the calculation of site coverage provided that the design and size of such structures or features shall be subject to the prior written approval of the Director; and

(IV) any structure or floor space other than as referred to in sub-clauses (b)(i)(I), (II) and (III) and (b)(ii) of this Special Condition, which has been excluded by the Building Authority from the calculation of gross floor area or site coverage under the Buildings Ordinance, any regulations made thereunder and any amending legislation provided that the Director at his sole discretion may require the payment by the Purchaser of an additional premium and administrative fee as shall be determined by the Director for any structure or any floor space excluded under this sub-clause;

Calculation of gross floor area and site coverage in buildings with curtain wall system forming external face of building

(ii) accept, for the purpose of calculating the gross floor area and site coverage, the outer face of the structural elements of the building or buildings erected or to be erected on the Lot as the external wall where a curtain wall system forms the external face of any building or buildings erected or to be erected on the Lot provided that the outer face of the curtain wall system shall project no more than 300 millimetres from the outer face of the structural elements and provided also that the Director shall have the sole discretion in deciding what comprises a structural element of any building or buildings erected or to be erected on the Lot.

Cap on Concession

(c) (i) The floor spaces of the features listed below which may in accordance with these Conditions be excluded from the calculation of the total gross floor area stipulated in Special Condition No. (14)(c) hereof shall not in the aggregate exceed 10% of the total gross floor area of the building or buildings erected or to be erected on the Lot:

(I) plant room which has been decided by the Building Authority as non-mandatory or non-essential plant room including but not limited to boiler room, room occupied by machinery or equipment for air-conditioning or heating system, SMATV room (as to which the decision of the Building Authority shall be final and binding on the Purchaser), and pipe duct and air duct connected to such plant room;

(II) chimney shaft;

(III) portion of lift shaft which has been decided by the Building Authority as larger lift shaft (as to which the decision of the Building Authority shall be final and binding on the Purchaser);

(IV) non-structural prefabricated external wall the thickness of which does not exceed 150 millimetres;

(V) walkways, horizontal screens and trellis not landscaped to the satisfaction of the Building Authority (as to which the decision of the Building Authority shall be final and binding on the Purchaser);

(VI) void over main or common entrance of the building or buildings erected or to be erected on the Lot; and

(VII) projection which projects more than 750 millimetres from the external wall of the building or buildings erected or to be erected on the Lot.

(ii) In calculating the total gross floor area of the building or buildings erected or to be erected on the Lot referred to in sub-clause (c)(i) of this Special Condition, there shall not be taken into account the floor spaces which are excluded from the calculation of the gross floor area of the building or buildings erected or to be erected on the Lot in accordance with these Conditions as to which the decision of the Director shall be final and binding on the Purchaser.

Purchaser's covenants

(40) All covenants made by the Purchaser in these Conditions are made by him on behalf of himself, his successors in title and persons deriving title under or through him or them and the Purchaser shall be liable for any acts done by any persons deriving title under or through him or them. All such covenants are intended to run with the Lot and burden the same. Further all such covenants are made with the Government and are intended to benefit the reversionary interest in the Lot.

SCHEDULE

PART A

Column 1	Column 2
	The proportion (expressed in percentage (%)) which the total gross floor area of the building or buildings designed and constructed for the corresponding facilities in column 1 bears to the total gross floor area of the building or buildings erected or to be erected on the Lot
(I) Clinical and Clinical Supporting Facilities	%
(II) Accommodation Facilities (if any)	%
(III) Non-Clinical Supporting Facilities (other than the Accommodation Facilities (if any))	%
(IV) <u>Sub-total</u> of the Non-Clinical Supporting Facilities (including the Accommodation Facilities (if any)) (i.e. (II) + (III))	%
(V) <u>Total (i.e. (I) + (II) + (III))</u>	100%

PART B

Column 1	Column 2
(I) The date of commencement of operation of the Hospital ("the Date")	<i>[To insert date i.e. a date within 60 calendar months from the date on which possession of the Possession Area 1 is deemed given under Special Condition No. (1) hereof.]</i>
(II) Total number of hospital beds to be provided at the Hospital	[] hospital beds
(III) Provision of hospital beds at the Hospital on and after the Date	<i>[To insert the accumulated number of hospital beds below]</i>
(i) The Date	[] hospital beds
(ii) <i>[To insert date i.e. a date within 24 months from the Date]</i>	[] hospital beds
(iii) <i>[To insert date i.e. a date within 48 months from the Date]</i>	[] hospital beds
(iv) <i>[To insert date i.e. a date within 72 months from the Date]</i>	[] hospital beds

MEMORANDUM OF AGREEMENT

BETWEEN

of

(herein referred to as "the Purchaser") of the one part and the Chief Executive on behalf of the Government of the Hong Kong Special Administrative Region of the other part *whereby it is Agreed* that the Purchaser's tender for the Lot described in the foregoing Tender Notice having been accepted at the premium hereunder specified and the Purchaser having paid the sum specified in his tender as a deposit and in part payment of the premium (the receipt of which is hereby acknowledged) hereby agrees to pay the balance of the said premium and to become the Lessee of the Lot upon and subject to the foregoing Conditions and on his part to perform and abide by the said Conditions.

Registry No.	Rent	Amount of premium at which purchased
Aberdeen Inland Lot No. 458	As specified in General Condition No. 4	\$

Dated this day of 20 .

Witness to the signature of the Purchaser :

Signature of the Purchaser/Seal of the
Purchaser and authorized signature(s) :

Address

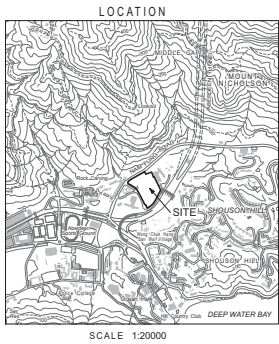
Witness to the signature of
District Lands Officer, Hong Kong West
and South :

For and on behalf of the Chief Executive
of the Hong Kong Special Administrative
Region

*Civil Servant,
Lands Department*

*District Lands Officer, Hong Kong West
and South*

Point	CO-ORDINATES DATA (ORIGIN : 1980 DATUM...)	
	N	E
A	812598.755	836128.355
B	812615.682	836152.199
C	812655.999	836224.940
D	812663.694	836237.724
E	812646.364	836243.869
F	812660.786	836283.409
G	812626.962	836293.691
H	812631.288	836298.669
J	812541.955	836342.808
K	812472.976	836306.072
L	812447.434	836287.552
M	812423.454	836255.131
N	812426.670	836248.914
P	812444.693	836242.246
Q	812451.000	836235.461
R	812494.877	836213.847
S	812521.390	836199.628
Y	812546.036	836184.911
T	812580.844	836133.530
25' CENTRE		
A-B	812494.888	836220.025
C-D	812850.384	836116.641
K-L	812526.885	836204.849
L-M	812530.886	836200.893
N-P	812432.644	836237.368
P-Q	812456.744	836247.124
Y-T	812410.017	836055.284
T-A	812592.027	836138.652

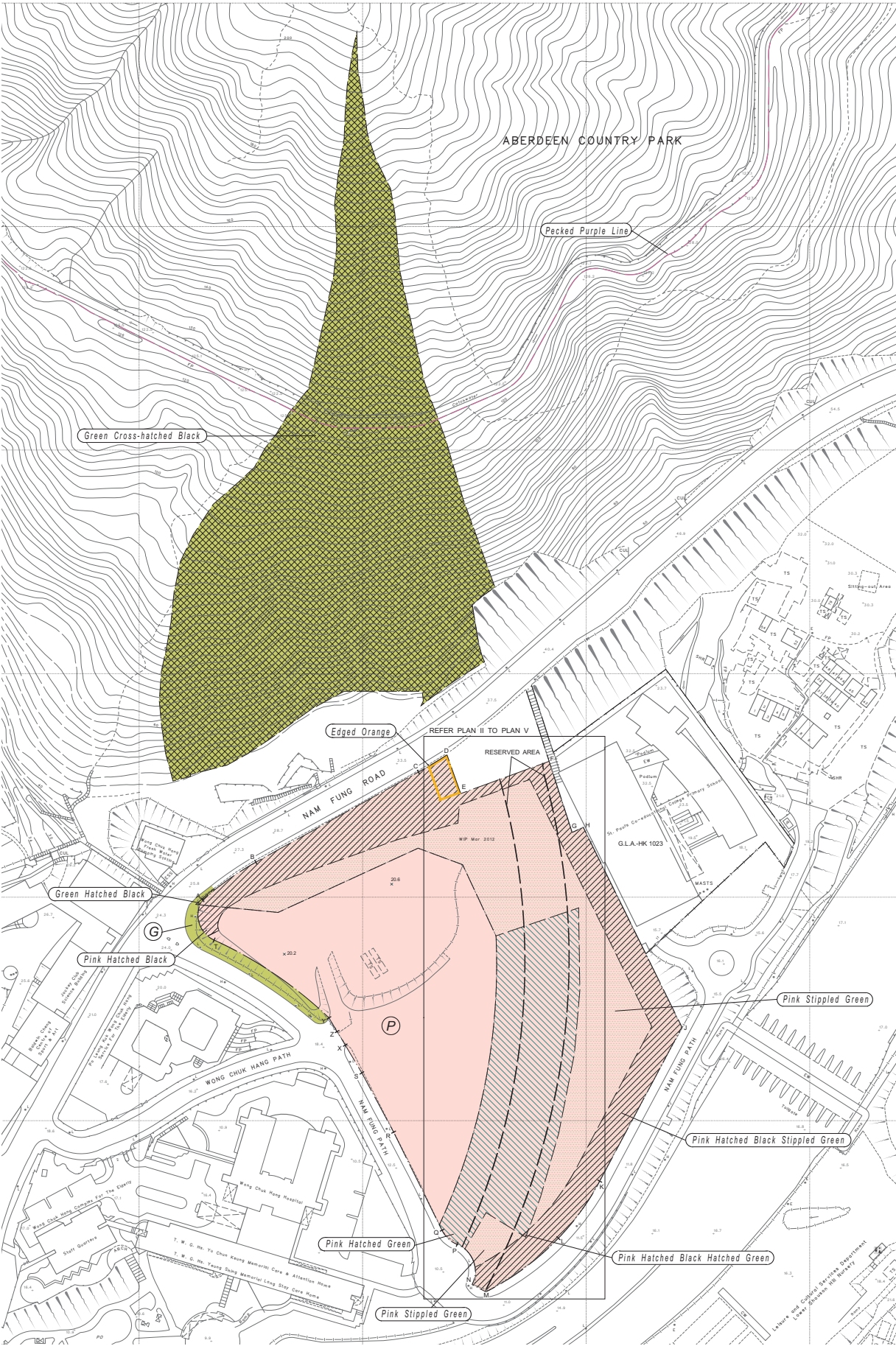


SIDE	DISTANCE IN METRES	BEARING ° ' "	PL.	CORNER MARKED BY
Chord A-B	29.242	54 37 39		
B-C	83.167	61 00 10		
Chord C-D	14.921	58 57 17		
D-E	18.387	160 28 38		
E-F	42.088	69 57 41		
F-G	33.444	162 05 40		
G-H	5.495	64 57 10		
H-J	99.643	153 42 20		
J-K	78.151	208 02 18		
Chord K-L	31.550	215 56 42		
Chord L-M	40.326	233 30 42		
M-N	7.000	297 21 08		
Chord N-P	19.217	339 41 49		
Chord P-Q	9.264	312 54 32		
Q-R	48.912	333 46 30		
R-S	30.085	331 47 43		
S-Y	28.706	329 09 25		
Chord Y-T	62.062	304 06 57		
Chord T-A	18.643	343 53 03		
CURVE DATA				
Arc AB = 29.297m	Radius = 138.534m	Δ = 12' 00" 00"		
Arc CD = 14.924m	Radius = 222.518m	Δ = 3' 50" 34"		
Arc KL = 31.650m	Radius = 114.683m	Δ = 15' 48' 45"		
Arc LM = 40.517m	Radius = 120.189m	Δ = 19' 19' 06"		
Arc NP = 21.626m	Radius = 13.000m	Δ = 95' 19' 01"		
Arc PQ = 9.472m	Radius = 13.000m	Δ = 41' 44' 34"		
Arc YT = 62.347m	Radius = 187.895m	Δ = 19' 00' 43"		
Arc TA = 21.156m	Radius = 12.300m	Δ = 98' 32' 56"		

×20.2 SPOT LEVEL IN METRES AS AT 01/11/2011

- SPECIAL CONDITIONS REFER
- PINK HATCHED BLACK
 - PINK HATCHED GREEN
 - PINK HATCHED BLACK HATCHED GREEN
 - PINK STIPPLED GREEN
 - PINK HATCHED BLACK STIPPLED GREEN
 - GREEN
 - GREEN HATCHED BLACK
 - GREEN CROSS-HATCHED BLACK
 - EDGED ORANGE
- POINTS X Y Z

- LEGEND
- G.L.A. GOVERNMENT LAND ALLOCATION
 - COUNTRY PARK BOUNDARY



COLOURED PINK, PINK HATCHED BLACK, PINK HATCHED GREEN, PINK HATCHED BLACK HATCHED GREEN,
PINK STIPPLED GREEN AND PINK HATCHED BLACK STIPPLED GREEN AREA 27 500 SQUARE METRES (ABOUT)

SCALE 1:1 000

metres 20 0 20 40 60 80 100 metres

DISTRICT LANDS OFFICE
HONG KONG WEST AND SOUTH
LANDS DEPARTMENT



Witness to the Signature of the Purchaser

Signature of the Purchaser / Seal of
the Purchaser and Authorized Signature(s)

For and on behalf of the Chief Executive
of the Hong Kong Special Administrative Region

Witness to the Signature of
District Lands Officer, Hong Kong West and South
Civil Servant,
Lands Department

District Lands Officer,
Hong Kong West and South

SALE PLAN				
Field Book	517/833-70			
Comp Folder	HK6284			
Svy Officer	CHIU M.L.			
Tech Officer	YIU K.W.			
Date	Mar 2012			
Plan No.	HK6284-SP			

Survey approved by
District Survey Office, Hong Kong
Lands Department

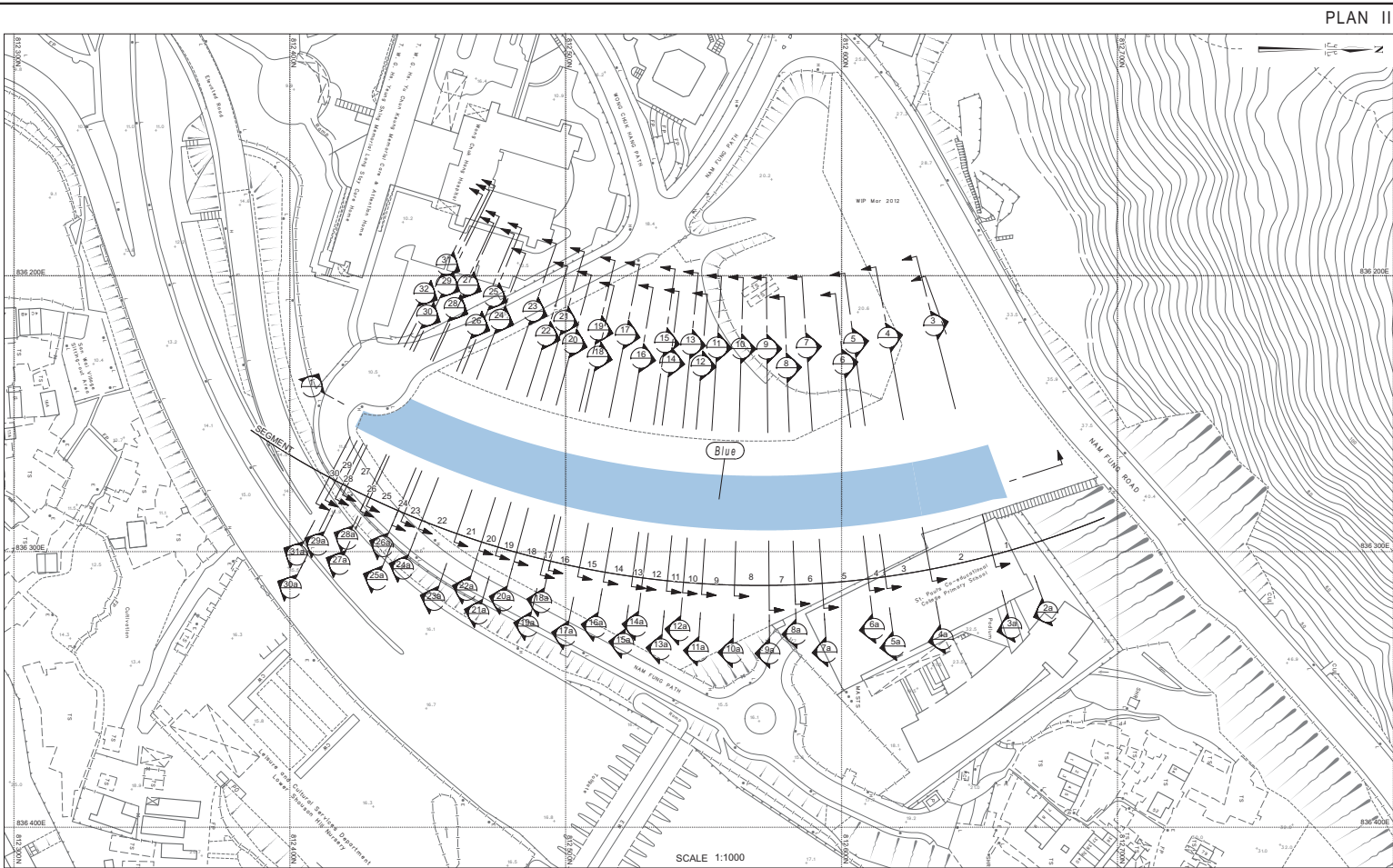
Signed
(CHAN KAI HONG)
District Land Surveyor
22 / 03 / 2012

ABERDEEN INLAND LOT No. 458

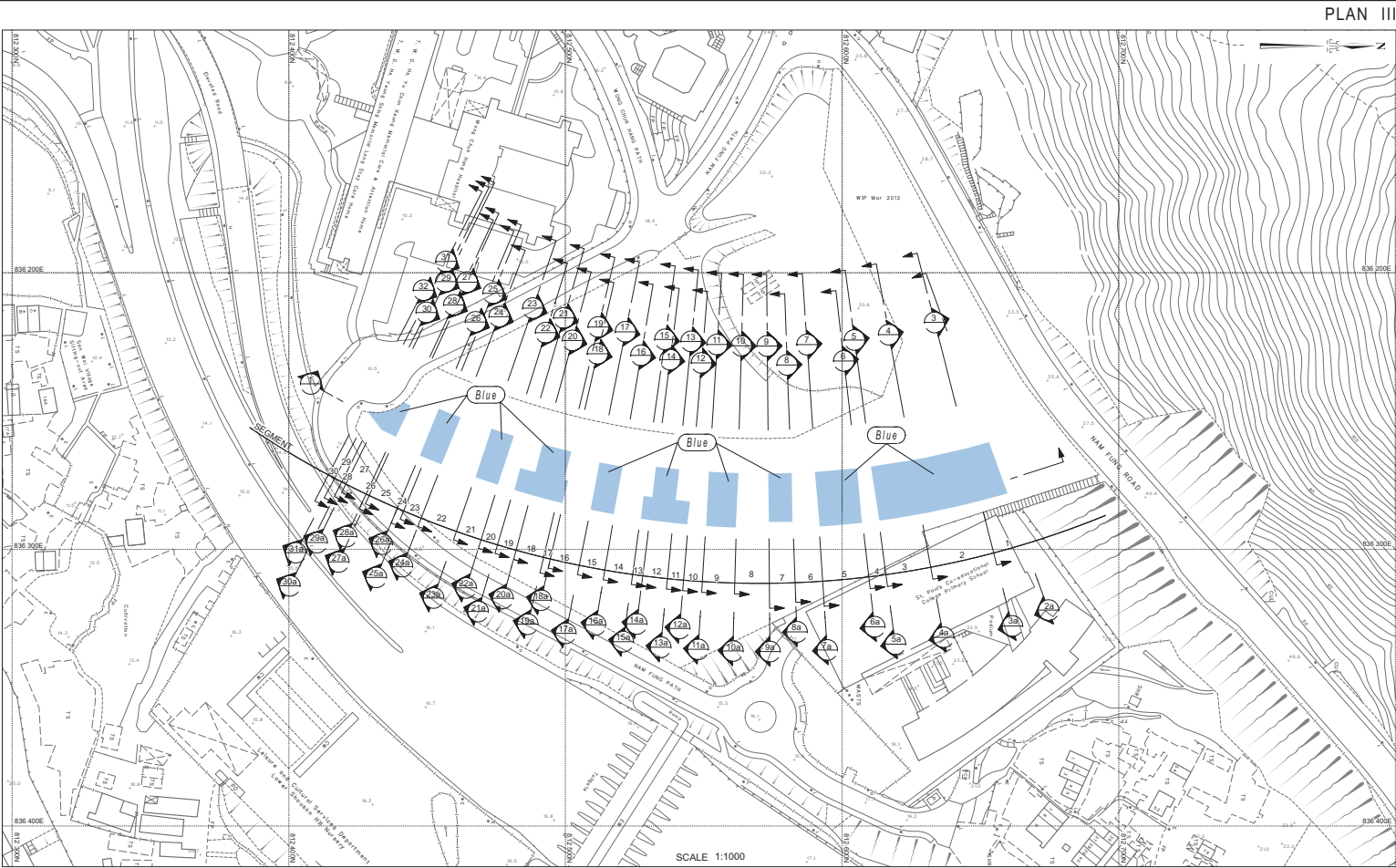
File No. DLO/HKS L/M 84/SHT/82
Survey Sheet No. 11-SW-25A & 25C
Layout Plan No. ---
Reference Plan. No. 902/K/000/PLD/P01/011E & M/H15/11/13
PLAN No. HK6284-SP (SHEET 1 OF 5)

Date this----- day of ----- 20--

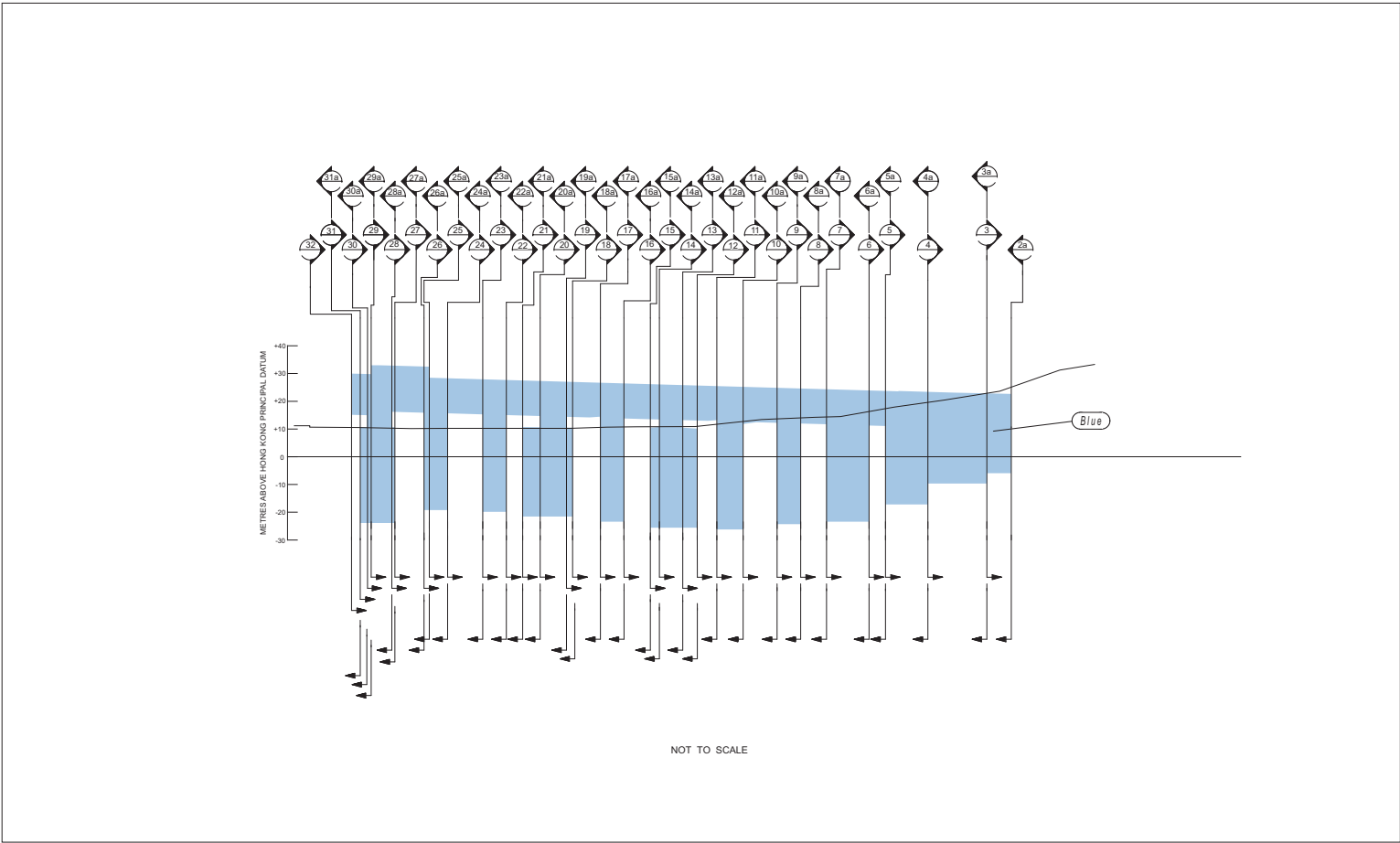
Date : 22/03/2012



LOT NUMBER: AL 458
COURT: 1000
SCHEMATIC: 1000



PLAN OF RESERVED AREA AT LEVEL 0.0 METRE ABOVE HONG KONG PRINCIPAL DATUM



NOT TO SCALE

SECTION 1

DISTRICT LANDS OFFICE
HONG KONG WEST AND SOUTH
LANDS DEPARTMENT



Witness to the Signature of the Purchaser

Signature of the Purchaser / Seal of
the Purchaser and Authorized Signature(s)

For and on behalf of the Chief Executive
of the Hong Kong Special Administrative Region

Witness to the Signature of
District Lands Officer, Hong Kong West and South
Civil Servant,
Lands Department

District Lands Officer,
Hong Kong West and South

Field Book	SALE PLAN			
Comp.Folder				
Svy.Officer				
Tech.Officer	YIU K.W.			
Date	Mar 2012			
Plan No.	HK6284-SP			

Plan approved by
Signed
[CHAN KAI HONG]
District Land Surveyor
22 / 03 / 2012
District Survey Office, Hong Kong
Lands Department
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ABERDEEN INLAND LOT No. 458

File No. DLO/HKS L/M 84/SHPT/82
Survey Sheet No. 11-SW-25A & 25C
Layout Plan No. ---
Reference Plan. No. 902/K/000/PLD/P01/012F & 013D
PLAN No. HK6284-SP (SHEET 3 OF 5)

Dated this.....day of.....20...



ABERDEEN INLAND LOT No. 458

File No. DLO/HKS L/M 84/SHPT/82
Survey Sheet No. 11-SW-25A & 25C
Layout Plan No. ---
Reference Plan. No. 902/K/000/PLD/P01/016B & 017B
PLAN No. HK6284-SP (SHEET 4 OF 5)

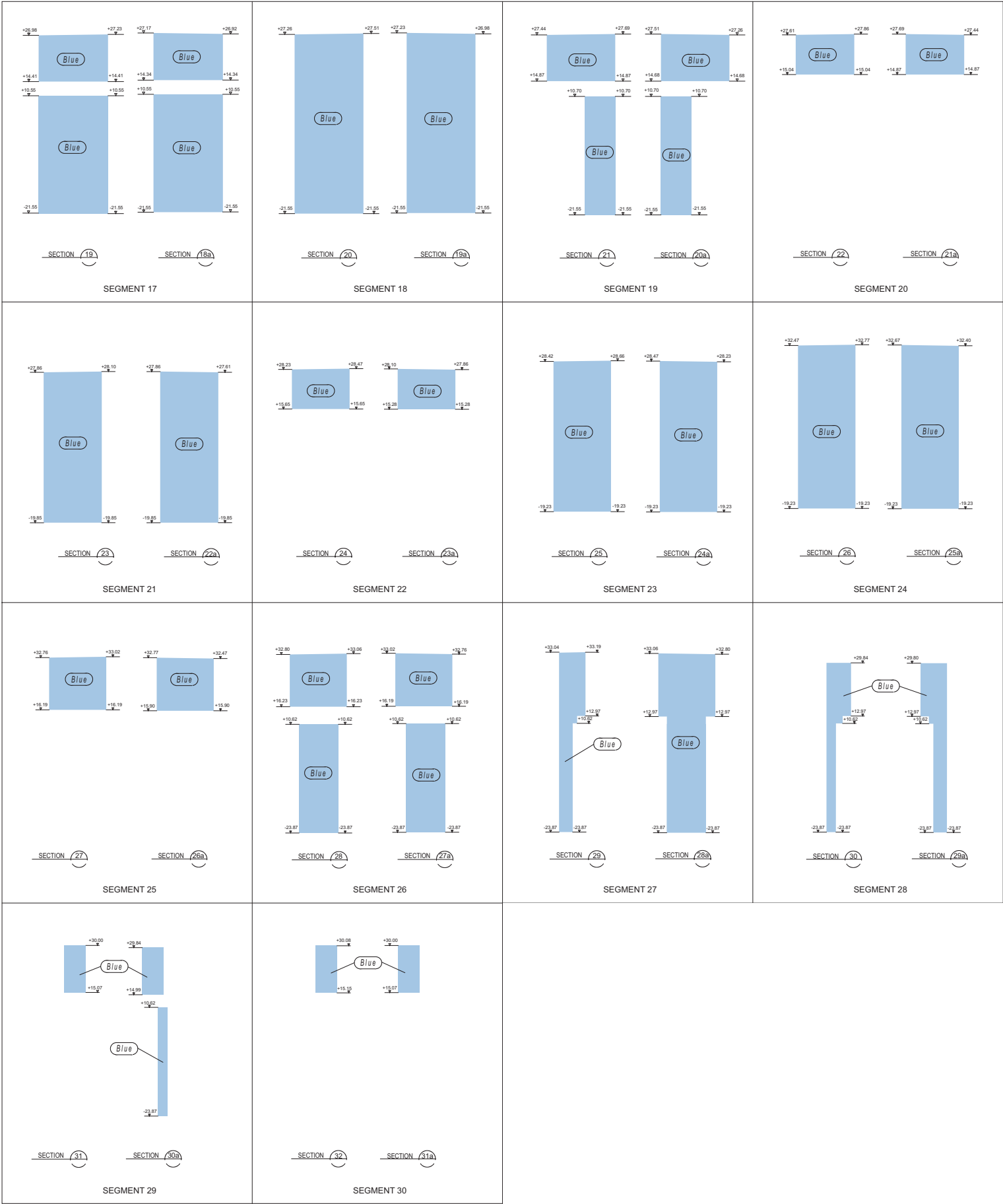
Dated this _____ day of _____ 20__

Date : 22/03/2012

LOT NUMBER: AL 458
LAYOUT: L000
SECTION: 1-13-10
SECTION: 1-13-10

PLAN V

DISTRICT LANDS OFFICE
HONG KONG WEST AND SOUTH
LANDS DEPARTMENT



Witness to the Signature of the Purchaser

Signature of the Purchaser / Seal of the Purchaser and Authorized Signature(s)

For and on behalf of the Chief Executive of the Hong Kong Special Administrative Region

Witness to the Signature of District Lands Officer, Hong Kong West and South Civil Servant, Lands Department

District Lands Officer, Hong Kong West and South

Field Book	SALE PLAN			
Comp Folder				
Svy Officer				
Tech Officer	NG L.L.			
Date	Mar 2012			
Plan No.	HK6284-SP			

Plan approved by
District Survey Office, Hong Kong
Lands Department
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Signed
~ (CHAN KAI HONG) ~
District Land Surveyor
22 / 03 / 2012

ABERDEEN INLAND LOT No. 458

NOT TO SCALE
CROSS SECTION PLAN OF RESERVED AREA FROM SEGMENT 17 - SEGMENT 30
LEVELS ARE IN METRES ABOVE HONG KONG PRINCIPAL DATUM
SECTION 18a - 31a ARE VIEWED TOWARDS THE SOUTHERN DIRECTION
SECTION 19 - 32 ARE VIEWED TOWARDS THE NORTHERN DIRECTION

File No. DLO/HKS L/M 84/SHT/82
Survey Sheet No. 11-SW-25A & 25C
Layout Plan No. ---
Reference Plan. No. 902/K/000/PLD/P01/017B, 018E & 022E
PLAN No. HK6284-SP (SHEET 5 OF 5)

Dated this..... day of 20...

Date: 22/03/2012

Dated20.....

AGREEMENT

AND

CONDITIONS OF SALE

of

Aberdeen Inland Lot No. 458

Purchaser :

Rent : As specified in General Condition No. 4

Term : Fifty years from the date of the
Memorandum of Agreement

Lands Department

Tai Po Town Lot No. 207
Chuen On Road, Tai Po, New Territories

Explanatory Statement
For Private Hospital Development at Chuen On Road, Tai Po, New Territories

This Explanatory Statement is issued for information only and is not intended to have any legal effect. The purpose of this Explanatory Statement is to facilitate tenderers in preparing tenders for the grant of Tai Po Town Lot No. 207 (herein referred to as “the Lot”) at Chuen On Road, Tai Po, New Territories. It shall not form part of the Tender Notice (including its annexes and appendices), Service Deed and Conditions of Sale by Public Tender for the Lot (which Conditions of Sale are herein referred to as “the Conditions of Sale”), nor shall it be taken into consideration in the interpretation and construction thereof.

2. This Explanatory Statement does not claim to be comprehensive or to have been independently verified. Neither the Government, nor any of its officers, agents or advisors accepts any liability or responsibility as to, or in relation to the adequacy, accuracy or completeness of the information contained in the Explanatory Statement; nor do they make any representation, statement or warranty, express or implied, with respect to such information or to the information on which the Explanatory Statement is based. Any liability in respect of any such information or any inaccuracy in the Explanatory Statement or omission from the Explanatory Statement is expressly disclaimed. In particular, but without prejudice to the generality of the foregoing, no representation or warranty is given as to the information contained in the Explanatory Statement. Nothing in the Explanatory Statement should be relied on as a representation, statement or warranty as to the intention, policy or action of the Government, its officers or agents.

Promotion of private hospital development in Hong Kong

3. The healthcare system of Hong Kong is overly reliant on public hospital services, which are provided at a highly subsidized rate of 95%. The significant imbalance between the public and private healthcare sectors has resulted in limited competition and collaboration between the two sectors and limited choice for patients, especially those who want a choice of hospital services and can afford more than public fees. This situation is not conducive to the long-term sustainability of our healthcare system with the rising demand for healthcare services as a result of the aging population, advancement in medical technology and increased public expectation for better quality of services.

4. The development of private healthcare services is one of the major Government policies announced by the Chief Executive in his 2009-10 Policy Address and a key initiative under the healthcare reform to increase the overall capacity of the healthcare system in Hong Kong and address the imbalance between the public and private sectors in hospital services.

5. Hong Kong is renowned for the high professional standards of our healthcare personnel as well as our advancement in medical technology and equipment. We have the advantages and potential in further developing our medical services, in particular in the provision of highly specialized services that require the inputs of technology and skills across different disciplines. In this connection, the Government’s Task Force on Economic Challenges has recommended the development of medical services as one of the six industries crucial to the development of Hong Kong’s economy.

6. To achieve the above policy objective, the Government has set aside the four sites at Wong Chuk Hang, Tai Po, Tseung Kwan O and Lantau respectively (herein referred as “the Reserved Sites”) for private hospital development. The Government is inviting tenders for the two sites at Wong Chuk Hang and Tai Po from 13 April 2012 to 27 July 2012. The other two sites will be disposed of later in phases.

7. In promoting the development of private hospitals, the Government seeks to ensure that the services provided by the new hospitals would be of good quality and can enhance the medical professional standards of Hong Kong. In submitting their tenders, tenderers must submit service proposals that comply with a set of requirements for the development of the Reserved Sites, covering the scope of service (such as the types of specialty), the standard of service (such as the number of beds and hospital accreditation) and price transparency, etc. The tenderers are also encouraged to submit service proposals that surpass these requirements to better serve the community.

Issues relating to Tai Po Town Lot No. 207

8. Tenderer should note that while Special Condition No. (9)(d) of the Conditions of Sale only specifies a maximum height of 90 metres above the Hong Kong Principal Datum pursuant to the Tai Po Outline Zoning Plan No. S/TP/23 and Notes, for the design and disposition of any building or buildings erected or to be erected on the Lot under Special Condition No. (9)(f) of the Conditions of Sale, a stepped building height profile, not exceeding the maximum building height, descending from the foothill harmonizing with the landscape characteristics of the Lot and the surrounding area is strongly recommended.

9. Tenderer should note that under Special Condition No. (28) of the Conditions of Sale, the Purchaser is required to carry out a sewerage impact assessment to assess the adverse sewerage impact which may arise from the proposed development of the Lot, to recommend mitigation measures and improvement works, and to implement the recommendations. Preliminary checking indicates that a section of the existing sewer along Chuen On Road and Chung Nga Road, to which the sewage of this development may discharge, may have inadequate capacity to cater for the full development of the Lot. For further information, Tenderer may contact Drainage Services Department (subject officer: Mr. S.C. WONG at telephone. no. 2300 1257).

TENDER NOTICE

1. Invitation to Tender

The Government of the Hong Kong Special Administrative Region ("the Government") invites tenders by way of premium for the grant of the lot of land described in the Particulars of the Lot hereunder for a term of fifty years commencing from the date of the Memorandum of Agreement at a rent specified in the Particulars of the Lot hereunder and subject to the terms and conditions of this Tender Notice (this Tender Notice together with its annexes and appendices are hereinafter collectively referred to as "this Tender Notice"), the General and Special Conditions of Sale together with their schedule (hereinafter collectively referred to as "the Conditions of Sale") and the Service Deed at Annex III together with its schedules and annexes (hereinafter collectively referred to as "the Service Deed") and subject also to the delivery of the tender bond in accordance with paragraph 16 ("the Tender Bond") and delivery of the performance guarantee ("the Performance Guarantee") and the bank bond ("the Bank Bond") in accordance with paragraph 20. This Tender Notice, together with the Conditions of Sale, the Memorandum of Agreement and the Service Deed, in their original forms as annexed hereto, are hereinafter collectively referred to as the "Tender Documents". Terms and expressions used and not otherwise defined in this Tender Notice but which are defined in the Conditions of Sale or the Service Deed shall have the respective meanings ascribed to them therein.

PARTICULARS OF THE LOT

Registry No.	Location	Site	Area in square metres	Rent
Tai Po Town Lot No. 207	Chuen On Road, Tai Po	As delineated and shown coloured pink and pink hatched red on the plan annexed hereto	54,851 (about)	An annual rent of an amount equal to 3% of the rateable value from time to time of the lot, subject to General Condition No. 4 of the Conditions of Sale

2. The Government does not bind itself to accept the tender with the highest overall combined score assessed in accordance with paragraph 17 or any tender submitted.

3. Tenders must be :

(a) made in the Form of Tender comprising (i) Form A and (ii) Form B annexed hereto, all duly signed and completed by the tenderers' authorized signatory/signatories,

(b) subject to paragraph 4, enclosed in two separate sealed envelopes:

(i) one marked on the outside "Non-premium Submission" and enclosing

(1) in DUPLICATE the duly signed and completed Form A annexed hereto;

(2) the tender bond referred to in paragraph 16.1;

(3) all documents referred to in paragraphs 8.1(iv), 8.1(v) and 9.1, in sufficient number of copies/sets as required under paragraph 11.1; and

(ii) the other marked on the outside "Premium Submission" and enclosing the duly signed and completed Form B annexed hereto,

which must then be placed inside one sealed outer envelope addressed to the Chairman, Central Tender Board and clearly marked on the outside of the outer envelope "Tender for Tai Po Town Lot No. 207",

and must be placed in the Tender Box labelled "Government Secretariat Tender Box" on the Ground Floor, East Wing, Central Government Offices, 2 Tim Mei Avenue, Tamar, Hong Kong by no later than 12 noon on Friday, the 27th day of July 2012 (such time or, where a Black Rainstorm Warning is issued or Typhoon Signal No. 8 or above is hoisted between 9 a.m. and 12 noon on the 27th day of July 2012, the time referred to in paragraph 5 is for the purpose of this Tender Notice referred to as "the Tender Closing Time").

4. If it is not practicable to place the "Non-premium Submission" documents in one envelope then they should be placed in separate sealed envelopes. Tenders with a size exceeding 0.1 m² and a thickness of more than 30 centimetres should be separated into smaller parcels, each parcel to be clearly marked with the words "Non-premium Submission – Part ____ of No. ____". Bulky submissions should be wrapped properly with strong paper which is unlikely to break when tender is being deposited in the Tender Box.

5. In case a Black Rainstorm Warning is issued or Typhoon Signal No. 8 or above is hoisted between 9 a.m. and 12 noon on the 27th day of July 2012, tenders must be submitted by no later than 12 noon on the first working day of the following week.

6. Tenders submitted after the Tender Closing Time will not be considered.

7. By submitting a tender, a tenderer shall be taken to have agreed to all terms and conditions set out in this Tender Notice. The person who is named as the Tenderer in the Particulars of Tenderer in Form A shall be regarded as acting as a principal.

8. **Submission of Essential Documents**

8.1 Tenderers must submit the following essential documents by the Tender Closing Time (hereinafter collectively referred to as the "Submission of Essential Documents Requirements"):

- (i) duly signed and completed Form A (in duplicate) as required under paragraph 3(a) in an envelope separate from the one in which Form B is contained;
- (ii) duly signed and completed Form B as required under paragraph 3(a) in an envelope separate from the one in which Form A is contained;
- (iii) tender deposit as required under paragraph 16;
- (iv) tenderer's service provision proposals in the forms at Appendices A to D of the Marking Scheme at Annex II annexed hereto; and
- (v) duly signed undertaking by each Key Personnel as defined in Annex VII annexed hereto.

8.2 Proposals submitted in the forms at Appendices A to D of the Marking Scheme in accordance with paragraph 8.1(iv) must comply with the Mandatory Requirements and must meet the Minimum Acceptable Levels set out respectively in Section I and Section II of Annex I annexed hereto.

8.3 A tender which does not comply with paragraph 8.1 or paragraph 8.2 will not be further considered.

9. **Submission of other proposals and information**

9.1 Tenderers shall submit the following in their tenders:

- (i) tenderer's other service provision proposals in the forms at Appendices E to J of the Marking Scheme at Annex II annexed hereto;

- (ii) financial statements in respect of each of the tenderer and the proposed performance guarantor in accordance with paragraph 13.1(a), to be marked as “Appendix K”;
- (iii) original letter from the tenderer’s proposed performance guarantor undertaking to submit to the Government the Performance Guarantee in accordance with the requirements set out in paragraph 13.1(b), to be marked as “Appendix L”;
- (iv) original letter(s) from bank(s) in accordance with the requirements set out in paragraph 13.1(c), to be marked as “Appendix M”;
- (v) information regarding sufficient working capital in respect of the tenderer and the proposed performance guarantor in accordance with paragraph 13.1(d), to be marked as “Appendix N”;
- (vi) tenderer’s projected annual profit and loss accounts and cash-flow statements in accordance with paragraph 13.1(e), to be marked as “Appendix O”; and
- (vii) tenderer’s proposed schedule of development of the Lot in the form at Annex VIII annexed hereto.

9.2 The Government reserves the right to decide at its absolute discretion whether to consider a tender which fails to comply with paragraph 9.1.

10. **Tenderer’s Counter-proposal**

10.1 Notwithstanding anything provided in the Tender Documents, a tenderer must not submit a proposal which has the effect of:

- (i) altering or varying any term or condition of the Tender Documents including, for the avoidance of doubt, any Mandatory Requirements and Minimum Acceptable Levels set out respectively in Section I and Section II of Annex I annexed hereto; or
- (ii) limiting or avoiding, or which seeks to limit or avoid, any responsibility or liability of the tenderer under the Tender Documents; or
- (iii) limiting or avoiding, or which seek to limit or avoid, any responsibility or liability of the tenderer or its employees, agents or subcontractors (whether in contract, tort or otherwise) for breach of any obligations under the Conditions of Sale, the Memorandum of Agreement and the Service Deed, or for failing to exercise the skill and care required by the Conditions of

Sale, the Memorandum of Agreement or the Service Deed or reasonably expected of the aforesaid persons in these circumstances.

10.2 The Government reserves the right to decide at its absolute discretion whether to consider a tender which fails to comply with paragraph 10.1.

11. **Number of copies of documents to be provided in the "Non-premium Submission" envelope**

11.1 A tenderer must submit with its tender one original and 15 copies/sets of documents as required under paragraph 3(b)(i)(3).

11.2 The Government shall have the right to call upon any tenderer to submit additional copies of the documents referred to in paragraph 11.1 whereupon such additional copies, if requested, shall be delivered within five (5) working days free of cost to the Government.

11.3 Notwithstanding paragraphs 3, 11.1 and 11.2, the Government shall have the discretion to decide whether or not a tender has been submitted with sufficient copies of the documents as required in paragraphs 11.1 and 11.2 and to decide whether or not to consider such a tender.

12. **Clarification and Request for Missing Information**

12.1 Notwithstanding anything herein contained, the Government reserves the right to seek clarification or request missing information (other than the documents required to be submitted as Submission of Essential Documents Requirements under paragraph 8.1) from any tenderer as the Government may at its absolute discretion consider necessary. The tenderer shall within five (5) working days or such other period as specified in the request, submit to the Government such clarification, information or document. A tender may not be considered further if adequate information or requested documents are not provided as required by the deadline specified in the request, or in the case of clarification, such clarification is not provided or is not acceptable to the Government.

13. **Financial Capability**

13.1 A tenderer must demonstrate that it is financially capable of fulfilling its obligations under the Conditions of Sale, the Memorandum of Agreement and the Service Deed, and that its proposed performance guarantor is an incorporated company and financially capable of performing its obligations under the Performance Guarantee. For this purpose, the tenderer must provide and submit such financial information or financial statements stated in Hong Kong dollars, giving evidence of the financial capability of the tenderer and the proposed performance guarantor, including but not limited to the following:

(a) financial statements in respect of each of the tenderer and the proposed performance guarantor to be marked as “Appendix K”, including:

(I) audited accounts complying with the following requirements:

- (1) originals or copies certified by the tenderer’s and the proposed performance guarantor’s auditors for each of the three (3) financial years prior to the date on which the tenderer submits its tender, or for each of the financial years since the date of their incorporation if either the tenderer or its proposed performance guarantor is a newly incorporated company;
- (2) the latest audited accounts must be for a period ending no more than eighteen (18) months before the date on which the tenderer submits its tender;
- (3) the audited accounts must contain the directors’ report, auditors’ report, balance sheet, profit and loss account, statement of changes in equity, cash flow statement (if applicable) and notes to the accounts;
- (4) if the tenderer is an unincorporated partnership, audited accounts for each participant in such unincorporated partnership must be submitted in the manner prescribed in paragraph 13.1(a)(I);
- (5) all such accounts must be audited by a Certified Public Accountant (Practising) as defined in the Professional Accountants Ordinance (Cap.50) or, for a company which is incorporated outside the Hong Kong Special Administrative Region (“Hong Kong”), by auditors recognised in its home jurisdiction;
- (6) in the event any such accounts are in a language other than Chinese or English, a full translation of such audited accounts into English certified in accordance with Regulation 6 of Companies (Forms) Regulations (Cap. 32B) must also be provided; and
- (7) the basis and policies of accounting adopted for the purpose of preparing each set of audited accounts in respect of the last three (3) financial years, or for each of the financial years since the date of incorporation if either the tenderer or its proposed performance guarantor is a newly incorporated company, shall be the same; and each set of audited accounts shall have been prepared according to accounting principles generally accepted in Hong

Kong and the disclosure requirements of the Companies Ordinance (Cap. 32);

- (II) management accounts covering the period commencing immediately after the end of the last financial year up to a date not earlier than three (3) months before the date on which the tenderer submits its tender (if such period has not already been covered by the latest audited accounts). The management accounts shall have been prepared on the same basis and policies of accounting as were adopted in the preparation of the audited accounts for the last three (3) financial years, or for each of the financial years since the date of incorporation if either the tenderer or its proposed performance guarantor is a newly incorporated company, and in accordance with accounting principles generally accepted in Hong Kong and the disclosure requirements of the Companies Ordinance (Cap. 32);
 - (III) unaudited accounts in respect of the tenderer are acceptable only if the tenderer is a newly incorporated company where the first accounts are not yet available or the tenderer is an unincorporated partnership where audited accounts are not mandatorily required and unaudited accounts in respects of the proposed performance guarantor are acceptable only if the proposed performance guarantor is a newly incorporated company where the first accounts are not yet available; and
 - (IV) the management accounts mentioned in (II) above and the unaudited accounts mentioned in (III) above in respect of the tenderer must be certified as true copies by a director or the managing partner of the tenderer or the management accounts mentioned in (II) above and the unaudited accounts mentioned in (III) above in respect of the proposed performance guarantor must be certified as true copies by a director or the managing partner of the proposed performance guarantor or by certified public accountants or other accountants acceptable to the Government; and
- (b) original letter from the proposed performance guarantor undertaking to submit to the Government the Performance Guarantee as required in paragraph 20, to be marked as "Appendix L";
 - (c) original letter(s) from bank(s) confirming the line of credit facilities available to both the tenderer and the proposed performance guarantor and the current undrawn balances of such facilities and the respective amounts standing to the credit of the bank accounts respectively in the names of the tenderer and the proposed performance guarantor as at a date to fall on or after the 30th day of March 2012, to be marked as "Appendix M";

- (d) any other information in support of the tenderer having sufficient working capital for fulfilling its obligations under the Conditions of Sale, the Memorandum of Agreement and the Service Deed and the proposed performance guarantor having sufficient working capital for fulfilling its obligations under the Performance Guarantee, such as information showing the amount of paid up capital, credit line, reserve and other financing support agreement, to be marked as “Appendix N”;
- (e) the projected annual profit and loss accounts and cash flow statements in respect of expenditure to be incurred and income to be generated from the performance of the Conditions of Sale, the Memorandum of Agreement and the Service Deed for the first five years from the date of commencement of operation of the hospital proposed by the tenderer under paragraph 1 of Appendix C of the Marking Scheme at Annex II, certified by the tenderer, to be marked as “Appendix O”, provided that;
 - (i) the assumptions used in preparing the projected profit and loss accounts should be reasonable and must be clearly stated. All supporting schedules and detailed calculations shall also be submitted in full; and
 - (ii) in so far as the estimated profits or any part thereof are derived and based on any assumed sources of income which requires the Government’s approval in advance, the Government’s acceptance of its tender shall not constitute or imply any approval of such sources of income by the Government. The Government shall not be deemed to have accepted or endorsed these profit and loss accounts or the assumptions set out therein merely by accepting any tender which incorporates such accounts; and
- (f) any other additional financial information as may be requested by the Government.

13.2 If the tenderer is incorporated within twelve (12) months immediately preceding the Tender Closing Time, the information of each shareholder of such tenderer required under paragraph 13.1(a) shall also be provided.

13.3 If the tenderer is an unincorporated partnership, the financial capability assessment will apply to each participant of the unincorporated partnership.

13.4 If the tenderer is a subsidiary of another company according to the Companies Ordinance (Cap.32), apart from the “company only” accounts reflecting financial position and results of the tenderer itself, the audited consolidated accounts reflecting the financial position of the “group of companies” as defined in the Companies Ordinance (Cap.32) as a whole shall also be provided.

14. **Company Status**

14.1 At the time of submitting a tender:

- (a) a tenderer which is a company must be incorporated under the laws of Hong Kong or the laws of its place of incorporation if outside Hong Kong;
- (b) a tenderer which is a partnership must have been formed;
- (c) if a shareholder of an incorporated tenderer or partner of an unincorporated partnership is a company, it must be incorporated under the laws of Hong Kong or the laws of its place of incorporation if outside Hong Kong; and
- (d) a partner of a partnership must have been formed.

14.2 In case the tenderer is an unincorporated partnership, the tenderer shall submit details of each participant of the partnership as set out in the Particulars of Tenderer in Form A. Such details shall be submitted under the name of the partnership. Each participant of the partnership is required to sign all parts of the Tender Documents where the tenderer's signature is required.

14.3 Where the successful tenderer referred to in paragraph 19.1 is incorporated or established outside Hong Kong, it shall provide to the Government, within fourteen (14) working days from the date of notification of award referred to under paragraph 19.1, a legal opinion in English containing the matters set out in Annex VI hereto with regard to the successful tenderer and the Conditions of Sale as well as the Service Deed and, as the Government may require, any additional legal opinion on all and any matters arising from its tender, the Conditions of Sale and the Service Deed before a date to be specified by the Government. The legal opinion, containing the matters set out in Annex VI hereto, and any additional legal opinion, must be issued by a lawyer or a firm of lawyers duly qualified to practise in the place where the successful tenderer is incorporated or established. The legal opinion and any additional legal opinion must be addressed to and issued for the benefit of "The Government of the Hong Kong Special Administrative Region". The legal opinion and any additional legal opinion must also be satisfactory to the Government in all respects.

15. **Right of Incorporation**

The Government reserves the right at its absolute discretion whether to accept all or any part of a tender. A tenderer must note and accept that, should the tenderer be selected to be awarded the Memorandum of Agreement and the Service Deed by the Government, the Government may, at its absolute discretion, make any of the proposals submitted by the tenderer an integral part of the Service Deed, the Memorandum of Agreement and the Conditions of Sale mentioned in paragraphs 19.1(a) and 19.1(b) or any one or more of such documents. The tenderer, by submitting a tender, irrevocably authorizes the Government to amend the Memorandum of Agreement, the Conditions of Sale and the Service Deed as the Government in its sole discretion considers appropriate for the purpose of incorporating the proposals.

16. **Tender Deposit**

16.1 A TENDERER MUST FORWARD WITH ITS TENDER a tender deposit in the form of a tender bond in the sum of five million Hong Kong dollars (HK\$5,000,000) made payable upon demand by the Government and issued by a bank duly licensed under Section 16 of the Banking Ordinance (Cap. 155) in favour of the Government and which is expressed to be irrevocable and remain in full force and effect from the date of the Tender Bond until the 26th day of July 2013 subject to clause 10 of the Tender Bond. Unless otherwise agreed by the Government, the Tender Bond shall be in the form set out in Annex IX hereto. If a tenderer is notified of the award of the Memorandum of Agreement and the Service Deed, the Government shall demand payment of the whole tender deposit under the Tender Bond and the tender deposit paid under the Tender Bond shall be treated as a deposit towards and applied in part payment of the premium tendered. Subject to paragraphs 16.2 and 16.3, all other tender bonds will be returned within a period of fourteen (14) working days from the date of the execution of the Memorandum of Agreement and the Service Deed by the successful tenderer, to the unsuccessful tenderers at the addresses stated in their tenders.

16.2 A tender must remain valid and open for acceptance on and subject to the terms and conditions set out in the Tender Documents and the delivery of the Performance Guarantee and the Bank Bond up to and including the 26th day of April 2013 subject to clause 10 of the Tender Bond (hereinafter referred as the "Tender Validity Date"). The Government reserves the right to extend at its sole and absolute discretion the Tender Validity Date to a date on or before the 26th day of July 2013 (such date is hereinafter referred to as the "Extended Tender Validity Date").

16.3 Notwithstanding paragraph 16.1, the tender deposit paid under the Tender Bond submitted under paragraph 16.1 will be fully forfeited by the Government if:

- (a) a tenderer withdraws or revokes its tender on or before the Tender Validity Date or the Extended Tender Validity Date (if the Tender Validity Date is extended in accordance with paragraph 16.2); or
- (b) a tenderer, after it has been notified by the Government in accordance with paragraph 19.1 that it has been awarded the Memorandum of Agreement and the Service Deed, fails or refuses to:
 - (i) comply with the requirements set out in paragraph 19; or
 - (ii) duly execute the Memorandum of Agreement, the Service Deed and all the other documents referred to in paragraphs 19.1(a) and 19.1(b) within the time frame specified therein; or

- (iii) provide and deliver all the documents set out in paragraph 19.1 within the time frame specified therein.

For the avoidance of doubt, the forfeiture of the tender deposit shall not prejudice any other right or remedy of the Government under this Tender Notice or at law.

17. **Tender Assessment**

Tenders will be considered in accordance with the Marking Scheme at Annex II hereto.

18. **Tender Negotiation**

18.1 Notwithstanding anything herein contained, the Government reserves the right to negotiate with any tenderer (including requiring any tenderer to amplify and supplement) the terms and conditions of any parts of its tender except the land premium offered under Form B annexed hereto.

18.2 Notwithstanding paragraph 6, if a tenderer has submitted a tender on or prior to the Tender Closing Time and such tenderer is requested by the Government to amplify or supplement the terms of its tender in accordance with paragraph 18.1, then the submission of an amplified or supplemented tender in accordance with the Government's said request within the period stipulated by the Government for such submission shall not constitute a late tender.

19. **Award of the Memorandum of Agreement and the Service Deed**

19.1 If a tenderer is selected to be awarded the Memorandum of Agreement and the Service Deed by the Government, the successful tenderer will be notified of the award (the "notification of award") by a letter posted to it at or delivered to the address stated in its Form A, or sent by fax to the facsimile number stated in its Form A. The successful tenderer must within fourteen (14) working days of the date of the said letter:

- (a) executes as a deed (and in the case of a limited company duly execute under its common seal and in accordance with its Articles of Association or as otherwise required under the laws of the jurisdiction in which it is incorporated) the Service Deed in the form of the proforma appearing in Annex III hereto incorporating the tenderer's proposals submitted and as considered appropriate by the Government under paragraph 15;
- (b) sign or, in the case of a limited company, duly execute under its Common Seal and in accordance with its Articles of Association, or as otherwise required under the law of the jurisdiction in which it is incorporated or established, the following:

- (i) the Memorandum of Agreement in the form annexed to the Conditions of Sale, with the Conditions of Sale incorporating the tenderer's proposals submitted and as considered appropriate by the Government under paragraph 15; and
- (ii) the sale plan(s) annexed hereto.
- (c) submit to the Government a Performance Guarantee and a Bank Bond duly executed by the Performance Guarantor and the bank referred to in paragraph 20.1 to secure the successful tenderer's performance of its obligations under the terms and conditions of the Service Deed to be executed between the Government and the successful tenderer;
- (d) provide to the Government a legal opinion required under paragraph 14.3 where the successful tenderer is incorporated or established outside Hong Kong; and
- (e) provide to the Government a legal opinion required under paragraph 20.2, where the performance guarantor accepted by the Government in accordance with paragraph 20.1 is incorporated or established outside Hong Kong,

and deliver all the above documents duly signed and executed to the Director of Lands.

19.2 The successful tenderer shall, if required by the Government, provide such additional legal opinion(s) referred to in paragraph 14.3 or paragraph 20.2 before a date to be specified by the Government.

19.3 Tenderers must note and accept that there is no binding contract between the Government and the successful tenderer unless and until each of the Memorandum of Agreement and Service Deed have been executed by the Government and the successful tenderer.

19.4 In the event that:

- (a) the successful tenderer fails to duly execute all the documents referred to in, and in accordance with, paragraphs 19.1(a) and 19.1(b); or
- (b) the successful tenderer fails to provide and deliver all the documents specified in paragraph 19.1; or
- (c) the successful tenderer fails to provide or deliver to the Government any additional legal opinion referred to in paragraph 14.3 or paragraph 20.2, if so required by the Government, before a date to be specified by the Government,

the Government's notification of award under paragraph 19.1 will become void. The Government will disqualify the tenderer concerned, and the Government may, but is not obliged to, award the Memorandum of Agreement and the Service Deed to another tenderer. Without prejudice to the rights and remedies of the Government, should the premium offered by the disqualified tenderer be higher than that offered by the tenderer who eventually enters into the Memorandum of Agreement and Service Deed with the Government, whether awarded pursuant to this invitation to tender or another subsequent invitation to tender, the disqualified tenderer shall pay the Government the difference between the premium it offered under Form B annexed hereto and that offered by the tenderer who eventually enters into the Memorandum of Agreement and Service Deed with the Government.

19.5 After the notification of award, the identities of the successful tenderer and its parent companies (if any), the identities of the unsuccessful tenderers, the amount tendered by the successful tenderer, and the Service Deed executed or to be executed by the successful tenderer may be disclosed by the Government. The Government reserves the right to announce the tender results without the need to seek the prior agreement of the tenderers and their parent companies (if any).

20. Performance Guarantee and Bank Bond

20.1 Upon receipt of the notification of award under paragraph 19.1, as security for due performance of the Service Deed, the successful tenderer must within fourteen (14) working days of the date of the notification of award procure and submit to the Government a Performance Guarantee in the form set out in Annex IV hereto and a Bank Bond in the form set out in Annex V hereto duly executed respectively by a performance guarantor accepted by the Government and a bank duly licensed under Section 16 of the Banking Ordinance (Cap. 155). In the event that the successful tenderer is an unincorporated partnership, the successful tenderer shall procure and submit to the Government a single Performance Guarantee and a single Bank Bond in accordance with the provisions in this paragraph and covering the obligations of all the partners and participants of the unincorporated partnership. Unless otherwise agreed by the Government, a Performance Guarantee and a Bank Bond not in the form or not on the terms as set out respectively in Annex IV and Annex V hereto will not be accepted by the Government.

20.2 Where the proposed performance guarantor is incorporated or established outside Hong Kong, the successful tenderer shall submit to the Government, within fourteen (14) working days from the date of notification of award, a legal opinion in English containing the matters set out in Annex VI hereto, with regard to the performance guarantor and the Performance Guarantee and, as the Government may require, any additional legal opinion on all and any matters arising from its proposed performance guarantor or the Performance Guarantee before a date to be specified by the Government. The legal opinion, containing the matters set out in Annex VI hereto, and any additional legal opinion must be issued by a lawyer or a firm of lawyers duly qualified to practise in the place where the proposed performance guarantor is incorporated. The legal opinion and any additional legal opinion must be addressed to and issued for the benefit of "The

Government of the Hong Kong Special Administrative Region". The legal opinion and any additional legal opinion must also be satisfactory to the Government in all respects.

21. **Warning Against Collusion**

21.1 By submitting a tender, the tenderer represents and warrants that in relation to the tender:

- (a) it has not communicated and will not communicate to any person other than the Government its premium offer;
- (b) it has not fixed and will not fix its premium offer by arrangement with any person;
- (c) it has not made and will not make any arrangement with any person as to whether it or that other person will or will not submit a tender; and
- (d) it has not otherwise colluded and will not otherwise collude with any person in any manner whatsoever in the tendering process.

21.2 In the event that the tenderer is in breach of any of the representations and/or warranties in paragraph 21.1, the Government shall be entitled to, without compensation to any person or liability on the part of the Government:

- (a) not accept the tender;
- (b) if the Government has accepted the tender, withdraw its acceptance of the tender; and
- (c) if the Government has executed the Memorandum of Agreement and Service Deed with the tenderer, forthwith terminate the Memorandum of Agreement and Service Deed.

21.3 The tenderer shall indemnify and keep indemnified the Government against all losses, damages, costs or expenses arising out of or in relation to any breach of any of the representations and/or warranties in paragraph 21.1.

21.4 Paragraph 21.1 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 premium offer, or with its professional advisers, consultants or contractors to solicit their assistance in preparation of tender submission.

21.5 The rights of the Government under paragraphs 21.2 and 21.3 are in addition to and without prejudice to any other rights or remedies available to it against the tenderer at law or otherwise.

22. Tenderers' Enquiries

22.1 Tenderers are requested to note that the Government will only answer questions of a general nature concerning this invitation to tender and will not provide legal or other advice in respect of the Conditions of Sale, the Service Deed, the Performance Guarantee, the Bank Bond, the Tender Bond or any other documents referred to in this Tender Notice or any statutory provisions relating to development of the lot. All enquiries should be in writing only and directed to the Chief Estate Surveyor/Headquarters at fax number (852) 2116 0764 or e-mail address 'ceshq@landsd.gov.hk'. The Government is entitled to decide at its sole discretion whether or not to answer any enquiries or part thereof. If answers are to be given, they will be placed on the Lands Department's website '<http://www.landsd.gov.hk/>' and Food and Health Bureau's website '<http://www.fhb.gov.hk/>'. The Government reserves the right to disclose in full or in part the contents of these enquiries and the answers given without the need to seek the prior agreement of the enquirers. Tenderers are advised to check these websites from time to time for the Government's response to enquiries. It is hereby specifically declared by the Government that any statement, whether oral or written, made and any action taken by any Government officer in response to any enquiry made by a prospective tenderer or in respect of any disclosure of the contents of these enquiries and the answers given shall be for guidance and reference purposes only. Any statement or disclosure shall not be deemed to form part of this Tender Notice and such statement, disclosure or action shall not be deemed to amplify, alter, negate, waive or otherwise vary any of the terms or conditions as are set out in the Tender Documents. The Government will not accept any liability in respect of the adequacy, accuracy and completeness of or otherwise arising out of or in relation to any statement, disclosure or action taken by the Government or its officers.

22.2 After lodging a tender with Government, tenderers shall not attempt to initiate any further contact, whether direct or indirect, with the Government on their tenders or this Tender Notice. The Government shall have the sole right to initiate any such further contact and all such contacts and replies of tenderers shall be in writing only.

23. Disposal of Tender Documents

Tenderers are required to note that in no circumstances will the documents submitted by the tenderers be returned to the tenderers.

24. License, Permit and Certificate

The successful tenderer will be required to comply with all applicable statutory provisions and requirements pertaining to the occupation and use of the Lot for the development of a hospital. The successful tenderer shall be responsible for obtaining all licenses, permits, certificates, consent or approval required by law. For the avoidance of doubt, execution of the Memorandum of Agreement and Service Deed

shall not be taken as agreement on the part of the Government that any license, permit, certificate, consent or approval required under any legislation in connection with the occupation or use of the Lot will be given. No claim shall be made against the Government in respect of the successful tenderer's inability or failure to obtain any such license, permit, certificate, consent or approval nor shall the Government's rights and remedies under or pursuant to the Memorandum of Agreement and Service Deed be in any way affected by reason thereof. The successful tenderer enters into the Memorandum of Agreement and Service Deed entirely at its own risk.

25. **Personal Data**

25.1 Tenderers are required to note that pursuant to the provisions of the Land Registration Ordinance (Cap. 128) and the regulations made thereunder the personal data contained in this Tender Notice, the Form of Tender comprising Form A and Form B both annexed hereto, the Memorandum of Agreement, the Conditions of Sale and the Service Deed will appear in the land register(s) or record(s) of the Land Registry to facilitate the orderly conduct of land transactions and to provide the most up-to-date information to searchers.

25.2 Tenderers are required to note that the personal data of any individual provided in the tender will be used for tender evaluation and contract award purposes.

25.3 A tenderer shall ensure that the relevant individual to whom the personal data belongs prior to its disclosure in the tender has acknowledged and consented that his personal data may be disclosed to the Government and as provided below for the purpose of the tender.

25.4 Each tenderer acknowledges and consents that the personal data provided in the tender may be disclosed to the parties responsible for tender evaluation in other Government bureaux, departments and non-Government organizations.

25.5 The individual to whom the personal data belongs has the right of access and correction with respect to personal data as provided for in Sections 18 and 22 and Principle 6 of Schedule 1 of the Personal Data (Privacy) Ordinance (Cap. 486). The right of access includes the right to obtain a copy of the individual's personal data provided in the Tender Documents. Enquiries in writing concerning the personal data collected by means of the tender, including the making of access and corrections, should be directed to the Chief Estate Surveyor/Headquarters at fax number (852) 2116 0764 or e-mail address 'ceshq@landsd.gov.hk'.

26. **Modification of the Tender and Cancellation**

26.1 The Government reserves the right without prior consultation or notice to modify, amend or revise any provision of this Tender Notice, any of the Annexes and Appendices hereto and the Form of Tender and to issue addenda to such effect at any time prior to the Tender Closing Time.

26.2 Notwithstanding anything herein contained, the Government may at any time cancel this Tender Notice or withdraw this invitation to tender at any time before or after the Tender Closing Time at the Government's absolute discretion and the Government is not bound to give any reasons for the cancellation or withdrawal. Without prejudice to such right of the Government, where there are any changes in the requirements of the Government after the Tender Closing Time for whatever reasons, the Government is not bound to consider any tender and reserves the right to re-issue or alter the terms of any of the Tender Documents, or withdraw this Tender Notice. Upon cancellation or withdrawal of this Tender Notice, if and when the Government considers fit, the Government may re-issue a Tender Notice on such terms and conditions as the Government thinks fit.

27. **Disqualification of Tenderers**

27.1 The Government reserves the right to disqualify any tenderer on the following grounds:

- (a) if a petition is presented, a proceeding is commenced, an order is made or a resolution is passed for the winding up or bankruptcy of the tenderer; or
- (b) if any false, inaccurate or incomplete statement or representation including personal data is contained in the tender or a promise or proposal is made knowingly that the tenderer will not be able to fulfil or deliver such promise or proposal.

28. **No Liability on Government's Part**

The participation of the tenderers in this tender (including without limitation, the preparation or submission of tenders) shall be entirely at their own risk. The Government will not under any circumstances be liable to any of the tenderers for any costs, expenses, loss or damage whatsoever arising out of or in connection with this invitation for tender irrespective of whether the Government actually proceeds with the grant of the lot or not.

29. **Interpretation**

29.1 In this Tender Notice, unless otherwise provided or the context otherwise requires, the following rules of interpretation shall apply:

- (a) references to Ordinances or statutory provisions shall be construed as references to those Ordinances or statutory provisions as replaced, amended, modified or re-enacted from time to time; and shall include all subordinate legislation made under those Ordinances;
- (b) words importing the singular shall include the plural and vice versa; words importing a gender shall include every gender; references to any person shall include references to individuals,

firms, public bodies, bodies corporate or unincorporated (wherever established or incorporated);

- (c) headings are inserted for convenience of reference only and shall not affect the construction of the Tender Documents;
- (d) references to paragraphs are to the paragraphs of this Tender Notice and references to Annexes are to the Annexes annexed to this Tender Notice;
- (e) references to a document:
 - (i) shall include all schedules, appendices, annexures and other documents attached to such document; and
 - (ii) shall mean the same as from time to time amended or supplemented;
- (f) references to “law” and “regulation” shall include any constitutional provisions, treaties, conventions, ordinances, subsidiary legislation, orders, rules and regulations having the force of law and rules of civil and common law and equity;
- (g) a time of a day shall be construed as a reference to Hong Kong time;
- (h) references to a working day means any day other than Saturdays and Public Holidays as defined in the Interpretation and General Clauses Ordinance (Cap. 1);
- (i) the words “include” and “including” shall be construed without limitation to the words following; and
- (j) references to a company mean an incorporated entity and include an incorporated joint venture; references to a partnership include an unincorporated joint venture.

FORM OF TENDER**Non-premium Submission**

Tender for the grant of Tai Po Town Lot No. 207 for a term of fifty years commencing from the date of the Memorandum of Agreement annexed to the Tender Notice at the rent specified in the Particulars of the Lot in the Tender Notice and subject to the terms and conditions of the Tender Notice, the Conditions of Sale and the Service Deed.

To : The Chairman,
Central Tender Board,
Government Secretariat,
Hong Kong.

I/We.....
of (address/registered office)

.....
having read the Tender Documents and examined the plan(s) therein referred to, hereby offer to purchase the above-mentioned lot at the premium set out in Form B (enclosed in my/our "Premium Submission" envelope submitted in accordance with paragraph 3(b)(ii) of the Tender Notice) for the term and upon the terms and conditions set forth in the Tender Notice, the Memorandum of Agreement, the Conditions of Sale and the Service Deed. For the avoidance of doubt, this Form A and the Premium Submission in Form B enclosed in my/our "Premium Submission" envelope together form and constitute my/our Tender offer to purchase the above-mentioned lot.

2. I/We note and accept that there is no binding contract between the Government of the Hong Kong Special Administrative Region (hereinafter referred to as "the Government") and the successful tenderer unless and until each of the Memorandum of Agreement and the Service Deed have been executed by the Government and the successful tenderer.

3. I/We submit herewith a tender bond for the tender deposit in the sum of HK\$5,000,000 made payable upon demand by the Government and issued by a bank duly licensed under Section 16 of the Banking Ordinance (Cap. 155) in favour of the Government and which is expressed to be irrevocable and remain in full force and effect from the date of the tender bond until the 26th day of July 2013 subject to clause 10 of the Tender Bond. I/We acknowledge and agree that if I/We am/are selected to be awarded the Memorandum of Agreement and the Service Deed, the Government will demand payment of the whole tender deposit under the tender bond and the tender deposit paid under the tender bond shall be treated as a deposit towards and applied in part payment of the premium for the lot as provided in the Conditions of Sale.

4. If I/we am/are selected to be awarded the Memorandum of Agreement and the Service Deed, I/we will pay the balance of premium in the manner and within the time limit stated in General Condition No. 2 of the Conditions of Sale and I/we shall execute the Memorandum of Agreement and the Service Deed in accordance with paragraph 19 and procure and submit to the Government the Performance Guarantee and the Bank Bond in accordance with paragraph 20 of the Tender Notice.

5. I/We understand that the Government reserves the right to disclose the identities of the successful tenderer and its parent companies (if any), the identities of the unsuccessful tenderers, the amount tendered by the successful tenderer and the Service Deed executed or to be executed by the successful tenderer, and to announce the tender results in accordance with paragraph 19.5 of the Tender Notice.

6. I/We hereby attach my/our Particulars of Tenderer, my/our proposals and such other information as required in paragraphs 8, 9 and 13 of the Tender Notice.

7. For the avoidance of doubt, capitalized terms herein shall have the meaning attributed to such terms in the tender notice issued by the Government on 13th day of April 2012 in connection with the above-mentioned lot.

Dated the _____ day of _____, 20____.

[In the case of a company:]

Signed by [Name] for and on behalf of the Tenderer:

Post/Title of Signatory (in block letters):

Name of Tenderer (in block letters):

[In the case of a partnership:]

Signature of each partner:

_____]

Name of each partner (in block letters):

_____	_____
_____	_____
_____	_____

Name of Tenderer (in block letters):

Address in block letters

.....

Telephone Number

Facsimile Number

Particulars of Parent Company (if appropriate) :

Name in block letters

.....

Address in block letters

.....

Name of Contact Person(s)

.....

Telephone Number

Facsimile Number

Note : In case the tenderer is an unincorporated partnership composing of more than one party, the tender must be signed by each partner.

Form A

(Non-premium Submission envelope)

Particulars of Tenderer

(To be placed in the envelope containing the Non-Premium Submission. In case the tenderer is an unincorporated partnership composing of more than one party, all participants/shareholders are required to provide the required information. Use additional sheets if necessary.)

- (1) (a) Name of Tenderer in block letters: _____ (in English)
- _____ (in Chinese, if applicable)
- (b) Address in block letters: _____
- _____
- _____
- (c) Nature of Business Incorporated/Unincorporated
(Please delete as appropriate)
- (d) Years of Establishment _____
- (e) For Incorporated Company

Names of shareholders of the incorporated company and their respective shareholdings or equity interests in percentages (Note):

- (f) For unincorporated partnership

Names of all participants of unincorporated partnership and their respective percentage of participation and interest. (Please state which participant is leading the partnership) (Note):

- (g) Names and residential addresses of the following, where appropriate:

Directors or partners of company/
partnership:

- (h) A copy of the Memorandum and Articles of Association, Certificate of Incorporation, the latest Annual Return filed with the Companies Registry, the shareholders' agreement, partnership agreement, or other documents evidencing its corporate and business status. (Please specify the document which is attached):

- (i) A photocopy of the current Business Registration certificate (or equivalent document). The Certificate should bear a machine printed line to show that full registration fee has been effected (Please specify the document which is attached):

The number of the Business Registration Certificate (or equivalent document) is _____

The date of expiry of Business Registration Certificate (or equivalent document) is _____

(j) Name of Contact Person(s) in block letters

(k) Telephone Number _____ Facsimile Number _____

(2) (a) Name of parent/holding company in block letters (if any) : _____ (in English)
_____ (in Chinese, if applicable)

(b) Places and Details of Incorporation of the parent/holding company: _____

(c) Diagram showing the relationship between the Tenderer and the parent/holding company and its respective shareholdings or equity interest in percentage.

(d) Name of Contact Person(s) in block letters

(e) Telephone Number _____ Facsimile Number _____

Note The information shall, in the case of the successful tenderer, be incorporated into the Memorandum of Agreement, the Conditions of Sale and the Service Deed and shall be binding on it unless amended with the Government's prior approval.

Form B

(Premium Submission envelope)

Premium Submission

Tender for the grant of Tai Po Town Lot No. 207 for a term of fifty years commencing from the date of the Memorandum of Agreement annexed to the Tender Notice at the rent specified in the Particulars of the Lot in the Tender Notice and subject to the terms and conditions of the Tender Notice, the Conditions of Sale and the Service Deed.

To : The Chairman,
Central Tender Board,
Government Secretariat,
Hong Kong.

I/We..... of (address/Registered office)

having read the Tender Documents and examined the plan(s) therein referred to, and having duly signed the Form A (enclosed in my/our "Non-premium Submission" envelope submitted in accordance with paragraph 3(b)(i) of the Tender Notice) offer to purchase the above-mentioned lot at a premium of _____ dollars (HK\$ _____) for the term and upon the terms and conditions set forth in the Tender Notice, the Memorandum of Agreement, the Conditions of Sale and the Service Deed. For avoidance of doubt, this Form B and the Non-premium Submission in Form A enclosed in my/our "Non-premium Submission" envelope together form and constitute my/our tender offer to purchase the above-mentioned lot.

Dated the _____ day of _____, 20 _____.

[In the case of a company:]

Signed by [Name] for and on behalf of the Tenderer:

Post/Title of Signatory (in block letters):

Name of Tenderer (in block letters):

[In the case of a partnership:]

Signature of each partner :

Name of each partner (in block letters):

Name of Tenderer (in block letters):

Address in block letters

Telephone Number

Facsimile Number

Particulars of Parent Company (if appropriate) :

Name in block letters

Address in block letters

Name of Contact Person(s)

Telephone Number

Facsimile Number

Note : In case the tenderer is an unincorporated partnership composing of more than one party, the tender must be signed by each partner.

FORM OF TENDER

Non-premium Submission

Tender for the grant of Tai Po Town Lot No. 207 for a term of fifty years commencing from the date of the Memorandum of Agreement annexed to the Tender Notice at the rent specified in the Particulars of the Lot in the Tender Notice and subject to the terms and conditions of the Tender Notice, the Conditions of Sale and the Service Deed.

To : The Chairman,
Central Tender Board,
Government Secretariat,
Hong Kong.

I/We.....
of (address/registered office)

.....
having read the Tender Documents and examined the plan(s) therein referred to, hereby offer to purchase the above-mentioned lot at the premium set out in Form B (enclosed in my/our "Premium Submission" envelope submitted in accordance with paragraph 3(b)(ii) of the Tender Notice) for the term and upon the terms and conditions set forth in the Tender Notice, the Memorandum of Agreement, the Conditions of Sale and the Service Deed. For the avoidance of doubt, this Form A and the Premium Submission in Form B enclosed in my/our "Premium Submission" envelope together form and constitute my/our Tender offer to purchase the above-mentioned lot.

2. I/We note and accept that there is no binding contract between the Government of the Hong Kong Special Administrative Region (hereinafter referred to as "the Government") and the successful tenderer unless and until each of the Memorandum of Agreement and the Service Deed have been executed by the Government and the successful tenderer.

3. I/We submit herewith a tender bond for the tender deposit in the sum of HK\$5,000,000 made payable upon demand by the Government and issued by a bank duly licensed under Section 16 of the Banking Ordinance (Cap. 155) in favour of the Government and which is expressed to be irrevocable and remain in full force and effect from the date of the tender bond until the 26th day of July 2013 subject to clause 10 of the Tender Bond. I/We acknowledge and agree that if I/We am/are selected to be awarded the Memorandum of Agreement and the Service Deed, the Government will demand payment of the whole tender deposit under the tender bond and the tender deposit paid under the tender bond shall be treated as a deposit towards and applied in part payment of the premium for the lot as provided in the Conditions of Sale.

4. If I/we am/are selected to be awarded the Memorandum of Agreement and the Service Deed, I/we will pay the balance of premium in the manner and within the time limit stated in General Condition No. 2 of the Conditions of Sale and I/we shall execute the Memorandum of Agreement and the Service Deed in accordance with paragraph 19 and procure and submit to the Government the Performance Guarantee and the Bank Bond in accordance with paragraph 20 of the Tender Notice.

5. I/We understand that the Government reserves the right to disclose the identities of the successful tenderer and its parent companies (if any), the identities of the unsuccessful tenderers, the amount tendered by the successful tenderer and the Service Deed executed or to be executed by the successful tenderer, and to announce the tender results in accordance with paragraph 19.5 of the Tender Notice.

6. I/We hereby attach my/our Particulars of Tenderer, my/our proposals and such other information as required in paragraphs 8, 9 and 13 of the Tender Notice.

7. For the avoidance of doubt, capitalized terms herein shall have the meaning attributed to such terms in the tender notice issued by the Government on 13th day of April 2012 in connection with the above-mentioned lot.

Dated the _____ day of _____, 20_____.

[In the case of a company:]

Signed by [Name] for and on behalf of the Tenderer:

Post/Title of Signatory (in block letters):

Name of Tenderer (in block letters):

[In the case of a partnership:]

Signature of each partner:

_____	_____
_____	_____
_____	_____

Name of each partner (in block letters):

_____	_____
_____	_____
_____	_____

Name of Tenderer (in block letters):

Address in block letters

Telephone Number

Facsimile Number

Particulars of Parent Company (if appropriate) :

Name in block letters

Address in block letters

Name of Contact Person(s)

Telephone Number

Facsimile Number

Note : In case the tenderer is an unincorporated partnership composing of more than one party, the tender must be signed by each partner.

Form A

(Non-premium Submission envelope)

Particulars of Tenderer

(To be placed in the envelope containing the Non-Premium Submission. In case the tenderer is an unincorporated partnership composing of more than one party, all participants/shareholders are required to provide the required information. Use additional sheets if necessary.)

- (1) (a) Name of Tenderer in block letters: _____ (in English)

(in Chinese, if applicable)
- (b) Address in block letters: _____

- (c) Nature of Business Incorporated/Unincorporated
(Please delete as appropriate)
- (d) Years of Establishment _____
- (e) For Incorporated Company

Names of shareholders of the incorporated company and their respective shareholdings or equity interests in percentages (Note):

- (f) For unincorporated partnership

Names of all participants of unincorporated partnership and their respective percentage of participation and interest. (Please state which participant is leading the partnership) (Note):

- (g) Names and residential addresses of the following, where appropriate:

Directors or partners of company/
partnership:

- (h) A copy of the Memorandum and Articles of Association, Certificate of Incorporation, the latest Annual Return filed with the Companies Registry, the shareholders' agreement, partnership agreement, or other documents evidencing its corporate and business status. (Please specify the document which is attached):

- (i) A photocopy of the current Business Registration certificate (or equivalent document). The Certificate should bear a machine printed line to show that full registration fee has been effected (Please specify the document which is attached):

The number of the Business Registration Certificate (or equivalent document) is _____

The date of expiry of Business Registration Certificate (or equivalent document) is _____

(j) Name of Contact Person(s) in block letters

(k) Telephone Number _____ Facsimile Number _____

(2) (a) Name of parent/holding company in block letters (if any) : _____ (in English)
_____ (in Chinese, if applicable)

(b) Places and Details of Incorporation of the parent/holding company:

(c) Diagram showing the relationship between the Tenderer and the parent/holding company and its respective shareholdings or equity interest in percentage.

(d) Name of Contact Person(s) in block letters

(e) Telephone Number _____ Facsimile Number _____

Note The information shall, in the case of the successful tenderer, be incorporated into the Memorandum of Agreement, the Conditions of Sale and the Service Deed and shall be binding on it unless amended with the Government's prior approval.

Form B

(Premium Submission envelope)

Premium Submission

Tender for the grant of Tai Po Town Lot No. 207 for a term of fifty years commencing from the date of the Memorandum of Agreement annexed to the Tender Notice at the rent specified in the Particulars of the Lot in the Tender Notice and subject to the terms and conditions of the Tender Notice, the Conditions of Sale and the Service Deed.

To : The Chairman,
Central Tender Board,
Government Secretariat,
Hong Kong.

I/We..... of (address/Registered office)

having read the Tender Documents and examined the plan(s) therein referred to, and having duly signed the Form A (enclosed in my/our "Non-premium Submission" envelope submitted in accordance with paragraph 3(b)(i) of the Tender Notice) offer to purchase the above-mentioned lot at a premium of _____ dollars (HK\$_____) for the term and upon the terms and conditions set forth in the Tender Notice, the Memorandum of Agreement, the Conditions of Sale and the Service Deed. For avoidance of doubt, this Form B and the Non-premium Submission in Form A enclosed in my/our "Non-premium Submission" envelope together form and constitute my/our tender offer to purchase the above-mentioned lot.

Dated the _____ day of _____, 20 _____.

[In the case of a company:]

Signed by [Name] for and on behalf of the Tenderer:

Post/Title of Signatory (in block letters):

Name of Tenderer (in block letters):

[In the case of a partnership:]

Signature of each partner :

Name of each partner (in block letters):

Name of Tenderer (in block letters):

Address in block letters

Telephone Number

Facsimile Number

Particulars of Parent Company (if appropriate) :

Name in block letters

Address in block letters

Name of Contact Person(s)

Telephone Number

Facsimile Number

Note : In case the tenderer is an unincorporated partnership composing of more than one party, the tender must be signed by each partner. -

**Mandatory Requirements and Minimum Acceptable Levels of Tenderer's Proposals
for development of a private hospital at the Lot**

Section I. Mandatory Requirements (to be assessed under Stage 2 of Tender evaluation)

A tenderer must submit service provision proposals of a private hospital to be developed at the Lot (hereinafter referred as the "Hospital") in accordance with Paragraph 8.1(iv) of the Tender Notice. The proposals submitted must comply with the following mandatory requirements ("Mandatory Requirements") and will be assessed under Stage 2 of the Tender Evaluation.

(1) Experience

- (i) A tenderer which is a company must submit information, in the form set out at Appendix A of the Marking Scheme, and demonstrate that the following Mandatory Requirements are satisfied –
 - (I) the board of directors of the company must comprise a minimum of three (3) directors; and
 - (II) more than half of the directors in the board of the tenderer must each have at least three (3) years' experience, on an aggregate basis from 1 January 2006 to 31 December 2011, in managing or operating a hospital(s) in Hong Kong or overseas with average annual in-patient discharges and deaths of not less than 25,000 from 1 January 2006 to 31 December 2011.
- (ii) A tenderer which is a partnership must submit information, in the form set out at Appendix A of the Marking Scheme, and demonstrate that the following Mandatory Requirements are satisfied –
 - (I) the partnership must comprise a minimum of three (3) partners; and
 - (II) more than half of the partners of the partnership must each have at least three (3) years' experience, on an aggregate basis from 1 January 2006 to 31 December 2011, in managing or operating a hospital(s) in Hong Kong or overseas with average annual in-patient discharges and deaths of not less than 25,000 from 1 January 2006 to 31 December 2011.
- (iii) A tenderer must propose, in the form set out in Appendix A of the Marking Scheme, a project team for implementing the Hospital project ("Project Team") which satisfies the following Mandatory Requirements –
 - (I) the project team must comprise a minimum of three (3) full-time key

personnel (“Key Personnel”);

- (II) each full-time Key Personnel must have relevant experience in one or more of the five functional areas of hospital operation, viz clinical services, quality assurance, planning and maintenance, finance, and human resource management; and
 - (III) all Key Personnel taken together must possess relevant experience in all the five functional areas mentioned in (II) above.
- (iv) For the purpose of satisfying (1)(iii)(II) and (III), relevant experience shall mean the experience gained by a person when he was employed or worked –
- (I) in hospital(s) in Hong Kong or overseas with average annual in-patient discharges and deaths of not less than 25,000 from 1 January 2006 to 31 December 2011; and
 - (II) in the capacity of at least the deputy head of a hospital (such as deputy medical superintendent, deputy medical director, deputy chief executive of a hospital) or head of a department of a hospital (such as departmental manager, chief of department) or head of a specialty (such as head of service) or equivalent, for at least three (3) years on an aggregate basis from 1 January 2006 to 31 December 2011.

For the avoidance of doubt, the relevant experience of each Key Personnel may be gained from working at different hospitals and may be with different employers.

- (v) For the avoidance of doubt, an individual who is a director or partner of a tenderer as mentioned in (1)(i) and (ii) above can at the same time be a Key Personnel of that tenderer.
- (vi) For the purpose of satisfying (1)(iii), the Government has no objection to a tenderer proposing to engage an individual as a Key Personnel if such individual is also being proposed as a Key Personnel by another tenderer provided that all such proposed engagements of the individual are disclosed in the tender of the first mentioned tenderer.
- (vii) After submission of its tender, a tenderer must not make any changes to the board of directors as mentioned in (1)(i), the partners as mentioned (1)(ii), or any Key Personnel as mentioned in (1)(iii). In the event that there are such changes beyond a tenderer’s control after the Tender Closing Time but prior to the award of the Memorandum of Agreement and the Service Deed, the tenderer must immediately inform the Government of such change in writing and the change will be taken into account by the Government for determining if a tenderer has satisfied this requirement. The Government will consider the changes only if the original proposals at the Tender Closing Time and the revised or substituted board of directors, partners or Key Personnel meet the Mandatory Requirements in (1)(i), 1(ii) and 1(iii).

(2) Accommodation Facilities

A tenderer's proposal on accommodation facilities must be submitted in the form set out at Appendix B of the Marking Scheme. The tenderer must not propose to allocate more than 5% of total Gross Floor Area (GFA) of the Hospital for accommodation facilities for patients of the Hospital and their carers, if provided, upon completion of the development of the Hospital. Accommodation facilities shall have the meaning under the Conditions of Sale.

(3) Obstetric Service

A tenderer's proposal on obstetric service must be submitted in the form set out at Appendix C of the Marking Scheme. The maximum percentage of number of obstetric beds proposed by the tenderer throughout the term must not exceed at all times 20% of the total number of hospital beds being provided at the Hospital. For the purpose of complying with this Mandatory Requirement, obstetric beds shall have the meaning under the Service Deed at Annex III of the Tender Notice.

Section II. Minimum Acceptable Levels (to be assessed under Stage 3 assessment of Tender evaluation)

A tenderer must submit proposals in developing the Hospital in accordance with Paragraph 8.1(iv) of the Tender Notice. The proposals submitted must meet the following minimum acceptable levels of quality/technical/service standards ("Minimum Acceptable Levels") and will be assessed under Stage 3 of the Tender evaluation.

(A) Land related Minimum Acceptable level

(4) Land use

A tenderer must submit proposals on land use, in the form set out at Appendix B of the Marking Scheme, which meet the following minimum acceptable levels -

- (i) the Hospital must allocate at least 70% of total GFA of the Hospital for clinical and clinical supporting facilities upon completion of the development of the Hospital;
- (ii) the Hospital must not allocate more than 30% of total GFA of the Hospital for non-clinical supporting facilities (including the accommodation facilities, if provided) upon completion of the development of the Hospital; and
- (iii) for the purpose of satisfying (i) and (ii) –
 - (I) clinical and clinical supporting facilities shall have the meaning under the Conditions of Sale;
 - (II) non-clinical supporting facilities shall have the meaning under the Conditions of Sale; and
 - (III) the Assessment Panel as mentioned in paragraph 1.2 (c) of the Marking

Scheme will consider and solely decide whether any facilities should be regarded as clinical and clinical supporting or non-clinical supporting facility.

(5) Scale and schedule of development

A tenderer must submit proposals on scale and schedule of development of the Hospital, in the form set out at Appendix C of the Marking Scheme, which meet the following minimum acceptable levels –

- (i) the Hospital must commence to operate within 60 months from the date of execution of the Memorandum of Agreement and Service Deed;
- (ii) no less than 300 hospital beds must be provided at the Hospital (the overall number of hospital beds a tenderer proposed to provide shall be referred as “proposed total number of hospital beds”). For the purpose of satisfying this minimum acceptable level, hospital beds shall have the meaning under the Service Deed at Annex III of the Tender Notice;
- (iii) with regard to the schedule of provision of hospital beds, the Hospital must provide -
 - (I) no less than 90 hospital beds upon commencement of Hospital operation;
 - (II) no less than a cumulative total of 150 hospital beds within 24 months from the date of commencement of Hospital operation;
 - (III) no less than a cumulative total of 300 hospital beds within 48 months from the date of commencement of Hospital operation; and
 - (IV) the “proposed total number of hospital beds” within 72 months from the date of commencement of Hospital operation, if applicable.

(B) Service related Minimum Acceptable Levels

(6) Charging and service arrangement

A tenderer must submit proposals on charging and service arrangement, in the form set out at Appendix D of the Marking Scheme, that meet the following minimum acceptable levels –

- (i) more than 50% of the in-patient bed days taken up in the Hospital each service year must be for services provided for Eligible Persons, where “Eligible Persons” means –
 - (I) holders of Hong Kong Identity Card issued under the Registration of Persons Ordinance (Cap 177); or
 - (II) children under 11 years of age with Hong Kong resident status.

For the purpose of meeting this minimum acceptable level, the in-patient bed days provided by standard beds at packaged charge in (6)(ii) below will be counted as part of the in-patient bed days required to be provided for Eligible Persons, and service year has the meaning attributed to "Service Year" under the Service Deed at Annex III of the Tender Notice;

- (ii) at least 30% of the in-patient bed days taken up in the Hospital each service year must be for services provided through standard beds at packaged charge (i.e. the provision of essential services and specialty services to patients in standard beds at an all-inclusive price) for Eligible Persons. For the purpose of meeting this minimum acceptable level –
 - (I) the packaged charge must cover doctors' fees, maintenance fees, diagnostic procedures, surgical operations, laboratory testing, X-ray tests, drugs, and other miscellaneous items;
 - (II) in-patient bed days provided through obstetric beds at packaged charge must be excluded;
 - (III) service year, essential services, specialty services, in-patient bed days, standard beds and obstetric beds have the meaning respectively attributed to "Service Year", "Essential Services", "Specialty Services", "In-Patient Bed Days", "Standard Beds" and "Obstetric Beds" under the Service Deed at Annex III of the Tender Notice; and
 - (IV) the Hospital must provide services at packaged charge based on the Diagnosis Related Groups (DRGs) system, which has the meaning attributed to "DRG System" under the Service Deed at Annex III of the Tender Notice.

Section III. Conditions in the Conditions of Sale and Service Deed

Tenderers should also note the following binding conditions on services of the Hospital set out in the Conditions of Sale and Service Deed. A tenderer must not submit a tender which includes proposals that are less favorable than the conditions set out in paragraphs (7) to (10) below. Tenders which include proposals that are less favorable than the conditions set out in paragraphs (7) to (10) will not be further considered. For the avoidance of doubt, these conditions are highlighted in this Annex for the attention of tenderers only but do not mean to represent an exhaustive list of conditions the successful tenderer need to comply with if awarded the Memorandum of Agreement and Service Deed.

(7) Service scope

The Hospital must, upon commencement of Hospital operation, provide services in specialties of –

- (I) general medicine, with or without medical sub-specialties;
- (II) general surgery, with or without surgical sub-specialties;
- (III) orthopaedics & traumatology; and

(IV) gynaecology,

as required in section 4(a)(i)(I) of the Special Conditions of the Conditions of Sale and Schedule 2 of the Service Deed at Annex III of the Tender Notice.

(8) Charging and service arrangement

The Hospital must publish and provide comprehensive charging information of its services as set out in paragraph 3 of Schedule 2 of the Service Deed at Annex III of the Tender Notice.

(9) Service Standards

The Hospital must, as required in Clause 6 of the Service Deed at Annex III of the Tender Notice, obtain within 48 months from the date of commencement of Hospital operation hospital accreditation by a qualified accreditation agent recognized by the International Society for Quality in Healthcare or such other organization as approved by the Government; and to maintain the hospital accreditation so obtained on an ongoing basis.

(10) Reporting

Tenderers must, as required in Clause 8 of the Service Deed at Annex III of the Tender Notice, provide –

- (i) regular reports to the Director of Health (“DoH”) on its compliance with –
 - (I) the Mandatory Requirements and Minimum Acceptable Levels set out in Section I and II of this Annex;
 - (II) the service provision proposals surpassing the Minimum Acceptable Levels as accepted by the Government;
 - (III) Conditions in the Conditions of Sale and Service Deed as set out in this Section III of this Annex; and
- (ii) any other information as required by DoH from time to time.

Marking Scheme for Tender Evaluation

1. Marking Scheme

1.1 The Government will use this marking scheme to consider tenders received. Tenders would score marks on the basis of the merits of their –

- (a) service provision proposals of a private hospital to be developed at the Lot according to individual assessment criteria (which will carry a weighting of 70%); and
- (b) land premium offers (which will carry a weighting of 30%)

1.2 The tender evaluation procedure includes the following five stages -

(a) Stage 1 Assessment – Completeness Checking

Tenders will be checked to see whether all documents as required in paragraph 8.1 of the Tender Notice have been submitted. A tender which does not comply with paragraph 8.1 of the Tender Notice will not be considered further.

(b) Stage 2 Assessment –Mandatory Requirements

Tenders which have passed the Stage 1 Assessment will be checked to see whether their service provision proposals comply with the Mandatory Requirements (set out in Section I of Annex I of the Tender Notice). A tender with service provision proposals which do not comply with any one or more of the Mandatory Requirements will not be considered further.

(c) Stage 3 Assessment – Technical Assessment

Stage 3 Assessment will be conducted by an assessment panel (“the Assessment Panel”) comprising representatives from the Food and Health Bureau and other relevant bureaux and departments. Tenders which have passed the Stage 1 Assessment and Stage 2 Assessment will

be checked to see whether their service provision proposals comply with the Minimum Acceptable Levels. Tenders which do not comply with the Minimum Acceptable Levels will not be further considered or awarded any score. Tenderers' service provision proposals which have passed the Stage 1 Assessment and Stage 2 Assessment and have complied with the Minimum Acceptable Levels will be given technical scores based on this Marking Scheme. The overall technical score will carry a weighting of 70%. Upon completion of Stage 3 Assessment, a weighted technical score for each tender which has passed the Stage 1 Assessment and Stage 2 Assessment will be calculated as follows –

Weighted	Overall technical score of the tender offer being considered
Technical = 70 x	
Score	Highest overall technical score among all conforming tender ¹

(d) Stage 4 Assessment – Calculation of Weighted Land Premium Score

Tenders that are awarded weighted technical scores in the Stage 3 Assessment will proceed to Stage 4 Assessment, which is to calculate the weighted land premium score based on the land premium offered in such tenders to the Government for the grant of the Lot. Stage 4 Assessment will be conducted by the Assessment Panel.

The land premium score will carry a weighting of 30%. Upon completion of Stage 4 Assessment, a weighted land premium score for each tender that is awarded a weighted technical score in Stage 3 Assessment will be calculated as follows –

Weighted	
Land	Land premium offer of the tender being considered
Premium = 30 x	
Score	Highest land premium offer among all conforming tenders

(e) Stage 5 Assessment – Calculation of combined score

On completion of Stage 4 Assessment, the weighted technical score

¹ For the purpose of this Marking Scheme, a tender will be deemed as a conforming tender if it passed Stages 1, 2 and 3 Assessment of the tender evaluation.

and weighted land premium score of conforming tenders will be added together to give the combined score according to the following formula

$$\text{Combined Score (maximum 100)} = \text{Weighted Technical Score (maximum 70)} + \text{Weighted Land Premium Score (maximum 30)}$$

- 1.3 Without prejudice to the rights and powers of the Government, unless it is not in the public interest to do so, the tender with the highest combined score will normally be recommended for the award of the Memorandum of Agreement and Service Deed.
- 1.4 The financial capability of the Tenderer that scores the highest combined score and that of its proposed Performance Guarantor will then be assessed to ensure that the Tenderer has the capability to provide sufficient working capital to support the development and operation of the Hospital.
- 1.5 All calculations of scores will be rounded to two decimal places at each stage of tender evaluation (e.g. figures at 0.005 or above but below 0.01 will be rounded to 0.01 while figures below 0.005 will be rounded to 0.00).
- 1.6 All service provision proposals on percentage submitted by the tenderers should be rounded down to the nearest digit (e.g. percentage at 25.8% will be rounded down to 25%).
- 1.7 In calculating any weighted score in accordance with this Marking Scheme, if the denominator of the relevant formula is zero, the weighted score being calculated will be deemed to be zero.

2. Assessment criteria of Stage 3 Assessment :

	Assessment Criteria		Maximum Score	Remarks
(1)	Scale and schedule of development	(a) Proposal concerning the percentage of Gross Floor Area (GFA) of the Hospital to be allocated for clinical	30	See Note 1

		and clinical supporting facilities		
		(b) Proposal concerning the date of commencement of the Hospital operation	20	See Note 2
		(c) Proposal concerning the number of beds to be provided	50	See Note 3
		(d) Proposal concerning the schedule of provision of beds	70	See Note 4
(2)	Specialties and facilities	(a) Proposal on clinical services	110	See Note 5
		(b) Proposal on patient-care related facilities and services	15	See Note 6
(3)	Charging and service arrangement	(a) Proposal on promoting transparency of the mechanism for reviewing Hospital fees and charges	15	See Note 7
		(b) Proposal on services for “Eligible Persons” and services at packaged charging	90	See Note 8
(4)	Manpower	(a) Manpower plan of the Hospital	40	See Note 9
		(b) Proposal on provision of training programmes and training facilities	30	See Note 10
(5)	Clinical governance	Proposal on safeguarding and promoting patient safety and service quality	30	See Note 11
		Total	500	

Explanatory Notes on Stage 3 Assessment – Technical Assessment

Note 1

- (1) Tenderers shall propose the allocation of Gross Floor Area (GFA) of the Hospital for various Clinical and Clinical Supporting Facilities in the form set out in Appendix B annexed hereto. In tenderers' proposal, the Hospital –
 - (i) must allocate at least 70% of total GFA of the Hospital for clinical and clinical supporting facilities upon completion of the development of the Hospital; and
 - (ii) must not allocate more than 30% of total GFA of the Hospital for non-clinical supporting facilities (including the accommodation facilities, if provided) upon completion of the development of the Hospital.
- (2) For the purpose of satisfying (1)(i) and (ii) –
 - (i) clinical and clinical supporting facilities shall have the meaning under the Conditions of Sale; and
 - (ii) non-clinical supporting facilities shall have the meaning under the Conditions of Sale.
- (3) Tenders with proposals not complying with (1) above will not be considered further.
- (4) Marks will be given based on the GFA allocated for clinical and clinical supporting facilities. Two marks will be given for each additional 1% of GFA allocated for clinical and clinical supporting facilities from 71% onwards, up to 85%. The maximum score is 30. Some of the scoring scenarios are shown below for reference.

Examples of scoring scenarios

	Percentage of GFA allocated for clinical and clinical supporting facilities	Marks
(a)	70%	0 mark
(b)	71%	2 marks
(c)	72%	4 marks
	:	:
	:	:
(d)	$\geq 85\%$	30 marks

Note 2

- (1) Tenderers shall propose the date of commencement of Hospital operation in the form set out in Appendix C annexed hereto. In tenderers' proposal, the Hospital must commence to operate within 60 months from the date of execution of the Memorandum of Agreement and Service Deed.
- (2) Tenders with proposals not complying with (1) above will not be considered further.
- (3) Marks will be given based on the length of period between the date of execution of the Memorandum of Agreement and Service Deed, and the date of commencement of Hospital operation. The maximum score is 20.

Scoring scenarios

	Duration between the date of execution of the Memorandum of Agreement and Service Deed and the date of commencement of Hospital operation	Marks
(a)	55 months \leq date of commencement \leq 60 months	0 mark
(b)	54 months \leq date of commencement < 55 months	2 marks
(c)	53 months \leq date of commencement < 54 months	4 marks
(d)	52 months \leq date of commencement < 53 months	6 marks
(e)	51 months \leq date of commencement < 52 months	8 marks
(f)	50 months \leq date of commencement < 51 months	10 marks
(g)	49 months \leq date of commencement < 50 months	12 marks
(h)	48 months \leq date of commencement < 49 months	14 marks
(i)	47 months \leq date of commencement < 48 months	16 marks
(j)	46 months \leq date of commencement < 47 months	18 marks
(k)	< 46 months	20 marks

Note 3

- (1) Tenderers shall propose the total number of hospital beds to be provided at the Hospital in the form set out at Appendix C annexed hereto. In tenderers' proposal, the Hospital must provide no less than 300 hospital beds (the overall number of hospital beds a tenderer proposed to provide shall be referred as "proposed total number of hospital beds" in Note 4). For the purpose of satisfying this paragraph, hospital beds shall have the meaning under the Service Deed at Annex III of the Tender Notice.
- (2) Tenders with proposals not complying with (1) above will not be considered further.
- (3) Marks will be given based on the number of hospital beds to be provided at

the Hospital. Zero mark will be given for a proposal of 300 beds. One additional mark will be given for every additional 4 hospital beds over and above 300 beds. The maximum score is 50.

Note 4

- (1) Tenderers shall propose the schedule of provision of hospital beds in the form set out at Appendix C annexed hereto. In the proposal, the Hospital must provide –
 - (i) no less than 90 hospital beds upon commencement of Hospital operation;
 - (ii) no less than a cumulative total of 150 hospital beds within 24 months from the date of commencement of Hospital operation;
 - (iii) no less than a cumulative total of 300 hospital beds within 48 months from the date of commencement of Hospital operation; and
 - (iv) the “proposed total number of hospital beds” within 72 months from the date of commencement of Hospital operation, if applicable.
- (2) Tenders with proposals not complying with (1) above will not be considered further.
- (3) Total weighted marks up to a maximum score of 70 will be given according to the percentage of hospital beds to be provided at different stages as set out in the table below.

Calculation of Marks				Examples	
Schedule of opening of hospital beds	Percentage of hospital beds to be provided	Weighting	Marks	Percentage of hospital beds to be provided	Marks
On date of commencement of Hospital operation	$v \%$	6	$v \times 6$	$v = 50$	300
Within 24 months thereafter	$w \%$	5	$w \times 5$	$w = 30$	150
Within 48 months thereafter	$x \%$	4	$x \times 4$	$x = 10$	40
Within 72	$y \%$	3	$y \times 3$	$y = 10$	30

months thereafter					
<i>Total</i>	<i>100%</i>		<i>z</i>		520
<p>Total Total score of the tender being considered (i.e. z)</p> <p>Weighted = 70 x _____</p> <p>Score Highest total score among all conforming tenders</p>					

Note 5
<p>(1) Apart from the provision of essential services as required in section 4(a)(i)(I) of the Special Conditions of the Conditions of Sale and Schedule 2 of the Service Deed at Annex III of the Tender Notice (see the definition of “Essential Services” in Schedule 2 of the Service Deed), tenderers shall provide a comprehensive and practicable proposal on the scope of other services of the Hospital in the form set out at Appendix E annexed hereto. The maximum score is 110 with a maximum of 10 marks to be given for provision of each of the following preferred specialties/services :</p> <ul style="list-style-type: none"> (i) Neurosurgery (ii) Cardiothoracic surgery (iii) Cardiology (iv) Haematology (v) Oncology (including the provision of radiotherapy and chemotherapy) (vi) Pediatric services (vii) Intensive care / Cardiac care / Pediatric intensive care / Neonatal intensive care unit (viii) Ophthalmology (ix) Accident and Emergency service (x) Chinese Medicine (xi) Mental health services <p>(2) For each of the proposed specialties/services, the proposal shall cover –</p> <ul style="list-style-type: none"> (i) details of the proposed specialties/services that would help to meet the projected service demand of the community based on the disease trend/pattern of Hong Kong; (ii) the service delivery model and the level of standard and quality of the proposed specialties/services;

<ul style="list-style-type: none"> (iii) target patients of the proposed services and the number of patients to be served by the proposed services; (iv) the timing for introduction of the proposed specialties/services; and (v) the plan to provide suitable equipment/facilities and deploy staff with appropriate expertise to support the effective provision of the proposed specialties/services. 	
Calculation of Marks	
Considerations	Marks
The proposal is practicable as supported by detailed information on all five items listed in (2)(i) to (v).	10
The proposal is practicable as supported by detailed information on four of the items listed in (2)(i) to (v), and brief information on the remaining item.	8
The proposal is practicable as supported by detailed information on three of the items listed in (2)(i) to (v), and brief information on the remaining items.	6
The proposal is practicable as supported by detailed information on two of the items listed in (2)(i) to (v), and brief information on the remaining items.	4
The proposal is practicable as supported by detailed information on one of the items listed in (2)(i) to (v) and brief information on the remaining items, or brief information on all items.	2
The proposal is not practicable notwithstanding the provision of detailed information on all or any of the items, or the proposal does not provide information that would enable an assessment on the practicability of the proposal.	0

Note 6
<p>(1) Tenderers shall provide a comprehensive and practicable proposal on the patient-care related facilities and services of the Hospital in the form set out at Appendix F annexed hereto. Examples of patient-care related facilities and services mean rehabilitation facilities, hydrotherapy facilities, and other supporting services provided by allied health professionals such as dieticians, physiotherapists, occupational therapists, clinical psychologists. The determination of the Assessment Panel as to whether a facility is a patient-care related facility shall be final. The maximum score is 15.</p>

<p>(2) The proposal shall cover –</p> <ul style="list-style-type: none"> (i) details of the proposed facilities and services that are related/connected to or in support of clinical services proposed under Item (2)(a) in Section 2 of the Marking Scheme; (ii) the service delivery model and the level of standard and quality of the proposed facilities and services; (iii) the number of patients to be served by the proposed facilities and services; (iv) the timing for introduction of the proposed facilities and services; and (v) the plan to provide suitable equipment/facilities and deploy staff with appropriate expertise to support the effective provision of the proposed services. 	
Calculation of Marks	
Considerations	Marks
The proposal is practicable as supported by detailed information on all five items listed in (2)(i) to (v).	15
The proposal is practicable as supported by detailed information on four of the items listed in (2)(i) to (v), and brief information on the remaining item.	12
The proposal is practicable as supported by detailed information on three of the items listed in (2)(i) to (v), and brief information on the remaining items.	9
The proposal is practicable as supported by detailed information on two of the items listed in (2)(i) to (v), and brief information on the remaining items.	6
The proposal is practicable as supported by detailed information on one of the items listed in (2)(i) to (v) and brief information on the remaining items, or brief information on all items.	3
The proposal is not practicable notwithstanding the provision of detailed information on all or any of the items, or the proposal does not provide information that would enable an assessment on the practicability of the proposal.	0
Note 7	
(1) Tenderers shall provide a comprehensive and practicable proposal on the	

mechanism for review of Hospital fees and charges and announcement of reviewed fees and charges that can enhance price transparency of services provided by the Hospital in the form set out at Appendix G annexed hereto. The maximum score is 15.

(2) The proposal shall include:

- (i) detailed procedures and the frequency of reviewing the fees and charges;
- (ii) list of types of stakeholder to be engaged for the purpose of (i) above; and
- (iii) means to inform the public of the outcome of each fees and charges review exercise.

Calculation of Marks	
Considerations	Scores
The proposal is practicable as supported by detailed information on all three items listed in (2)(i) to (iii).	15
The proposal is practicable as supported by detailed information on two of the items listed in (2) (i) to (iii), and brief information on the remaining item.	10
The proposal is practicable as supported by detailed information on one of the items listed in (2)(i) to (iii), and brief information on the remaining items; or brief information on all items.	5
The proposal is not practicable notwithstanding the provision of detailed information on all or any of the items, or the proposal does not provide information that would enable an assessment on the practicability of the proposal.	0

Note 8

(a) Service for “Eligible Persons”

(1) Tenderers shall propose the percentage of total in-patient bed days taken up in the Hospital each service year for services provided for Eligible Persons in the form set out at Appendix D annexed hereto. In their proposal, tenderers must propose to provide more than 50% of the in-patient bed days taken up in the Hospital each service year for services provided for Eligible Persons, where “Eligible Persons” means –

- (i) holders of Hong Kong Identity Card issued under the Registration of

- Persons Ordinance (Cap 177); or
- (ii) children under 11 years of age with Hong Kong resident status.
- (2) For the purpose of complying with (1) above, the in-patient bed days provided by standard beds at packaged charge in “(b) Services at packaged charging” below will be counted as part of the in-patient bed days required to be provided for Eligible Persons, and service year has the meaning attributed to “Service Year” under the Service Deed at Annex III of the Tender Notice.
- (3) Tender with proposals not complying with (1) above will not be considered further.
- (4) Two marks will be given to tenders which propose that 52% of total in-patient bed days taken up in the Hospital each year are for services provided for Eligible Persons. One additional mark will be given for each additional 1% of in-patient bed days taken up for services provided for Eligible Persons from 52% onwards, up to a maximum of 70%. The maximum score is 20. Some of the scoring scenarios are shown below for reference.

Examples of scoring scenarios

	Proposed percentage of in-patient bed days taken up in the Hospital each year for services provided for “Eligible Persons”	Marks
(a)	51%	0 mark
(b)	52%	2 marks
(c)	53%	3 marks
	:	
	:	
(d)	$\geq 70\%$	20 marks

(b) Services at packaged charging

- (1) Tenderers shall propose the percentage of in-patient bed days taken up for services provided through standard beds at packaged charge (i.e. the provision of essential services and specialty services to patients in standard beds at an all-inclusive price) for Eligible Persons out of the total number of in-patient bed days taken up in the Hospital each service year in the form set out at Appendix D annexed hereto. In their proposal, tenderers must propose to provide at least 30% of the in-patient bed days taken up in the Hospital each service year for services provided through standard beds at packaged charge for Eligible Persons.
- (2) For the purpose of complying with paragraph (1) above –
- (i) the packaged charge must cover doctors’ fees, maintenance fees,

- diagnostic procedures, surgical operations, laboratory testing, X-ray tests, drugs, and other miscellaneous items;
- (ii) in-patient bed days provided through obstetric beds at packaged charge must be excluded;
 - (iii) service year, essential services, specialty services, in-patient bed days, standard beds and obstetric beds have the meaning respectively attributed to "Service Year", "Essential Services", "Specialty Services", "In-patient Bed Days", "Standard Bed" and "Obstetric Beds" under the Service Deed at Annex III of the Tender Notice; and
 - (iv) the Hospital must provide services at packaged charge based on the Diagnosis Related Groups (DRGs) system, which has the meaning attributed to "DRG System" under the Service Deed at Annex III of the Tender Notice.
- (3) Tenders with proposals not complying with (1) above will not be considered further.
- (4) Marks will be given based on the percentage of in-patient bed days taken up for services provided through standard beds at packaged charge for Eligible Persons. One mark will be given for each additional 1%, from 31% onwards. The maximum score is 70. Some of the scoring scenarios are shown below for reference.

Examples of scoring scenarios

	Proposed percentage of in-patient bed days taken up each year for services provided through standard beds at packaged charge for "Eligible Persons"	Marks
(a)	30%	0 mark
(b)	31%	1 mark
(c)	32%	2 marks
	:	:
	:	:
(f)	100%	70 marks

Note 9

Tenderers shall provide a proposal on manpower deployment to support the operation of the Hospital at the time when the Hospital is fully commissioned (i.e. the time the Hospital provides all hospital beds, specialties and services, patient-care related facilities and services as proposed under Items 1(d), 2(a) and 2(b) of Section 2 of the Marking Scheme) in the form set out at Appendix H

annexed hereto. Having regard to the proposed scope of services of the Hospital, the proposal shall cover the number of doctors, nurses, allied health professionals, administration staff and supporting staff, as well as the manpower-to-bed ratios for (a) In-house on-site 24-hours specialists, (b) nurses, and (c) allied health professionals respectively. Marks shall be awarded SEPARATELY for each of the three aforementioned ratios as follows –

		Maximum score
(a)	In-house on-site 24-hours specialist-to-bed ratio	15 marks
(b)	Nurse-to-bed ratio	15 marks
(c)	Allied Health professional-to-bed ratio	10 marks

The score of each Tender will be converted into a weighted score in accordance with the following formula –

(a)	Weighted Score on In-house on-site 24-hours specialist-to-bed ratio	$= 15 \times \frac{\text{Number of in-house on-site 24 hours specialists per bed of the tender being considered}}{\text{Highest number among all conforming tenders}}$
(b)	Weighted Score on nurse-to-bed ratio	$= 15 \times \frac{\text{Number of nurses per bed of the tender being considered}}{\text{Highest number among all conforming tenders}}$
(c)	Weighted Score on Allied Health professional-to-bed ratio	$= 10 \times \frac{\text{Number of Allied Health professionals per bed of the tender being considered}}{\text{Highest number among all conforming tenders}}$

The weighted score of (a), (b) and (c) above will be added together to give the total score for Item (4)(a) in Section 2 of the Marking Scheme. The maximum score is 40.

Note 10

Tenderers shall provide comprehensive and practicable proposals for provision of training programmes/facilities in the form set out at Appendix I annexed hereto for

- Fellowship or post-fellowship training programmes/facilities for doctors; and/or
- On-site training programmes/facilities for nurses and/or allied health professionals.

For the purpose of (ii), only training programmes with duration of no shorter than 3 days will be considered for scoring. The maximum score is 30.	
Calculation of Marks for (i)	
Considerations	Marks
The proposal is practicable as supported by detailed information on the fellowship or post-fellowship training programmes for more than 30 training places each year for doctors, including the partnering institutions/organizations of the training programme, the timing for introduction of the proposed training programme, and supporting training facilities (such as simulation facilities).	15
The proposal is practicable as supported by detailed information on the fellowship or post-fellowship training programmes for 16 to 30 training places each year for doctors, including the partnering institutions/organizations of the training programme, the timing for introduction of the proposed training programme, and supporting training facilities (such as simulation facilities).	10
The proposal is practicable as supported by detailed information on the fellowship or post-fellowship training programmes for 15 or less than 15 training places each year for doctors, including the partnering institutions/organizations of the training programme, the timing for introduction of the proposed training programme, and supporting training facilities (such as simulation facilities).	5
The proposal is not practicable notwithstanding the provision of detailed information or the information provided does not enable an assessment to be made on the practicability of the proposal.	0
Calculation of Marks for (ii)	
Considerations	Marks
The proposal is practicable as supported by detailed information on the on-site training programmes for more than 80 training places each year for nurses and/or allied health professionals, including the partnering institutions/organizations of the training programme, the timing for introduction of the proposed training programme, and supporting training facilities.	15
The proposal is practicable as supported by detailed information on the on-site training programmes for 41 to 80 training places each	10

year for nurses and/or allied health professionals, including the partnering institutions/organizations of the training programme, the timing for introduction of the proposed training programme, and supporting training facilities.	
The proposal is practicable as supported by detailed information on the on-site training programmes for 40 or less than 40 training places each year for nurses and/or allied health professionals, including the partnering institutions/organizations of the training programme, the timing for introduction of the proposed training programme, and supporting training facilities.	5
The proposal is not practicable notwithstanding the provision of detailed information or the information provided on the on-site training programmes/facilities for nurses and/or allied health professionals does not enable an assessment of the practicability of the proposal.	0

Note 11	
<p>(1) Tenderers shall provide a comprehensive and practicable proposal on the clinical governance structure of the Hospital that could help ensure service quality and standards of the Hospital and patient safety in the form set out at Appendix J annexed hereto. The maximum score is 30.</p> <p>(2) The proposal shall include -</p> <ul style="list-style-type: none"> (i) a clear governance structure with well-defined roles and responsibilities of relevant parties; (ii) detailed mechanism and procedures for conducting clinical audit of the Hospital, including internal and external audit; (iii) detailed mechanism and procedures in monitoring, reporting and handling of sentinel events and medical incidents; (iv) detailed mechanism and procedures for review and introduction of advanced and new medical technology, medical equipment and drugs; and (v) detailed mechanism and procedures for handling complaints, enquiries and suggestions. 	
Calculation of Marks	

Considerations	Marks
The proposal is practicable as supported by detailed information on all five items listed in (2)(i) to (v).	30
The proposal is practicable as supported by detailed information on four of the items listed in (2)(i) to (v), and brief information on the remaining item.	24
The proposal is practicable as supported by detailed information on three of the items listed in (2)(i) to (v), and brief information on the remaining items.	18
The proposal is practicable as supported by detailed information on two of the items listed in (2)(i) to (v), and brief information on the remaining items.	12
The proposal is practicable as supported by detailed information on one of the items listed in (2)(i) to (v), and brief information on the remaining items; or brief information on all items.	6
The proposal is not practicable notwithstanding the provision of detailed information or the information provided does not enable an assessment of the practicability of the proposal.	0

Appendices to Annex II to Tender Notice

Appendix A

Form of Tenderer's proposal – Experience of Tenderers and the Proposed Key Personnel in the Project Team

Important note:

1. Please also refer to Annex I of the Tender Notice when completing this Appendix A.
2. Tenderers must at least propose three directors/partners in Table 1.
3. Tenderers must provide information of each of the proposed directors/partners in Table 2.
4. If a tenderer is a partnership comprising more than one entity, information required in Tables 1 and 2 of each entity comprising the partnership must be submitted.
5. Tenderers must at least propose three key personnel in Table 3.

Table 1 - Particulars of the board of directors of the tenderer (if tenderer is a company) or partners of partnership (if tenderer is a partnership)

	Name of Directors/Partners	Post
1.		
2.		
3.		
4.		
5.		
Total number of Directors/Partners		

Table 2 - Experience of the members of the board of directors (if tenderer is a company) / partners of partnership (if tender is a partnership) in hospital management or operation

	Name of Director/ Partner	Details of the hospital from which the experience was gained (a) Name and address of the hospital	Years of experience From (dd/mm/yy)	Position(s) held in the hospital	Description of experience
--	------------------------------	--	--	----------------------------------	---------------------------

		(b) Average number of in-patient discharge and deaths per year from 2006-2011	to (dd/mm/yy)		
1.					
2.					
3.					
4.					
5.					

Table 3 - Particulars and experience of Key Personnel

	Name of Key Personnel	Details of the hospital from which the experience was gained (a) Name and address of the hospital (b) Average number of in-patient discharge and deaths per year from 2006-2011	Years of experience From (dd/mm/yy) to (dd/mm/yy)	Position(s) held in the hospital	Description of "Relevant experience" in one or more of the five functional areas of hospital operation
1.					
2.					
3.					
4.					
5.					

4. Key responsibilities of each Key Personnel

Key Personnel ^{Note 1}	Key Responsibilities ^{Note 2}
(a) Clinical Services	
<i>Full Name of the Key</i>	▪ To oversee the provision of clinical services and

Note (1) : An individual key personnel may appear in more than one functional area. But each key personnel must be assigned to at least one functional area.

Note (2) : Separate sheets may be added to set out additional responsibilities of the key personnel under individual functional area.

Key Personnel ^{Note 1}	Key Responsibilities ^{Note 2}
<i>Personnel</i>	operation of clinical facilities of the hospital
- // -	<ul style="list-style-type: none"> To supervise a team of relevant and qualified personnel in operating the hospital according to the service proposals offered by the Tenderer and as set out under the Service Deed and the Conditions of Sale
	<ul style="list-style-type: none"> {Other responsibilities to be set by Tenderer}
	<ul style="list-style-type: none"> { Other responsibilities to be set by Tenderer}
(b) Quality Assurance	
<i>Full Name of the Key Personnel</i>	<ul style="list-style-type: none"> To oversee the quality of services of the hospital, including patient safety and risk management, quality and standards of services and healthcare professionals
- // -	<ul style="list-style-type: none"> To formulate and manage the contingency plan in response to infection and emergency situation
	<ul style="list-style-type: none"> {Other responsibilities to be set by Tenderer}
	<ul style="list-style-type: none"> { Other responsibilities to be set by Tenderer}
(c) Planning and maintenance	
<i>Full Name of Members</i>	<ul style="list-style-type: none"> To be responsible for all matters relating to the planning and development of the hospital according to the service proposals offered by the Tenderer and as set out under the Service Deed and the Conditions of Sale
- // -	<ul style="list-style-type: none"> To be responsible for all matters relating to the maintenance of the hospital, and initiate, implement and monitor programmes to maintain the hospital and relevant facilities in good condition
	<ul style="list-style-type: none"> {Other responsibilities to be set by Tenderer}
	<ul style="list-style-type: none"> { Other responsibilities to be set by Tenderer}
(d) Finance	
<i>Full Name of the Key Personnel</i>	<ul style="list-style-type: none"> To oversee the financial planning, budget and resources management
- // -	<ul style="list-style-type: none"> To oversee the financial risk management and financial operation
	<ul style="list-style-type: none"> {Other responsibilities to be set by Tenderer}

Key Personnel ^{Note 1}	Key Responsibilities ^{Note 2}
	▪ { Other responsibilities to be set by Tenderer }
(e) Human Resource Management	
<i>Full Name of the Key Personnel</i>	▪ To be responsible for matters relating to the recruitment, staffing and manpower deployment of the hospital
- // -	▪ To be responsible for matters relating to staff benefits, remuneration and occupational safety of the hospital
	▪ { Other responsibilities to be set by Tenderer }
	▪ { Other responsibilities to be set by Tenderer }

5. For the purpose to demonstrate that the proposed Directors/Partners and key personnel have met the Mandatory Requirements in Section I of Annex I to the Tender Notice, the following documents or documentary proof shall be submitted –

- (I) a curriculum vitae or a statement of experience by each of the Directors/Partners on managing or operating a hospital; and by each proposed key personnel in one or more of the functional areas of hospital operation in clinical services, quality assurance, planning and maintenance, finance, human resource management in Hong Kong or overseas;
- (II) reference letters from current and/or previous employers on the capacity of service, and the years of working experience of each of the proposed key personnel, in one of more of the functional areas of hospital operation in clinical services, quality assurance, planning and maintenance, finance, human resource management in Hong Kong or overseas;
- (III) details of the hospital(s) referenced in (I) above including but not limited to the name and address of the hospital, total number of beds, scope of services, number of doctors, nurses and other employees, as well as the service throughput such as the number of annual in-patient discharges, outpatient attendance, day patient attendance and accident and emergency attendance; and
- (IV) a confirmation duly signed by the tenderer that no restraints of trade or business have been contravened in proposing to engage the individuals as key personnel of the project team.

Appendix B

Form of Tenderer's proposal – Land Use

Important note:

1. Please also refer to Annex I to Tender Notice and Explanatory Note 1 of the Marking Scheme when completing this Appendix B.
2. Percentage to be provided in (I) of Column 2 must not be less than 70%.
3. Percentage to be provided in (II) of Column 2 must not exceed 5%.
4. Percentage to be provided in (III) and (IV) of Column 2 must not exceed 30%.

1. The percentage of total Gross Floor Area (GFA) of the Hospital to be allocated for each of the following categories of facilities upon completion of the development of the Hospital are as follows -

Column 1	Column 2
	The proportion (expressed in percentage (%)) which the total gross floor area of the building or buildings designed and constructed for the corresponding facilities in column 1 bears to the total gross floor area of the building or buildings erected or to be erected on the Lot
(I) Clinical and Clinical Supporting Facilities	_____ %
(II) Accommodation Facilities (if any)	_____ %
(III) Non-Clinical Supporting Facilities (other than Accommodation Facilities (if any))	_____ %
(IV) Sub-total of the Non-Clinical Supporting Facilities (including the Accommodation Facilities, if any) (i.e. (II) + (III))	_____ %
(V) Total (i.e. (I) + (II) + (III))	100%

Appendix C

Form of Tenderer's proposal – Scale and Schedule of Development

Important note:

1. Please also refer to Annex I to Tender Notice and Explanatory Notes 2, 3, 4 of the Marking Scheme when completing this Appendix C.
2. Figure to be provided in (I) of Column 2 must not exceed 60.
3. Figure to be provided in (II) of Column 2 must not be less than 300.
4. Figure to be provided in (III)(ii) of Column 2 must not exceed 20.
5. Figure to be provided in (IV)(i) of Column 2 must not be less than 90.
6. Figure to be provided in (IV)(i) of Column 1 should be the same as that inserted in (I) of Column 2.
7. Figure to be provided in (IV)(ii) of Column 2 must not be less than 150.
8. Figure to be provided in (IV)(iii) of Column 2 must not be less than 300.
9. Figure to be provided in (IV)(iv) of Column 2 should be the same as the number inserted in (II) of Column 2.

1. The date of commencement of operation of the Hospital, total number of hospital beds, percentage of obstetric beds to be provided at the Hospital and the schedule of provision of beds are as follows -

	<u>Column 1</u>	<u>Column 2</u>
(I)	Date of commencement of operation of the Hospital	Within_____ Months from the date of execution of the Memorandum of Agreement
(II)	Proposed total number of hospital beds	_____ Beds
(III)	Obstetric beds	
(i)	Total number of obstetric beds to be provided at the hospital	_____ Beds (Note)
(ii)	Maximum percentage of obstetric beds to be provided at the hospital as against the total number of hospital beds	_____ %
(IV)	Schedule of provision of beds	
(i)	Upon commencement of operation of Hospital (i.e. the date inserted in (I) of Column 2)	_____ Beds

(ii)	Within 24 months from the date of commencement of Hospital operation	_____ Beds
(iii)	Within 48 months from the date of commencement of Hospital operation	_____ Beds
(iv)	Within 72 months from the date of commencement of Hospital operation	_____ Beds

Note: The number to be provided by the tenderers in (III)(i) of Column 2 will be used by the Government for verification of tenderers' proposed percentage provided in (III)(ii) of Column 2.

Appendix D

Form of Tenderer's proposal – Charging and Service Arrangement

Important note:

1. Please also refer to Annex I to Tender Notice and Explanatory Note 8 of the Marking Scheme when completing this Appendix D.
2. The percentage of total in-patient bed days taken up in the Hospital each Service Year (as defined in the Service Deed) for services for “Eligible Persons” proposed by tenderers must be more than 50%.
3. The percentage of total in-patient bed days taken up in the Hospital each Service Year (as defined in the Service Deed) for services provided through standard beds at packaged charge for “Eligible Persons” proposed by tenderers must not be less than 30%.

1. The service arrangement for services for “Eligible Persons” is as follows –

[Please specify:

- (a) the percentage of total in-patient bed days taken up in the Hospital each Service Year (as defined in the Service Deed) that will be for services for “Eligible Persons”; and
- (b) any other supporting information.]

2. The service arrangement for services provided through standard beds at packaged charge for “Eligible Persons” is as follows –

[Please specify:

- (a) the percentage of total in-patient bed days taken up in the Hospital each Service Year (as defined in the Service Deed) that will be for services provided through standard beds at packaged charge for “Eligible Persons” (i.e. “Minimum Number” for Packaged Charging); and
- (b) any other supporting information.]

Note: Separate sheets may be added as necessary.

Appendix E

Form of Tenderer's proposal – Clinical Services

Important note:

Please also refer to Annex I to Tender Notice and Explanatory Note 5 of the Marking Scheme when completing this Appendix E.

3. The clinical services to be provided at the Hospital are as follows –

	Clinical Services (Please specify the specialties and/or other services)	Description and other supporting information	Timing of introduction of the specialties and/or other services
1.			Within _____ months from the date of commencement of Hospital operation
2.			Within _____ months from the date of commencement of Hospital operation
3.			Within _____ months from the date of commencement of Hospital operation

Note: Separate sheets may be added as necessary.

Appendix F

Form of Tenderer's proposal – Patient-care related facilities and services

Important note:

Please also refer to Annex I to Tender Notice and Explanatory Note 6 of the Marking Scheme when completing this Appendix F.

1. The patient-care related facilities and services to be provided at the Hospital are as follows –

	Patient-care related facilities and services	Description and other supporting information	Timing of introduction of the facilities and services
1.			Within _____ months from the date of commencement of Hospital operation
2.			Within _____ months from the date of commencement of Hospital operation
3.			Within _____ months from the date of commencement of Hospital operation

Note: Separate sheets may be added as necessary.

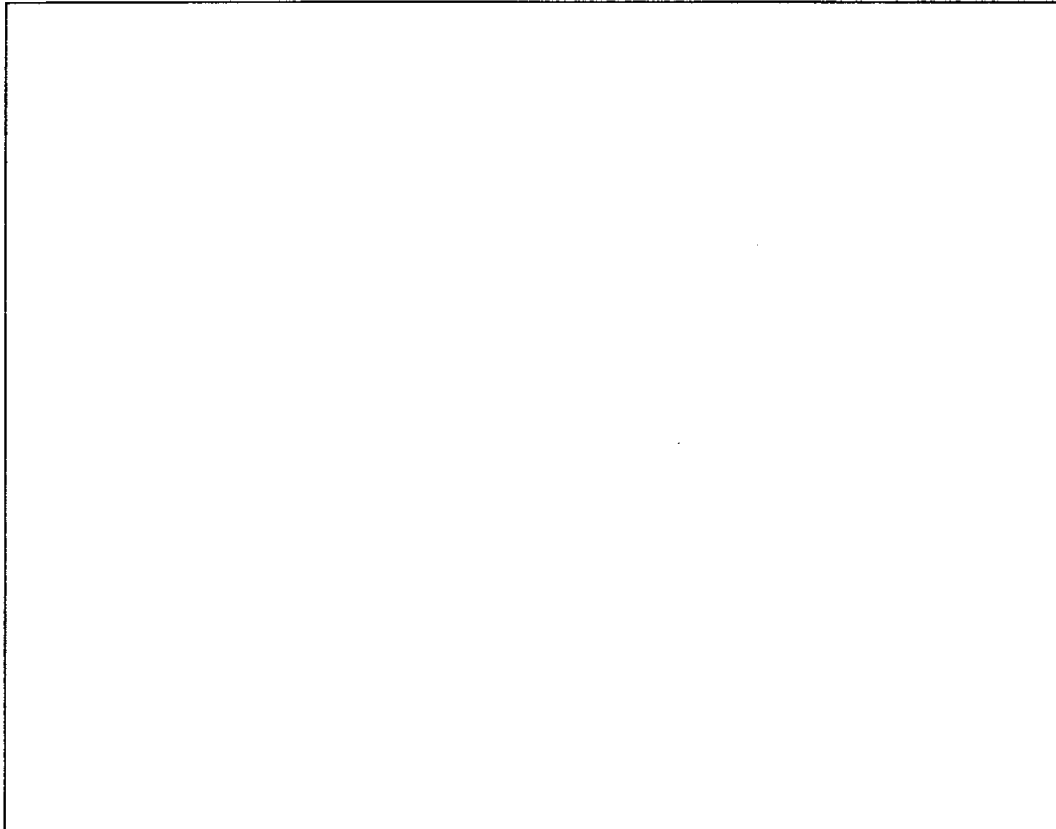
Appendix G

Form of Tenderer's proposal – Review of Hospital Fees and charges

Important note:

Please also refer to Annex I to Tender Notice and Explanatory Note 7 of the Marking Scheme when completing this Appendix G.

1. The mechanism for review of Hospital fees and charges and announcement of reviewed fees and charges is as follows –



Appendix H

Form of Tenderer's proposal – Manpower Deployment

Important note:

Please also refer to Annex I to Tender Notice and Explanatory Note 9 of the Marking Scheme when completing this Appendix H.

1. The manpower plan of the Hospital at the time when the Hospital is fully commissioned is as follows –

Table (I)	
Doctors	Number
(i) Specialists ^{Note 1} directly employed by the Hospital	_____ Note 2
(ii) Specialists in (i) providing in-house on-site 24 hours services	_____ Note 3
(iii) Trainees/non-specialists ^{Note 1} directly employed by the Hospital	_____ Note 2
(iv) Total number of doctors directly employed by the Hospital (i.e. (i) + (iii))	_____ Note 2
(v) Doctors not directly employed by the Hospital with admission right to the Hospital	_____ Note 2

Table (II)	
Nurses	Number
(i) Registered Nurses ^{Note 1}	_____ Note 2
(ii) Enrolled Nurses ^{Note 1}	_____ Note 2
(iii) Total number of nurses employed by the Hospital (i.e. (i) + (ii))	_____ Note 3
(iv) Nurses in (iii) who are at the rank of Department Operations Managers or Senior Nursing Officers or equivalent	_____ Note 2
(v) Nurses in (iii) who are at the rank of Advanced Practice Nurses or Nurse Specialists or Nursing Officers Ward Managers or equivalent	_____ Note 2

Table (III)	
Allied Health Professionals	Number

(i) Medical Laboratory Technologists ^{Note 1}	Note 2
(ii) Radiographers ^{Note 1}	Note 2
(iii) Occupational Therapists ^{Note 1}	Note 2
(iv) Physiotherapists ^{Note 1}	Note 2
(v) Optometrists ^{Note 1}	Note 2
(vi) Pharmacists ^{Note 1}	Note 2
(vii) Others (such as Clinical Psychologists, Dietitians, Speech Therapists, etc. Please specify)	Note 2
<i>Total</i>	Note 3

Table (IV)	
Administration and supporting staff	Number
(i) Administration staff	Note 2
(ii) Other supporting staff	Note 2
<i>Total</i>	Note 2

2. The manpower-to-bed ratios for in-house on-site 24 hours specialists, nurses and allied health professionals of the Hospital are as follows –

Table (V)	
(I) In-house on-site 24 hours specialist-to-bed ratio	____ In-house on-site 24 hours specialists per bed ^{Note 4}
(II) Nurse-to-bed ratio	____ nurses per bed ^{Note 4}
(III) Allied health professional -to-bed ratio	____ allied health professionals per bed ^{Note 4}

Notes

- (1) For the purpose of completing this Appendix -
- (i) “Specialists” shall mean doctors who are included in the Specialist Register of Medical Council of Hong Kong;
 - (ii) “Trainees/non-specialists” shall mean doctors who are under training for attaining the status of “Specialists” in (i);
 - (iii) “Registered Nurses” and “Enrolled Nurses” shall mean professionals who are registered or enrolled as a registered nurse or enrolled nurse respectively with the Nursing Council of Hong Kong; and;
 - (iv) “Medical Laboratory Technologists”, “Radiographers”, “Occupational Therapists”, “Physiotherapists”, “Optometrists” and

“Pharmacists” shall mean the professionals registered with the respective boards or councils in Hong Kong under the relevant Ordinances.

- (2) Numbers to be provided by the tenderers in the tables are for reference by the Government only. The Government reserves the right to decide at its absolute discretion whether to consider a tender which fails to provide such numbers.
- (3) Numbers to be provided by the tenderers will be used by the Government for verification of tenderers’ proposals in Table V.
- (4) Numbers to be provided by a tenderer in Table V as accepted by the Government will be incorporated in the Service Deed as binding obligations as appropriate, if the tenderer is selected as the successful tenderer.

Appendix I

Form of Tenderer's proposal – Training Programmes / Facilities

Important note:

Please also refer to Annex I to Tender Notice and Explanatory Note 10 of the Marking Scheme when completing this Appendix I.

1. The training programmes/facilities to be provided by the Hospital are as follows –

	Training programmes /facilities	Description and other supporting information (including the duration of the training programmes)	Timing of introduction of the programmes /facilities
1.			Within _____ months from the date of commencement of Hospital operation
2.			Within _____ months from the date of commencement of Hospital operation
3.			Within _____ months from the date of commencement of Hospital operation

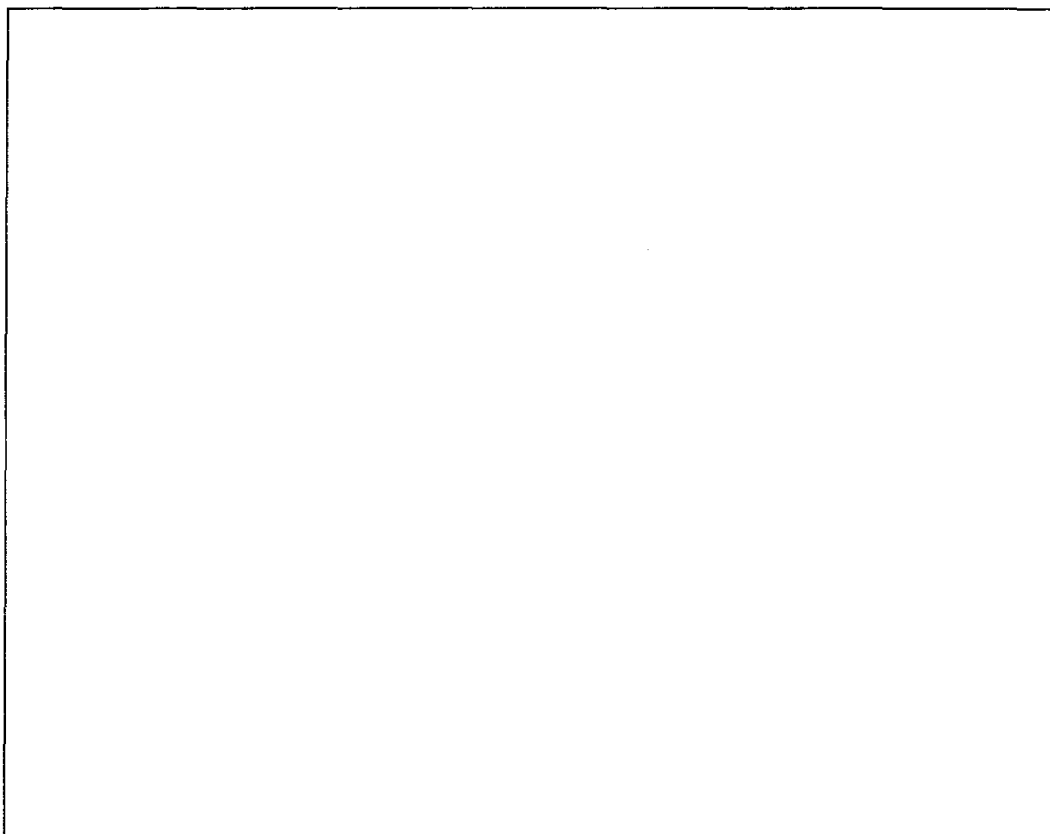
Appendix J

Form of Tenderer's proposal – Clinical Governance Structure

Important note:

Please also refer to Annex I to Tender Notice and Explanatory Note 11 of the Marking Scheme when completing this Appendix J.

1. The clinical governance structure of the Hospital is as follows –



Annex III to Tender Notice

[PARTY 1]

and

[PARTY 2]

SERVICE DEED

Contents

Clause		
Number	Heading	Page
	PART A: PRELIMINARY	1
1	INTERPRETATION	1
2	COMMENCEMENT AND DURATION	1
3	PRECEDENCE	2
	PART B: SERVICES	2
4	PURCHASER OBLIGATIONS	2
5	SCHEDULE OF DEVELOPMENT OF THE LOT	2
6	ACCREDITATION	3
7	KEY PERSONNEL	3
8	REPORTING AND REVIEW	4
9	AUDIT AND ACCESS	6
10	PURCHASER REPRESENTATIVE	7
	PART C: GENERAL PROVISIONS	7
11	WARRANTIES	7
12	INDEMNITY AND LIABILITY	8
13	LIMITATION OF LIABILITY	9
14	SUBCONTRACTING	9
	PART D: CHANGES IN LAW AND VARIATIONS	11

15	CHANGES IN LAW	11
16	VARIATIONS	11
	PART E: DEFAULT AND REMEDIES	11
17	BANK BOND AND PERFORMANCE GUARANTEE	11
18	LIQUIDATED DAMAGES	13
19	DEFAULTS CAPABLE OF REMEDY	14
20	STEP-IN RIGHTS	14
	PART F: TERMINATION	16
21	TERMINATION	16
22	EXIT MANAGEMENT PLAN AND CONSEQUENCES OF TERMINATION	17
23	FORCE MAJEURE	18
24	SURVIVAL	19
	PART G: DISPUTE RESOLUTION	20
25	ESCALATION AND DISPUTE RESOLUTION	20
	PART H: INTELLECTUAL PROPERTY, DATA PROTECTION AND CONFIDENTIALITY	20
26	INTELLECTUAL PROPERTY	20
27	CONFIDENTIALITY	20
28	DATA PROTECTION	21
	PART I: MISCELLANEOUS	22
29	PROBITY	22
30	GENERAL	23
	Schedule 1 – Definitions and Interpretation	27

Schedule 2 – Service Obligations	35
Schedule 2 Annexes	38
Schedule 3 – Escalation and Dispute Resolution	39
Schedule 4 – Subcontracting	43
Schedule 5 – Liquidated Damages	46

Date

2011

Parties [PARTY 1] of [specify address] ("**Government**")

[PARTY 2] of [specify address] ("**Purchaser**")

WHEREAS:

- A. The Government issued an invitation for an Expression of Interest to the public on 14 December 2009 ("**EOI**"). The EOI expressed the Government's desire to address the imbalance between hospital services in the public and private sectors, increase the overall capacity of the healthcare system, and support the development of medical services as one of the industries crucial for the development of Hong Kong's economy, by promoting and facilitating private hospital developments in Hong Kong.
- B. The Government, following consideration of responses to the EOI from interested parties, and Government's health policy objectives, invited proposals to undertake the Project pursuant to an invitation to tender issued on 13 April 2012 (as modified, amended or revised, the "**Tender Notice**").
- C. The Project, pursuant to the process described in the Tender Notice, has been awarded to the Purchaser, and *[insert further details as necessary based on the process up to execution and the mode the Purchaser has chosen to enter into the project agreements and undertake the Project]*.
- D. The Government has agreed to grant the Lot to the Purchaser pursuant to the terms of the grant registered in the Land Registry as New Grant No. [] ("**Land Grant**"), which is executed simultaneously with this Deed.
- E. The Purchaser and the Government wish to define their respective rights and obligations with respect to the Project, to the extent that they are not covered in the Land Grant, in this Deed.

NOW IT IS HEREBY AGREED as follows:

PART A: PRELIMINARY

1 INTERPRETATION

- 1.1 This Deed is interpreted according to the provisions of Schedule 1 (Definitions and Interpretation).

2 COMMENCEMENT AND DURATION

- 2.1 This Deed takes effect from the Effective Date and continues in full force and effect until the earlier of:

(a) the Expiry Date; or

- (b) the Termination Date,
(the "Term").

3 PRECEDENCE

- 3.1 To the extent there is any inconsistency or conflict between the terms of the Land Grant and this Deed, the terms of the Land Grant shall prevail.

PART B: SERVICES

4 PURCHASER OBLIGATIONS

- 4.1 The Purchaser shall:

- (a) comply with and perform its obligations in accordance with the terms of this Deed and the Land Grant;
- (b) comply with and perform its obligations in accordance with all Applicable Laws;
- (c) during the Service Period:
 - (i) provide the Services in accordance with the terms of this Deed (including the Service Obligations, Schedule 2 Annexes and Prudent Operating Practice);
 - (ii) without limiting clause 4.1(b):
 - (A) comply with the requirements set out in the Code of Practice and any other codes of practice relating to hospitals which are or may at any time be issued and specified by the Government in the provision of the Services; and
 - (B) operate the Hospital:
 - I in accordance with the *Hospitals, Nursing Homes and Maternity Homes Registration Ordinance* (Cap. 165 Laws of Hong Kong) and any regulations made under such legislation; and
 - II in all respects to the satisfaction of the Government.
 - (iii) in respect of professional staff employed at the Hospital who are required to be registered or licensed, only employ such professional staff as are duly registered or licensed under Applicable Laws in force in Hong Kong.

5 SCHEDULE OF DEVELOPMENT OF THE LOT

- 5.1 Without prejudice to the Land Grant, the Purchaser shall use its best endeavours to execute the Works in accordance with the Schedule of Development of the Lot.
- 5.2 The Government may at any time and from time to time request further information from the Purchaser in respect of the Schedule of Development of the Lot and the

Purchaser shall provide such further information to the satisfaction of the Government within five (5) Business Days of receiving such a request.

- 5.3 Nothing stated in the Schedule of Development of the Lot, and no approval by the Government of the Schedule of Development of the Lot or any amendments thereto, shall relieve the Purchaser from any of its other duties, obligations or liabilities under this Deed including its obligations to proceed with the Works and provide the Essential Services on or before the Scheduled Service Commencement Date.

6 ACCREDITATION

- 6.1 Within forty-eight (48) months from the Service Commencement Date, the Purchaser shall obtain accreditation for the Hospital from a qualified accreditation agent recognised by the International Society for Quality in Healthcare or such other organisation as approved by the Government.
- 6.2 The Purchaser shall maintain the accreditation obtained under clause 6.1 from the date of obtaining such accreditation until the end of the Service Period.

7 KEY PERSONNEL

- 7.1 During the period from the Effective Date until forty-eight (48) months following the Service Commencement Date ("**Key Personnel Period**"), the Purchaser shall procure, engage and deploy the Key Personnel in the execution of the Works and the provision of the Services. If, at any time during the Key Personnel Period, any of the Key Personnel cease to be engaged or deployed by the Purchaser to discharge the key responsibilities as specified for that individual in the Schedule 2 Annexes, then the Purchaser shall:

- (a) provide notice to the Government at least seven (7) Business Days prior to the cessation of engagement or deployment of such Key Personnel or, if prior notice is not possible, as soon as reasonably practicable after such cessation; and
- (b) subject to clauses 7.2 and 7.3, procure alternative personnel as soon as reasonably possible (which in any case shall be no more than six (6) months after providing the notice to the Government in accordance with clause 7.1(a)) who, unless otherwise agreed by the Government, are no less experienced, knowledgeable and qualified in the execution of the Works or provision of the Services than the Key Personnel for whom they are a replacement.

- 7.2 The Purchaser shall submit:

- (a) the curriculum vitae of the proposed alternative personnel to the Government; and
- (b) other information as reasonably requested by the Government from time to time,

for its approval of the proposed alternative personnel. Prior to submitting the information set out in clauses 7.2(a) and 7.2(b), the Purchaser shall make all reasonable investigations to ensure that such information is true and accurate.

- 7.3 The Purchaser shall not engage or deploy the alternative personnel in the execution of the Works or the provision of the Services unless and until it has received the written approval of the Government.

8 REPORTING AND REVIEW

Execution of the Works

- 8.1 The Purchaser shall report to the Government on the progress of the execution of the Works and its compliance with the Schedule of Development of the Lot at least once every six (6) months commencing from the Effective Date until the date specified in column 1 of paragraph (III)(iv) in Part B of the schedule to the Land grant or on request from the Government from time to time.

- 8.2 The Purchaser shall promptly inform the Government of any actual or anticipated material deviations from any dates stipulated in the Schedule of Development of the Lot.

- 8.3 In cases where:

- (a) any material problem, emergency, strike, security event, injury, work stoppage or legal problem be anticipated, or any unanticipated event occur which may adversely affect the Purchaser's ability to perform its obligations in connection with completion of the Works in a timely manner; or
- (b) the Purchaser has reason to believe that there will be a material deviation in the Schedule of Development of the Lot that may result in the Purchaser failing to achieve the Scheduled Service Commencement Date

(each a "**Material Incident**"), then, in addition to all other reports required under this Deed, the Purchaser shall promptly notify the Government of such event or failure and deliver a report to the Government in sufficient detail to enable the Government to understand the nature of such Material Incident, identifying:

- (i) the nature of the event or failure;
- (ii) the reason for the event or failure;
- (iii) the impact which such event or failure has had, or in the reasonable opinion of the Purchaser, is likely to have or will have, on its ability to achieve the Scheduled Service Commencement Date; and
- (iv) the steps which the Purchaser (acting in accordance with the Prudent Operating Practice) has taken, is taking and will take to mitigate the adverse consequences of such event or failure.

Provision of Services

- 8.4 The Purchaser shall report to the Government on the Purchaser's compliance with the Service Obligations and items relating thereto in Schedule 2 Annexes and clause 6:

- (a) on a six (6) monthly basis, from the Service Commencement Date until the date specified in column 1 of paragraph (III)(iv) in Part B of the schedule to the Land Grant:

- (i) on or before the last day of August for the period from January to June during which the Services were performed in that Service Year; and
 - (ii) on or before the last day of February for the period from July to December during which the Services were performed in the preceding Service Year;
 - (b) on a yearly basis, from the date specified in column 1 of paragraph (III)(iv) in Part B of the schedule to the Land Grant until the Expiry Date or the Termination Date;
 - (i) on or before the last day of February for reports covering the period from January to December in the preceding Service Year; or
 - (ii) if the Expiry Date or Termination Date is earlier than 31 December in a Service Year, within two (2) months following the Expiry Date or Termination Date, whichever is the earlier.
- 8.5 The Purchaser shall submit to the Government such information as is requested or required by and in accordance with the Code of Practice, to be given by the time specified in the Code of Practice.
- 8.6 The Purchaser shall report to the Government the occurrence of the following as soon as practicable after its occurrence:
- (a) any unauthorised access or unauthorised or accidental disclosure of Personal Data held by the Hospital; or
 - (b) any Insolvency of the Purchaser.
- 8.7 The Purchaser shall, within such period or periods as may at any time be required by the Government (or such other extended period or periods as may be approved by the Government), provide any other information and submit all documents in connection with or relating to the Hospital to the Government, the Director of Health and/or a Government Representative as the Government may in its absolute discretion require from time to time.

Hospital Bed occupancy

- 8.8 During the Service Period, the Purchaser shall submit to the Government statements reporting on the occupancy of the Hospital Beds available in the Hospital during the preceding Service Year
- (a) within two (2) months after the end of each Service Year; or
 - (b) if the Expiry Date or Termination Date is earlier than 31 December in a Service Year, within two (2) months following the Expiry Date or Termination Date, whichever is the earlier.

Accommodation Facilities

- 8.9 In the event that Accommodation Facilities are provided by the Purchaser during the Service Period, the Purchaser shall submit to the Government statements on the occupancy, and detailed records on utilization, of the Accommodation Facilities for the same reporting periods and within the same time frame as those set out in clause 8.4.

Manner of reporting

- 8.10 The Purchaser shall report to the Government as required in this clause 8 in the format, manner and containing the information as may be specified by the Government from time to time.
- 8.11 The Government may amend any period of reporting specified in this clause 8 or other reporting periods specified by the Government from time to time on prior notice to the Purchaser.

9 AUDIT AND ACCESS

- 9.1 During the Term and for a period of six (6) years after the Termination Date, the Government may by itself or through an external auditor conduct audits for the following purposes:
- (a) to review the Purchaser's compliance with the Service Obligations and Schedule 2 Annexes;
 - (b) to review the Purchaser's compliance with Applicable Laws;
 - (c) to review any records created in connection with the provision of the Services;
 - (d) to review any books of account kept by the Purchaser in connection with the provision of the Services;
 - (e) to carry out the audit and certification of the Purchaser's accounts;
 - (f) to verify the accuracy and completeness of the reports delivered or required under clause 8 of this Deed; or
 - (g) to review the Purchaser's compliance with any other provision of this Deed.
- 9.2 The Government shall use its reasonable endeavours to ensure that the conduct of an audit pursuant to clause 9.1 does not unreasonably disrupt the Purchaser or delay the provision of the Services.
- 9.3 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 9, unless the audit identifies a breach by the Purchaser of its obligations under this Deed, in which case the Purchaser shall reimburse the Government for all the Government's reasonable costs incurred in the course of the audit.
- 9.4 On request from the Government, the Purchaser shall provide any Government Instrumentality or its advisors, agents or representatives with all reasonable access to the Lot, records, books of account, systems or any information relevant for the purpose of allowing the Government to:
- (a) monitor the Purchaser's compliance with this Deed; and
 - (b) conduct an audit pursuant to clause 9.1,
- and offer its co-operation and assistance to such Parties for the purposes of such monitoring or audit.

10 PURCHASER REPRESENTATIVE

- 10.1 The Purchaser shall, within ten (10) Business Days from the Effective Date, notify the Government of the individual it intends to appoint as its Purchaser Representative, and shall submit the curriculum vitae of such individual with such notification to the Government. The Purchaser shall not replace or remove the individual appointed as the Purchaser Representative, without notifying the Government at least ten (10) Business Days prior to such replacement or removal.
- 10.2 The Purchaser Representative shall have the authority to represent and act for the Purchaser at all times during the performance of this Deed.
- 10.3 The Purchaser Representative shall meet with the Government or a Government Representative at the request of the Government from time to time.

PART C: GENERAL PROVISIONS

11 WARRANTIES

- 11.1 The Purchaser warrants and represents to the Government that:
- (a) *[[Drafting note: if it is a company], it is a company incorporated and validly existing under the laws of Hong Kong or the laws of its place of incorporation and is not Insolvent;] OR*
[[Drafting note: if it is a partnership], this Deed is executed in the name of the partnership and is binding on all of the partners in the partnership and the partnership is not Insolvent]
 - (b) it has all power, authority and capacity to enter into this Deed and to carry out the obligations contemplated under this Deed;
 - (c) it has all the necessary Authorisations in order to lawfully enter into and exercise its rights and perform its obligations under this Deed;
 - (d) the execution by the Purchaser of, the performance of the Purchaser of its obligations under, and the compliance of the Purchaser with the terms of, this Deed does not and will not:
 - (i) contravene any Applicable Law to which the Purchaser is subject;
 - (ii) contravene any Authorisation obtained by the Purchaser;
 - (iii) require performance of an obligation before the appropriate Authorisation can be obtained;
 - (iv) contravene any undertaking or instrument binding on the Purchaser; and
 - (v) contravene any provision of the Purchaser's memorandum and articles of association;
 - (e) it has:

- (i) conducted its own investigations and enquiries in relation to the Services, had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has entered into this Deed in reliance on its own investigations, enquiries and due diligence; and
 - (ii) received all information requested by it from the Government to enable it to determine whether it is able to provide the Services in accordance with the terms of this Deed and has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Government;
- (f) no litigation, arbitration, tax claim, dispute or administrative proceeding is current, pending or threatened against the Purchaser which will likely affect the Purchaser or its ability to perform its obligations under this Deed;
- (g) the information which Purchaser has provided to the Government in connection with the negotiation and preparation of this Deed (including evidence of the Purchaser's financial and technical ability to carry into effect and discharge its obligations under this Deed) is true and accurate in all material respects and is not misleading, whether by omission or otherwise;
- (h) it has, and the Key Personnel have, the required qualifications, resources, ability, experience, expertise, skills and capacity to execute the Works and perform the Services in a professional manner and in all respects as set out in this Deed; and
- (i) in relation to the tender submitted by the Purchaser in response to the Tender Notice, it had not up to the Effective Date:
- (i) communicated its land premium offer to any person other than the Government;
 - (ii) fixed its land premium offer by arrangement with any person;
 - (iii) made any arrangement with any person as to whether it or that other person was to submit a tender; or
 - (iv) colluded with any person in any manner whatsoever in the tendering process.

11.2 The Purchaser acknowledges and agrees that the Government has entered into this Deed in reliance on the warranties and representations in this clause 11. If, during the Term, any of the warranties and representations given to the Government in this clause 11 ceases to be true or accurate, the Purchaser shall promptly inform the Government of the same and provide the Government with any further information as may be reasonably requested by the Government in connection therewith.

12 INDEMNITY AND LIABILITY

12.1 The Purchaser shall indemnify and keep indemnified the Government at all times from and against any and all Claims (whether in tort or otherwise) and Losses suffered or incurred by the Government or for which the Government becomes liable (notwithstanding that any such Claims or Losses may have arisen from any act or thing that the Purchaser has warranted or represented or may be authorised or

obliged to do under this Deed or the Land Grant) arising as a result of or in connection with:

- (a) any act or omission (including negligence, recklessness, tortious acts, wilful misconduct, default, unauthorised acts or wilful omissions) of the Purchaser, its employees, agents, representatives, licensees, Subcontractors or any persons who provided or provide Services at or relating to the Hospital;
- (b) any breach of this Deed by the Purchaser, regardless of whether or not such breach was caused by the Purchaser or its employees, agents, licensees, representatives, licensees, Subcontractors or any persons who provided or provide Services at or relating to the Hospital;
- (c) the use or occupation of the Lot, the Hospital, the Non-Clinical Supporting Facilities or the Accommodation Facilities; or
- (d) any notice, claim or demand to pay, do, or perform any act, matter or thing to be paid, done or performed by the Purchaser.

12.2 If Purchaser is a partnership, each partner or participant of the partnership shall be jointly and severally liable to the Government for all of the Purchaser's obligations and liabilities to the Government under this Deed.

13 LIMITATION OF LIABILITY

General

- 13.1 To the maximum extent permitted by law, the Government shall not be liable to the Purchaser for any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities or payment of sums under other agreements, whether direct or indirect or for any indirect, special or consequential loss or damage in connection with this Deed.
- 13.2 For the avoidance of doubt, nothing in this Deed limits the Government's liability in respect of death or personal injury resulting from its negligence.

14 SUBCONTRACTING

- 14.1 Without prejudice to the provisions of the Land Grant and subject to clauses 14.2 and 14.3, the Purchaser may only subcontract the whole or any part of, its rights and obligations under this Deed with the consent of the Government and subject to the any terms and conditions the Government may at its absolute discretion impose.
- 14.2 The Purchaser may subcontract those Services listed in paragraph 1 of Schedule 4 (Subcontracting) without the consent of the Government.
- 14.3 If the Purchaser intends to subcontract any of its rights and obligations under clause 14.1, the Purchaser shall provide the Government with at least three (3) months prior notice (or a period of notice which may be shorter than three (3) months but is reasonable taking into account the circumstances for the change as the Government may agree) of any proposed change in Subcontractors, the Government's written consent in accordance with clause 14.1 being necessary for any such change.
- 14.4 The Purchaser:

- (a) warrants and represents to the Government that each Subcontractor has all the necessary Authorisations in order to lawfully enter into and exercise its rights and perform its obligations under any such Subcontract;
- (b) warrants and represents to the Government that each Subcontractor is qualified, experienced and knowledgeable in the provision of the Subcontracted Services and has the required ability, experience, expertise, skills and capacity to perform the Subcontracted Services in a professional manner;
- (c) shall remain responsible to the Government for the performance of its obligations under this Deed notwithstanding the appointment of any Subcontractor and be responsible for the acts, omissions and neglects of any Subcontractor; and
- (d) shall ensure that all Subcontracts between the Purchaser and any Subcontractor shall:
 - (i) be in writing;
 - (ii) be consistent, and in no way contrary to or inconsistent, with any of the terms or provisions of this Deed and the Land Grant;
 - (iii) contain a warranty that the Subcontractor is appropriately qualified, licensed, skilled, and experienced in respect of the performance of services they are contracted by the Purchaser to perform;
 - (iv) impose obligations on a Subcontractor which are equal to those imposed on the Purchaser as set out in this Deed to the extent such obligations are relevant to the Subcontracted Services;
 - (v) include the terms as set out in paragraph 2 of Schedule 4 (Subcontracting); and
 - (vi) contain provisions enabling the Subcontracted Services to be novated to the Government, its successors and assigns, upon the Government's written request, without further consent of the Subcontractor, in the event of termination of this Deed; and
- (e) shall procure that each Subcontractor complies with the terms referred to in 14.4(d).

14.5 In subcontracting any of its obligations under this Deed, the Purchaser shall not in any way be relieved of its duties, obligations or liabilities under this Deed nor be entitled to any greater protection than it otherwise would have been entitled to had such subcontracting not been effected.

14.6 The Government may at any time or times during the Term request the Purchaser to replace a Subcontractor in the following circumstances:

- (a) the Subcontractor ceases to have the necessary Authorisations to provide the Subcontracted Services;
- (b) the Subcontractor's acts or omissions result in the Purchaser being in breach of this Deed; or

- (c) the Subcontractor is in breach of the terms of a Subcontract which are equal to those imposed on the Purchaser as set out in this Deed, including the terms set out in paragraph 2 of Schedule 4 (Subcontracting).

For the avoidance of doubt, nothing in this clause requires the Government to monitor a Subcontractor's performance.

- 14.7 The Purchaser shall comply with any request of the Government pursuant to clause 14.6 within the period of time notified to the Purchaser in such request.

PART D: CHANGES IN LAW AND VARIATIONS

15 CHANGES IN LAW

- 15.1 The Purchaser agrees that it shall bear all costs and expenses incurred in connection with its compliance with any changes to any Applicable Laws which affects this Deed, the execution of the Works or the provision of the Services.

16 VARIATIONS

- 16.1 Subject to clauses 16.2 and 16.3, this Deed may not be varied except by agreement in writing signed by duly authorised representatives of the Parties.
- 16.2 The Purchaser acknowledges and agrees that the Government shall only consider variations to this Deed which would at least meet the Minimum Requirements.
- 16.3 During the period of six (6) years from the Service Commencement Date, the Purchaser may not request any changes to the Essential Services or the Specialty Services in paragraph 1 (Services Scope), paragraph 2 (Obstetric Beds) and paragraph 4 (Packaged Charging) of Schedule 2 (Service Obligations) and items relating thereto in Schedule 2 Annexes.
- 16.4 For the avoidance of doubt, subject to clause 16.1, the Government may at any time during the Term request any changes to the terms of this Deed.

PART E: DEFAULT AND REMEDIES

17 BANK BOND AND PERFORMANCE GUARANTEE

- 17.1 To secure the Purchaser's performance of its obligations under this Deed (including the Purchaser's obligation to pay Liquidated Damages or other costs and damages) the Purchaser shall deliver to the Government:
 - (a) the duly executed Bank Bond on or before the Effective Date in accordance with the requirements set out in [clause 20 and Annex V] of the Tender Notice; and
 - (b) the duly executed Performance Guarantee on or before the Effective Date in accordance with the requirements set out in [clause 20 and Annex IV] of the Tender Notice.
- 17.2 The Purchaser shall ensure that the Bank Bond is enforceable and in place from the date of issuance until six (6) years after the Expiry Date (the "**Bank Bond Validity**

Period") unless any disputed sums remains outstanding from the Purchaser to the Government, in which case the Bank Bond shall be extended at its full value until such time as such dispute has been finally settled or determined.

- 17.3 The Purchaser shall ensure that the Performance Guarantee is enforceable and in place from the date of issuance until all obligations, warranties, duties and undertakings now or hereafter to be carried out or performed by the Purchaser under this Deed and Land Grant shall have been satisfied or performed in full to the satisfaction of the Government.
- 17.4 In the event that the Bank Bond is issued with a fixed expiry date and such expiry date may occur prior to the end of the Bank Bond Validity Period, the Purchaser shall:
- (a) ensure that the expiry date under the Bank Bond is extended to the end of the Bank Bond Validity Period; or
 - (b) deliver a replacement Bank Bond to cover the remaining term of the Bank Bond Validity Period and such replacement Bank Bond shall be issued by a bank meeting the requirements of the Bank Bond as set out in [clause 20 and Annex V] of the Tender Notice and on the same terms as the replaced Bank Bond.

Such extended or replacement Bank Bond shall be duly executed and delivered to the Government no later than twenty (20) Business Days before the fixed expiry date. Any expiry of a Bank Bond or an extension or replacement thereof shall be without prejudice to existing claims made under the Bank Bond.

- 17.5 If the Purchaser fails to provide an extension to a Bank Bond or a replacement Bank Bond pursuant to clause 17.4, the Government has the right to draw the outstanding balance of the Bank Bond and hold the same on security for compliance by the Purchaser with its obligations and liabilities under this Deed. The Government shall be entitled to make deductions against any amounts so held in respect of any claim for which it would have been entitled to draw against an extended or replacement Bank Bond (had the Purchaser provided the same pursuant to clause 17.4) but shall otherwise return to the Purchaser the remaining balance of such amounts (without any interest) if the Purchaser provides the relevant extended or replacement Bank Bond or, if no extended or replacement Bank Bond is provided, six (6) years following the Termination Date or the Expiry Date, whichever is applicable.

Drawdown and Replacement Bank Bond Period

- 17.6 In the event the Bank Bond is drawn upon to pay for any payments due and payable from the Purchaser to the Government in accordance with this Deed, the Purchaser shall provide a replacement Bank Bond from a bank meeting the requirements set out in [clause 20 and Annex V] of the Tender Notice, immediately and in any event no later than five (5) Business Days following such drawing on the Bank Bond.
- 17.7 If a Bond Replacement Event occurs, the Purchaser shall provide a replacement Bank Bond from a bank meeting the requirements set out in [clause 20 and Annex V] of the Tender Notice no later than twenty (20) Business Days after the occurrence of that Bond Replacement Event.
- 17.8 All fees, taxes and expenses associated with procuring, preparing, completing, stamping (if applicable) and enforcing the Bank Bond or replacement Bank Bond shall be paid by the Purchaser.

- 17.9 Any draw downs or enforcement of the Bank Bond or the Performance Guarantee pursuant to this Deed is without prejudice to any other rights, remedies or claims available to the Government which have accrued under this Deed, the Land Grant or any other rights or remedies of the Government.

18 LIQUIDATED DAMAGES

Guaranteed Performance Levels

- 18.1 Without limiting any clause of this Deed, the Purchaser shall from the Service Commencement Date achieve the Performance Obligations.
- 18.2 If, following the Service Commencement Date until the Expiry Date or Termination Date, whichever is the earlier, the Purchaser does not meet any or all of the Performance Obligations, then without prejudice to its right to claim common law damages for breach, the Government shall be entitled to elect to require the Purchaser to pay the Government liquidated damages ("**Liquidated Damages**") at the rate specified in Schedule 5 (Liquidated Damages) for the period commencing from the date that the Government determines that the Purchaser's performance fell below its Performance Obligations until the date that the Government is satisfied that the Purchaser is performing at the Performance Obligations.

Payment

- 18.3 Any payments of the Liquidated Damages shall be made by the Purchaser to the Government within twenty (20) Business Days of the Purchaser's receipt of an invoice from the Government which sets forth the amounts of the Liquidated Damages which are then due and payable. If such payment is not made by the Purchaser, the Government may deduct an equivalent amount from the Bank Bond.
- 18.4 It is acknowledged and agreed by the Parties that:
- (a) this Deed is an arm's length contract (and the Parties have been, or have the facility to be, properly advised before entering into this Deed);
 - (b) the Government shall suffer loss and damages in the event of failure of the Purchaser to meet the Performance Obligations;
 - (c) any Liquidated Damages which are payable under this Deed are in the nature of liquidated damages, and not a penalty, and are fair and reasonable, and not extravagant or unconscionable (having regard to the greatest loss which the Parties could reasonably anticipate at the time this Deed was made that the Government would suffer); and
 - (d) payments of any such Liquidated Damages represent a genuine and reasonable estimate of fair compensation to the Government for the losses that may reasonably be anticipated from such failure.

Effect of Liquidated Damages

- 18.5 The payment or deduction of Liquidated Damages:
- (a) is without prejudice to the Government's other rights and remedies for breach, delay or performance failures of the Purchaser; and

- (b) shall not relieve the Purchaser from its obligation to execute the Works or provide the Services, or from any other of its obligations, duties or liabilities under this Deed and the Land Grant.

19 DEFAULTS CAPABLE OF REMEDY

- 19.1 If a Default occurs which in the sole opinion of the Government is a Default which is capable of being remedied, then the Government may give the Purchaser notice in writing specifying that the Default has occurred and the nature of the Default ("**Default Notice**").
- 19.2 On receipt of a Default Notice, the Purchaser shall promptly prepare and submit to the Government for its approval a draft plan describing the actions and measures the Purchaser shall diligently pursue for the remedying or curing of the Default subject to the Default Notice ("**Draft Cure Plan**").
- 19.3 Within a reasonable period after receipt of a Draft Cure Plan pursuant to clause 19.2, the Government shall notify the Purchaser either of its:
 - (a) approval of the Draft Cure Plan; or
 - (b) rejection of the Draft Cure Plan, and provide reasons to the Purchaser for its rejection.
- 19.4 If the Government approves a Draft Cure Plan in accordance with clause 19.3(a) ("**Approved Cure Plan**") the Purchaser shall remedy or cure the Default in accordance with the Approved Cure Plan within the period of time specified in the Approved Cure Plan ("**Applicable Cure Period**").
- 19.5 Without prejudice to any other rights or remedies the Government may have in relation to any loss that may have been suffered as a result of the Default, if the Purchaser remedies or cures the Default in accordance with clause 19.4, the Default shall be deemed to have been remedied or cured with effect from the date on which full compliance with clause 19.4 is met as confirmed in writing by the Government.
- 19.6 If the Government rejects a Draft Cure Plan pursuant to clause 19.3(b), the Purchaser, in consultation in good faith with the Government, shall amend the Draft Cure Plan to meet the requirements of the Government and submit the amended Draft Cure Plan to the Government for its approval within five (5) Business Days of the date of the rejection of the Draft Cure Plan, in which case clause 19.3 shall apply to the amended Draft Cure Plan.
- 19.7 If the Government approves the amended Draft Cure Plan submitted in accordance with clause 19.6, the provisions of clause 19.4 shall be applicable. If the Government does not approve the amended Draft Cure Plan, then the Default shall be deemed a Default not capable of being remedied for the purposes of clause 21.

20 STEP-IN RIGHTS

- 20.1 If:
 - (a) a Termination Event (other than the event specified in clause 21.1(ii)) occurs and this Deed is not terminated; or

(b) the Government reasonably forms the opinion that unless the Government exercises some or all of its rights under this clause 20, there is or is likely to be:

- (i) a hazard to users of the Hospital or the public;
- (ii) a material risk of substantial damage to the Lot or the Hospital; or
- (iii) a material risk to the environment,

then the Government may elect to, and if it so elects the Purchaser shall assist the Government wherever and however possible to ensure that the Government or any third party designated by the Government is able to:

- (c) temporarily take or assume total or partial possession, management and control of the Hospital or the Services; and
- (d) take such other steps as in the reasonable opinion of the Government are necessary or desirable to continue the provision of the Services in accordance with the Service Obligations and Schedule 2 Annexes as required by this Deed or to minimise:
 - (i) a hazard to users of the Hospital or the public;
 - (ii) a material risk of substantial damage to the Lot or the Hospital; or
 - (iii) a material risk to the environment,

as applicable

(each a **"Step-in Right"**).

20.2 For the avoidance of doubt, the reference in clause 20.1(c) includes the right of the Government, or any third party designated by the Government, to use all or some of the Hospital Equipment, Hospital Facilities and Personal Data of employees and patients of the Hospital for the purpose of exercising a Step-in Right.

20.3 Unless it is not reasonably practical to do so, the Government shall give prior notice to the Purchaser of its decision to exercise a Step-in Right.

20.4 Upon the Government exercising any of its Step-in Rights, the Purchaser's rights and obligations under this Deed are suspended to the extent necessary to permit the Government to exercise such a Step-in Right.

20.5 The Purchaser:

- (a) irrevocably, and as security for the performance of the Purchaser's obligation under this Deed, appoints the Government, and such persons as are from time to time designated by the Government, jointly and severally as its attorney with full power and authority to exercise a Step-in Right; and
- (b) agrees to ratify and confirm whatever action an attorney appointed under clause 20.5(a) takes in accordance with that clause.

20.6 If the Government has exercised a Step-in Right, the Government may cease to exercise such a Step-in Right at any time and in any event shall cease to exercise a Step-in Right as soon as:

- (a) if the Government has exercised a Step-in Right pursuant to clause 20.1(a), the applicable Termination Event is cured or remedied or rectified or the Government ceases to pursue a cure or remedy of the relevant Default; or
 - (b) if the Government has exercised a Step-in Right pursuant to clause 20.1(b), the relevant hazard or material risk is averted or overcome or, where it has materialised, its consequences have been mitigated or otherwise dealt with to the Government's reasonable satisfaction,
- (each a "**Step-Out Event**").

20.7 Unless it is not reasonably practical to do so, the Government shall give prior notice to the Purchaser of its decision to cease exercising a Step-In Right.

20.8 The Purchaser acknowledges and agrees that:

- (a) the Government shall not have any liability to the Purchaser, and the Purchaser shall not be entitled to make any Claim, arising out of or in connection with the exercise of a Step-in Right by the Government unless the Government acts in bad faith in the exercise of such a right;
- (b) the Government is not obliged to remedy or cure any Default or to overcome or mitigate any hazard, risk or hazard or risk consequences in respect of which the Government exercises a Step-in Right;
- (c) the exercise of a Step-in Right, subject to clause 20.8(d), does not limit any other right of the Government under this Deed, including any rights arising pursuant to the applicable Default; and
- (d) upon the Government ceasing to exercise a Step-in Right pursuant to clause 20.6:
 - (i) the Purchaser shall immediately recommence performance of the Purchaser's obligations which were suspended pursuant to clause 20.4; and
 - (ii) the Government shall, at the cost and expense of the Purchaser, give reasonable assistance to the Purchaser to ensure that the process of the Government ceasing to exercise such a Step-in Right and the Purchaser recommencing to perform its obligations is effected as smoothly as possible.

20.9 The exercise by the Government of a Step-in Right shall not obligate the Government in any way to provide any Services in accordance with the terms of this Deed including the Service Obligations and Schedule 2 Annexes.

PART F: TERMINATION

21 TERMINATION

21.1 At any time after the occurrence of the following events, the Government may terminate this Deed immediately on notice to the Purchaser:

- (a) a Default which is not capable of being remedied;

- (b) a Default which is subject to an Approved Cure Plan which is not remedied during the Applicable Cure Period;
- (c) the Land Grant Termination;
- (d) if the Purchaser becomes Insolvent;
- (e) a Change of Control in the Purchaser without the prior written consent of the Government;
- (f) the Purchaser wholly or substantially abandons the Hospital;
- (g) it becomes unlawful for the Purchaser to operate all or a material part of the Hospital;
- (h) as a result of a Force Majeure Event in accordance with clause 23.6;
- (i) a Step-Out Event has not occurred within three (3) months from the date of the event triggering a Step-in Right;
- (j) the Purchaser does not comply with its probity obligations under clauses 29.1 and 29.5;
- (k) the Purchaser is in breach of any of the warranties or representations in this Deed,

("Termination Events").

- 21.2 If this Deed is terminated by the Government pursuant to clause 21.1, such termination shall be at no loss or cost to the Government and the Purchaser hereby indemnifies the Government against any such losses or costs which the Government may suffer as a result of any such termination pursuant to clause 21.1.
- 21.3 Termination of this Deed pursuant to clause 21.1 is without prejudice to any other rights, remedies or claims available to the Government which have accrued under this Deed, the Land Grant or any other rights or remedies of the Government.

22 EXIT MANAGEMENT PLAN AND CONSEQUENCES OF TERMINATION

- 22.1 The Purchaser shall, at least one (1) year prior to the Scheduled Service Commencement Date, submit to the Government a draft Exit Management Plan to ensure the orderly cessation of operation and closure of the Hospital or transition of the Services from the Purchaser to the Government or any third party designated by the Government in the event of termination or expiry of this Deed for any reason. Following its review of the Exit Management Plan, the Government may either:

- (a) require amendments to the Exit Management Plan; or
- (b) approve the Exit Management Plan.

The Purchaser shall immediately make any amendments as reasonably required by the Government.

- 22.2 The Purchaser shall conduct a review on a two (2) yearly basis of the Exit Management Plan, and shall update and revise the Exit Management Plan:
 - (a) following a review of the Exit Management Plan, but only to the extent required to reflect any changes in the Services since the last review;

- (b) immediately on notice of termination of this Deed; and
 - (c) twelve (12) months prior to the Expiry Date.
- 22.3 The Purchaser shall submit the revised Exit Management Plan to the Government for its review. Following its review of the revised Exit Management Plan, the Government may either:
 - (a) require amendments to the revised Exit Management Plan; or
 - (b) approve the revised Exit Management Plan.

The Purchaser shall immediately make any amendments as reasonably required by the Government.

- 22.4 On the Termination Date or Expiry Date, whichever is the earlier, the Government may elect whether or not all or part of the Exit Management Plan shall be implemented. In the event that the Government elects the implementation of all or part of the Exit Management Plan, the Purchaser shall comply with the Exit Management Plan and co-operate fully with the Government to ensure an orderly cessation of operation and closure of the Hospital or transition of the Services and handover of the Hospital to the Government or, at the Government's request, a third party designated by the Government.
- 22.5 On the Termination Date or Expiry Date, whichever is the earlier, the Government may exercise its rights under Special Condition No.14 [Termination] of the Land Grant.
- 22.6 Within the twelve (12) month period after the Termination Date or Expiry Date, whichever is the earlier, the Government may, or a third party designated by the Government may, at the Government's option, elect to purchase or lease all or some of the Hospital Equipment or Hospital Facilities (other than those which are fixtures to the Lot or part thereof, which shall become Government's property upon the surrender, re-entry or Government's taking back of possession of the Lot or the part thereof concerned):
 - (a) at an amount calculated in accordance with clause 22.7; and
 - (b) on terms and conditions to be mutually agreed by the Parties.
- 22.7 The amount of purchase price or rental of any Hospital Equipment or Hospital Facilities purchased or leased by the Government in accordance with clause 22.6 shall be determined by a independent professional valuer of such hospital equipment or facilities to be appointed by the Parties by mutual agreement. The cost of a valuation under this clause 22 shall be borne equally by the Government (or its designated third party) and the Purchaser.

23 FORCE MAJEURE

- 23.1 In the event that the Purchaser is delayed or prevented from performing its obligations under this Deed by a Force Majeure Event, the Purchaser shall:
 - (a) at the earliest possible opportunity, give notice in writing to the Government of the Force Majeure Event, stating the:
 - (i) nature and cause of the Force Majeure Event;
 - (ii) commencement date of the Force Majeure Event;

- (iii) manner in which its performance of its obligation under this Deed will be delayed or prevented; and
 - (iv) likely duration in which its performance of its obligations under this Deed will be delayed or prevented by such Force Majeure Event;
 - (b) use all reasonable endeavours to mitigate the effects of the Force Majeure Event on the performance of its obligations under this Deed; and
 - (c) resume performance of its obligations as soon as reasonably possible after the removal of the cause of the Force Majeure Event.
- 23.2 Within five (5) Business Days after the giving of notice in clause 23.1 of a Force Majeure Event, the Purchaser shall provide proof, in reasonable detail, of the matters set out in clause 23.1(a).
- 23.3 Notwithstanding any provision of this clause, the Purchaser cannot claim relief if the Force Majeure Event is:
- (a) attributable to its wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event; or
 - (b) one where a reasonable service provider in the position of the Purchaser should have foreseen and provided for the cause in question.
- 23.4 As soon as practicable following the Purchaser's notification of the Force Majeure Event, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate measures to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Deed, which includes taking or procuring the taking of all steps to overcome or minimise the consequences of the Force Majeure Event in accordance with best industry practice.
- 23.5 The Purchaser shall notify the Government as soon as practicable after the Force Majeure Event ceases or no longer causes the Purchaser to be unable to comply with its obligations under this Deed. Following such notification, this Deed shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the Parties.
- 23.6 The Government may, during the continuance of any Force Majeure Event, terminate this Deed by notice to the Purchaser if a Force Majeure Event occurs that affects all or a substantial part of the Services and which continues for more than twenty (20) Business Days.

24 SURVIVAL

- 24.1 All terms of this Deed that, by their nature, are intended to survive termination or expiration shall survive any termination or expiration, including without limitation the following clauses: clause 9 (Audit and Access), clause 12 (Indemnity and Liability), clause 13 (Limitation of Liability), clause 17 (Bank Bond and Performance Guarantee), clauses 21.2 and 21.3 (Termination), clause 22 (Exit Management Plan and Consequences of Termination), clause 26 (Intellectual Property), clause 27 (Confidentiality), clause 30 (General) and Schedule 1 (Definitions and Interpretation).

PART G: DISPUTE RESOLUTION

25 ESCALATION AND DISPUTE RESOLUTION

- 25.1 Except where expressly provided otherwise in this Deed, any dispute arising out of or in connection with this Deed shall be resolved in accordance with the procedure set out in Schedule 3 (Escalation and Dispute Resolution).

PART H: INTELLECTUAL PROPERTY, DATA PROTECTION AND CONFIDENTIALITY

26 INTELLECTUAL PROPERTY

- 26.1 The Purchaser acknowledges and agrees that the Government is the owner of all Intellectual Property Rights, whether existing as at the Effective Date or created afterwards, in and to any documents or other works provided to the Purchaser in connection with this Deed.
- 26.2 The Government acknowledges and agrees that the Purchaser is the owner of all Intellectual Property Rights, whether existing as at the Effective Date or created afterwards, in and to any documents or other works provided to the Government in connection with this Deed ("**Purchaser Works**"). The Purchaser hereby grants to the Government and its authorised users a non-exclusive, transferable, royalty-free, irrevocable, worldwide and perpetual licence to use, reproduce, modify, adapt and create derivative works of the Purchaser Works for the purposes contemplated in this Deed.
- 26.3 To the extent permissible by law, in relation to the Purchaser Works and the Disclosable Information to the extent it is created by or under the direction of the Purchaser, the Purchaser shall grant or procure from any author involved in the creation of the Purchaser Works :
- (a) a waiver or a consent in favour of the Government and its authorised users of all of the Purchaser's or any such author's rights in connection with its or their authorship of the Purchaser Works or the Disclosable Information (as the case may be), including any moral rights relating thereto;
 - (b) an agreement or consent to all acts and omissions by the Government and its authorised users which would otherwise infringe the Purchaser's or the author's moral or other rights in the Purchaser Works or the Disclosable Information (as the case may be); and
 - (c) an agreement not to assert any such moral or other rights in relation to the Purchaser Works or the Disclosable Information (as the case may be).

Such waiver, consent or agreement shall take effect from the grant of the licence for the Intellectual Property Rights pursuant to clauses 26.2 or 27.2 (as the case may be).

27 CONFIDENTIALITY

- 27.1 Subject to clauses 27.2 and 27.3, the Purchaser shall not use or disclose and shall keep confidential all matters relating to this Deed and shall use its best endeavours to prevent its employees, agents, representatives and Subcontractors from making any use or disclosure to any person of any matters relating hereto.

27.2 The Government reserves the right to disclose to any third party the Disclosable Information as it deems appropriate and the Purchaser grants to the Government a non-exclusive, transferable, royalty-free, irrevocable worldwide and perpetual licence to publish, distribute, make available and communicate the Disclosable Information for this purpose.

27.3 Clause 27.1 shall not apply to any disclosure of information:

- (a) required by any Applicable Law;
- (b) that is reasonably required by any persons engaged by the Purchaser in the performance of the Purchaser's obligations under this Deed (provided such third person is itself subject to confidentiality obligations with respect to the information);
- (c) where the Purchaser can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 27.1;
- (d) to enable a determination to be made under Schedule 3 (Escalation and Dispute Resolution); or
- (e) which is already lawfully in the possession of the Purchaser, prior to its disclosure by the Government.

28 DATA PROTECTION

28.1 The Purchaser shall (and shall procure that any of the Purchaser's personnel or Subcontractors involved in the provision of the Services):

- (a) comply with its obligations under the PDPO;
- (b) only use the Personal Data as reasonably required in connection with the provision of the Services;
- (c) comply with the procedures or processes notified to the Purchaser by the Government with respect to Personal Data from time to time;
- (d) implement and maintain all reasonable technical and organizational measures to maintain security, prevent unauthorized or unlawful access to or processing of Personal Data and accidental loss or destruction of, or damage to, Personal Data; and
- (e) give the Government notice as soon as the Purchaser becomes aware of any breach of its data protection obligations under this Deed, any enforcement proceeding against it under the PDPO or any unauthorised access to, or accidental disclosure of, any Personal Data.

28.2 Unless the Government requires in writing otherwise, the Purchaser shall not disclose the Personal Data to any third parties other than:

- (a) to employees and Subcontractors to whom the disclosure is necessary for the provision of the Services, provided it is made subject to obligations of confidentiality no less onerous than those imposed upon the Purchaser and is consistent with any procedures specified by the Government from time to time; or

- (b) to the extent required by any Government Instrumentality, provided the Purchaser gives notice to the Government of any such disclosure promptly after it becomes aware of that requirement.
- 28.3 At the time of collection of Personal Data from a data subject by the Purchaser or its Subcontractors, the Purchaser shall or shall ensure that:
 - (a) it notifies such data subjects; and
 - (b) each Subcontractor notifies such data subjects,that the data may be used or accessed by the Government or a third party in the event that the Government or a third party assumes the operation of the Hospital in accordance with this Deed for any reason.

PART I: MISCELLANEOUS

29 PROBITY

- 29.1 The Purchaser shall prohibit its employees, agents and Subcontractors who are involved in or in relation to this Deed from offering, soliciting or accepting any advantage as defined in the Prevention of Bribery Ordinance (Cap. 201 Laws of Hong Kong) when conducting business in connection with this Deed.
- 29.2 The Purchaser shall issue to each of its employees, agents and Subcontractors who are involved in or in relation to this Deed a copy of this clause on the Effective Date (or if such employees, agents or Subcontractors are engaged after the Effective Date, on the date of engagement).
- 29.3 The Purchaser shall give and shall ensure that the Government Representative is given all relevant information relating to the performance of the obligations set out in this clause 29 upon request.
- 29.4 If any part of this Deed is subcontracted to or by any person, the Purchaser shall ensure that the probity clause in Schedule 4 (Subcontracting) is included in all Subcontracts (whether or not the Purchaser is a party to such Subcontracts).
- 29.5 The Purchaser shall:
 - (a) procure any contracts pursuant to this Deed by a fair, transparent and competitive bidding process;
 - (b) during any procurement process pursuant to this Deed, follow procedures reasonably intended to identify Subcontractors and other professionals of appropriate quality, capabilities and calibre so that the services meet appropriate quality standards and are provided in a cost-efficient manner; and
 - (c) report to the Government on any agreements or transactions with its related companies/persons] in relation to the Services, this Deed or Land Grant, as and when required by the Government.
- 29.6 If this Deed is terminated in accordance with clause 21.1(j), due notice will be taken by the Government of the breach which may prejudice the standing, approval or eligibility of the Purchaser (as contractor or subcontractor) for inclusion or

consideration in any approved list or pre-qualification exercise for Government contracts.

30 GENERAL

Savings

- 30.1 The Government's obligations under this Deed as a commercial contracting party shall not fetter the powers, discretions and duties of any Government departments or officers under the Applicable Law.

Notices

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

If to Purchaser

Address:

Fax No:

Attention: [state position]

If to the Government

Address:

Fax No:

Attention: [state position]

- 30.3 Where any information or documentation is to be provided or submitted to the Purchaser Representative, it shall be provided or submitted by sending the same by post, facsimile or by hand, leaving the same at:

Address:

Fax No:

- 30.4 Either Party to this Deed may change its nominated address or facsimile number or recipient by prior notice to the other Party.

- 30.5 Notice given by post shall be effective upon the earlier of (i) actual receipt, and (ii) five (5) Business Days after mailing. Notices delivered by hand shall be effective upon delivery. 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 11am 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.

Assignment

- 30.6 The Purchaser may not assign, novate or otherwise dispose of any or all of its rights and obligations under this Deed without the prior written consent of the Government.

Releases and waivers

- 30.7 The rights, powers and remedies conferred on any Party by this Deed and remedies available to any Party are cumulative and are additional to any right, power or remedy which it may have under general law or otherwise.
- 30.8 Any 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 Deed by any 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.
- 30.9 Any relaxation, forbearance, indulgence or delay (together "indulgence") of any 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).

No Agency

- 30.10 Nothing in this Deed shall be construed as creating a partnership or as a contract of employment between the Government and Purchaser.
- 30.11 Save as expressly provided otherwise in this Deed, Purchaser shall not be, or be deemed to be, an agent of the Government and Purchaser shall not hold itself out as having the power to bind the Government in any way.

Entire Agreement

- 30.12 Except where expressly provided otherwise in this Deed, this Deed 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 Deed.

Severability

- 30.13 If any provision of this Deed shall be declared invalid, unenforceable or illegal by the courts of any competent jurisdiction to which it is subject or HKIAC as that term is defined in paragraph 1.1 of Schedule 3 (Escalation and Dispute Resolution), 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 Deed 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.

Counterparts

- 30.14 This Deed may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the Parties shall constitute a full original of this Deed for all purposes.

Costs and Expenses

30.15 Each Party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution of this Deed.

Governing Law and Jurisdiction

30.16 This Deed is governed by and construed in accordance with the laws of Hong Kong. The Purchaser waives all defences of lack of personal jurisdiction and forum non conveniens. The choice of jurisdiction set out in Schedule 3 (Escalation and Dispute Resolution) does not prevent either Party from seeking injunctive relief with respect to a violation of intellectual property rights or confidentiality in any appropriate jurisdiction.

Further Assurance

30.17 Each Party shall do all things and execute all further documents necessary to give full effect to this Deed.

Change of Control

30.18 The Purchaser shall not undergo a Change of Control without the prior written consent of the Government.

IN WITNESS WHEREOF this Deed has been executed by the Parties and is intended to be and is hereby delivered on the day and year first above written.

SIGNED, SEALED and DELIVERED)
by [NAME], [TITLE])
for and on behalf of)
The Government of the Hong Kong)
Special Administrative Region)
in the presence of:)

Witness

Signature: _____

Name: _____

Address: _____

SEALED with the COMMON SEAL of)
[NAME OF THE PURCHASER])
and SIGNED by [NAME], [TITLE])
as a duly authorized signatory)
in the presence of:)

Witnesses

Signature: _____

Name: _____

Address: _____

Schedule 1 – Definitions and Interpretation

1 Interpretation

1.1 In this Deed:

- (a) clause, schedule and paragraph headings do not affect the interpretation of this Deed;
- (b) the schedules and annexes which form part of this Deed have effect as if set out in full in the body of this Deed and any reference to this Deed includes the schedules and the annexes;
- (c) references to clauses and schedules are to the clauses and schedules of this Deed and references to paragraphs are to the paragraphs in the schedules;
- (d) words in the singular shall include the plural and vice versa;
- (e) a gender includes all genders;
- (f) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (g) a reference to a person includes a natural person, corporate or unincorporated body or statutory body (whether or not having separate legal personality) or any other entity and that person's legal and personal representatives, successors and permitted assigns;
- (h) a reference to this Deed is this Deed as amended, varied, supplemented, novated or replaced, except to the extent prohibited by this Deed;
- (i) a reference to a certain document (including legislation) in this Deed or to a provision of legislation includes a modification of such a document or re-enactment of the legislation, a legislative provision substituted for it and a regulation or statutory instrument issued or made under it;
- (j) a reference to writing or written includes faxes;
- (k) a reference to a time of a day shall be construed as a reference to Hong Kong time; and
- (l) any words following the terms “including”, “include”, “in particular” or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2 Definitions

2.1 In this Deed, words that are not defined have the meaning given to them in the Land Grant.

2.2 In this Deed:

- (a) **Applicable Law** means all applicable laws, bye-laws, regulations, policies and codes of conduct, including the Code of Practice.
- (b) **Approved Cure Plan** has the meaning given to it in clause 19.4.

- (c) **Applicable Cure Period** has the meaning given to it in clause 19.4.
- (d) **Authorisations** means permits, licences, approvals and authorisations of any nature.
- (e) **Bank Bond** means the bank bond in substantially the form set out in Annex [V] of the Tender Notice, and includes any replacement bank bonds in accordance with clause 17.7.
- (f) **Bank Bond Validity Period** has the meaning given to it in clause 17.2.
- (g) **Bond Replacement Event** means in respect of the Bank Bond (i) if the issuing bank becomes Insolvent; or (ii) the issuing bank ceases to be licensed under the Banking Ordinance (Cap. 155) or the issuing bank's licence issued pursuant to such Ordinance has been suspended in accordance with such Ordinance; or (iii) the Bank Bond becoming invalid or unenforceable.
- (h) **Business Day** means any day (other than a Saturday or Sunday) on which banks generally are open in Hong Kong.
- (i) **Change of Control** means:
 - (i) If the Purchaser is a company:
 - (A) a change in the shareholding or equity interest representing at least fifteen percentage (15%) of total issue share capital or total equity of the Purchaser;
 - (B) any other event such that a change occurs in the control (as described in (I), (II) or (III) below) of the Purchaser or any company which is a holding company of the Purchaser from that which existed at the Effective Date (whether occurring at one time or through a series or succession of transactions); or
 - (C) a change in the corporate structure of the Purchaser or any company which is a holding company of the Purchaser, which results in a person other than the shareholder of the Purchaser as at the Effective Date:
 - I controlling the composition of the board of directors of the Purchaser;
 - II controlling the voting power of the board of directors or any class of shareholders of the Purchaser, or both; or
 - III holding more than one half of the issued share capital (either beneficially or otherwise) of the Purchaser; or
 - (ii) if the Purchaser is a partnership, a change in any of the partners in the partnership.
- (j) **Claim** means all actions, proceedings, costs, claims and demands whatsoever.
- (k) **Code of Practice** means the Code of Practice for Private Hospitals, Nursing Homes and Maternity Homes issued by the Department of Health of the Government.

- (l) **Consolidation Order** has the meaning given to it in paragraph 2.9(a) of Schedule 3 (Escalation and Dispute Resolution).
- (m) **Deed** means this deed (including all schedules and annexes to it).
- (n) **Default** means a breach of this Deed.
- (o) **Default Notice** has the meaning given to it in clause 19.1.
- (p) **Director of Health** means the Director of Health of the Government.
- (q) **Disclosable Information** means :
 - (i) this Deed;
 - (ii) the Land Grant; and
 - (iii) any reports or information submitted to the Government in accordance with clause 8.
- (r) **Dispute** means a dispute, controversy, difference or claim between the Parties arising out of or in relation to this Deed.
- (s) **Draft Cure Plan** has the meaning given to it in clause 19.2.
- (t) **DRG System** means the International Refined Diagnosis Related Groups System, or any other Diagnosis Related Groups System as approved by the Government from time to time.
- (u) **Effective Date** means the date of this Deed.
- (v) **Eligible Person** means:
 - (i) a holder of a Hong Kong Identity Card; or
 - (ii) a child under eleven (11) years of age who is a resident of Hong Kong.
- (w) **Essential Services** means:
 - (i) general medicine with or without medical sub-specialities;
 - (ii) general surgery with or without surgical sub-specialities;
 - (iii) orthopaedics and traumatology; and
 - (iv) gynaecology.
- (x) **Exit Management Plan** means a plan for the orderly transition of Services from the Purchaser to the Government or a third party designated by the Government, or for ending operation and closure of the Hospital, in the event of termination or expiry of this Deed.
- (y) **Expiry Date** means the date of expiry of the term of the Land Grant.
- (z) **Force Majeure Event** means any cause affecting the performance of the Purchaser's obligations under this Deed arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding:

- (i) any industrial dispute relating to the Purchaser, the Purchaser's employees or any other failure in the Purchaser's supply chain; or
 - (ii) any widespread disease or epidemic.
- (aa) **Governmental Instrumentality** means the government of Hong Kong, and any bureau, department or political subdivision of the government of Hong Kong, and any individual or entity under the direct or indirect control of any such government exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government or any other governmental entity, instrumentality, agency, authority, board, corporation, committee or commission, trust or any independent regulatory authority, in each case within Hong Kong, and any successor to or any assignee of any of the foregoing.
- (bb) **Government Representative** means any representative of the Government or any public officer as designated by the Government from time to time for the purpose of this Deed.
- (cc) **HKIAC** has the meaning given to it in paragraph 1.1 of Schedule 3 (Escalation and Dispute Resolution).
- (dd) **Hong Kong** means Hong Kong, Special Administrative Region of the People's Republic of China.
- (ee) **Hong Kong Identity Card** means an identity card as those terms are defined in the Registration of Persons Ordinance (Cap. 177 Laws of Hong Kong).
- (ff) **Hospital Bed** or **Bed** means beds in the Hospital for accommodation of patients, including in-patients, day patients and babies, as determined by the Director of Health in his sole and absolute discretion.
- (gg) **Hospital Equipment** means the equipment in the Hospital required for the operation of the Hospital in accordance with this Deed.
- (hh) **Hospital Facilities** means the facilities in the Hospital required for the operation of the Hospital in accordance with this Deed.
- (ii) **In-Patient Bed Days** means for each Hospital Bed, a day on which that Hospital Bed was occupied at midnight by an in-patient (which, for the avoidance of doubt, shall not include day patients or out patients).
- (jj) **Insolvent** means the occurrence of any of the following events in relation to an entity:
 - (i) that the entity is unable or admits inability to pay its debts as they fall due or suspends making payments on any of its debts other than in connection with a bona fide dispute;
 - (ii) any appointment of a receiver or administrator in respect of the entity by a Government agency;
 - (iii) any corporate action, legal proceedings or other procedure or step in respect of the winding-up of the entity or the appointment of an insolvency practitioner to manage the entity or any of its affairs; or

- (iv) any corporate action, legal proceedings or other procedure or step taken in relation to:
 - (A) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, bankruptcy or reorganization (by way of voluntary arrangement, scheme of arrangement or otherwise) of the entity; or
 - (B) a composition, assignment or arrangement with any material creditor of the entity,

or any analogous procedure or step taken in any jurisdiction.

(kk) **Intellectual Property Rights** means any patents, copyrights (including derivative works), trade marks, moral rights, design rights and any other intellectual property or proprietary right arising at any time under the laws of any jurisdiction.

(ll) **Key Personnel** means those personnel identified in the Schedule 2 Annexes and those persons substituted or replaced in accordance with clause 7.

(mm) **Key Personnel Period** has the meaning given to it in clause 7.1.

(nn) **Land Grant** has the meaning given to it in Recital D.

(oo) **Land Grant Termination** means any of the following:

- (i) the expiry of the term of the Land Grant;
- (ii) the termination of the Land Grant pursuant to the terms thereof and/or Applicable Laws;
- (iii) the re-entry of the Lot by the Government pursuant to the terms of the Land Grant and/or Applicable Laws;
- (iv) the Land Grant being rescinded, avoided, annulled or otherwise ceasing to be valid or effective for any reason; or
- (v) the Purchaser ceasing to have any estate, right, title, benefit or interest in the Lot as Purchaser under the Land Grant.

(pp) **Liquidated Damages** has the meaning given to it in clause 18.2.

(qq) **Loss** means any liability (including legal expenses) of any kind whatsoever and includes direct and indirect, consequential or special damage, loss of profits, loss of use, loss of revenue, anticipated revenue, interest or other such claim arising from any cause whatsoever whether or not such loss, damage or claim is based on contract, statute, warranty, tort (including negligence), indemnity or otherwise.

(rr) **Material Incident** has the meaning given in clause 8.3.

(ss) **Minimum Requirements** means those land and service related mandatory requirements, minimum acceptable levels and conditions in the conditions of sale and service deed with respect to the Hospital as set out respectively in Sections I, II and III in Annex I of the Tender Notice.

- (tt) **Obstetric Beds** means the Hospital Beds provided for maternity services. For the avoidance of doubt, Obstetric Beds excludes Hospital Beds for newborn babies.
- (uu) **Package Service** means the offering of the Essential Service and Specialty Services to a patient in a Standard Bed at an all-inclusive price. For the avoidance of doubt, a Package Service includes all costs relating to the clinical service and includes the costs of doctor's fees, maintenance fees, diagnostic procedures, surgical operations, laboratory testing, X-ray test, drugs and other miscellaneous items.
- (vv) **Parties** means the parties to this Deed and "**Party**" means any one of them.
- (ww) **Performance Guarantee** means the Performance Guarantee described in clause [IV] of the Tender Notice.
- (xx) **Performance Obligations** means those obligations of the Purchaser listed in column two of the table in Schedule 5 (Liquidated Damages).
- (yy) **Personal Data** has the meaning given to it in the PDPO.
- (zz) **PDPO** means the Personal Data (Privacy) Ordinance (Cap. 486 Laws of Hong Kong).
- (aaa) **Project** means (i) the development, financing, design, engineering, procurement, manufacture, factory testing, transportation, construction, erection, installation, equipping, completion, testing, commissioning, insurance, ownership, operation and maintenance of the Hospital and all necessary facilities and equipment related thereto, located at Tai Po Town Lot No.207, Hong Kong (ii) provision of the Services, and (iii) all activities incidental to any of the foregoing, in accordance with this Deed and the Land Grant.
- (bbb) **Prudent Operating Practice** means those practices, methods, equipment, specifications and standards of safety and performance, (as the same may change from time to time) and that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in the same type of undertaking under the same or similar circumstances, and in any event, in line with internationally applicable medical services standards and practices.
- (ccc) **Purchaser Representative** means the individual notified to the Government as being the Purchaser Representative in accordance with clause 10.1 or any replacement individual.
- (ddd) **Purchaser Works** has the meaning given to it in clause 26.2.
- (eee) **Schedule 2 Annexes** means the annexes to Schedule 2 (Service Obligations).
- (fff) **Schedule of Development of the Lot** means the schedule for the Works set forth in the Schedule 2 Annexes, as amended from time to time in accordance with the terms of this Deed.
- (ggg) **Scheduled Service Commencement Date** means the date set out in column 2 of item (I) in Part B of the schedule to the Land Grant.

- (hhh) **Services** means any or all of the clinical and non-clinical services provided in connection with the Hospital, the Non-Clinical Supporting Facilities and the Clinical and Clinical Supporting Facilities, including the Essential Services and the Specialty Services, in accordance with the requirements of this Deed and the Land Grant.
- (iii) **Service Commencement Date** means the date of the Commencement Certificate.
- (jjj) **Service Obligations** means the obligations listed in Schedule 2 (Service Obligations).
- (kkk) **Service Period** means the period from the Service Commencement Date until the Termination Date or Expiry Date, whichever is the earlier.
- (lll) **Services Price List** has the meaning given to it in paragraph 3 of Schedule 2 (Service Obligations).
- (mmm) **Service Year** means a calendar year from 1 January to 31 December of a year, except that:
- (i) during the first year in which the Service Commencement Date occurs, from the Service Commencement Date to 31 December of that year; and
 - (ii) during the year in which the Termination Date or Expiry Date occurs, from 1 January of that year until the Termination Date or Expiry Date, whichever is the earlier.
- (nnn) **Shortfall Add-on** has the meaning given to it in paragraph 4.3 of Schedule 2 (Service Obligations).
- (ooo) **Specialty Services** means those services listed in the Schedule 2 Annexes under the heading "Specialty Services".
- (ppp) **Standard Bed** means, where more than one category or class of Hospital Beds are provided in the Hospital differentiated by the fees charged for the patient's occupancy, all in-patient beds in the category or class for which the lowest level of occupancy fee and related fees are charged. For the avoidance of doubt, if there is only one category or class of Hospital Beds provided by the Purchaser, such category or class of Hospital Beds shall be a Standard Bed.
- (qqq) **Step-in Right** has the meaning given to it in clause 20.1.
- (rrr) **Step-Out Event** has the meaning given to it in clause 20.6.
- (sss) **Subcontract** means any contract between the Purchaser and a third party pursuant to which the Purchaser agrees to source the provision of any of the Services from that third party.
- (ttt) **Subcontractor** means the contractors or service providers that enter into a Subcontract with the Purchaser.
- (uuu) **Subcontracted Services** means those Services to be provided pursuant to this Deed through a Subcontractor in accordance with clause 14.

(vvv) **Term** means the term of this Deed, as defined in clause 2.1.

(www) **Termination Date** means the date this Deed is terminated in accordance with clause 21.1.

(xxx) **Termination Event** means any of the events triggering termination set out in clause 21.1.

(yyy) **Tender Notice** has the meaning given to it in Recital B.

(zzz) **Tribunal** has the meaning given to it in paragraph 2.3 of Schedule 3 (Escalation and Dispute Resolution).

(aaaa) **Works** means all design, planning, engineering, procurement, supply, manufacturing, factory testing, transport, delivery, construction, erection, installation, completion, pre-commissioning, commissioning, testing, insurance, labour, supervision, training, services, facilities, equipment, supplies, tools, materials and spare parts, utilities and consumables to be furnished by the Purchaser or its Subcontractors or that may be required (i) to design, build, test and complete the Hospital and its related facilities, or (ii) meet other obligations set forth in this Deed and the Land Grant (other than provision of the Services), all in accordance with this Deed and the Land Grant.

Schedule 2 – Service Obligations

1 Services Scope

- 1.1 The Purchaser shall provide the Essential Services, the Specialty Services and the Clinical and Clinical Supporting Facilities.

2 Obstetric Beds

- 2.1 The number of Obstetric Beds shall not be more than the percentage designated in the Schedule 2 Annexes of the total number of Hospital Beds to be provided in the Hospital by the Purchaser as specified in the Land Grant during any Service Year.

3 Price Transparency

- 3.1 The Purchaser shall publish a comprehensive services price list, which provides charging information on:

- (a) Room or bed charges;
 - (b) Diagnostic procedures;
 - (c) Therapeutic services/procedures;
 - (d) Nursing care;
 - (e) Medication, consumables and equipment; and
 - (f) other miscellaneous items as advised by the Government from time to time,
- (“**Services Price List**”),

and shall provide to patients, at regular intervals, lists of chargeable items and their respective costs.

- 3.2 The Services Price List shall be made available to the public, including through publication on the Hospital website and by making printed material readily available and displaying the Services Price List at major facilities within the Hospital, including information desks, admission offices, shroffs and pharmacies.
- 3.3 The Services Price List shall be current, up-to-date, detailed, clear and easy-to-read and provide a detailed breakdown of the costs and charges that may be incurred by a patient during his or her admission at the Hospital.

4 Packaged Charging

- 4.1 In each Service Year, the Purchaser shall provide at least the Minimum Number of the In-Patient Bed Days in that Service Year through Standard Beds as a Package Service to Eligible Persons.

The Minimum Number of In-Patient Bed Days is the percentage of the total number of In-Patient Bed Days which is designated as the “Minimum Number” for packaged charging in the Schedule 2 Annexes.

The Actual Minimum Number is the actual minimum number of In-Patient Bed Days to be provided as Standard Beds as a Package Service to Eligible Persons in a Service Year and shall be calculated as follows:

Actual minimum number = [percentage designated as the "Minimum Number" for packaged charging in the Schedule 2 Annexes] x ([total In-Patient Bed Days in a Service Year])

For example, if 30% is the relevant percentage and there are 10000 total In-Patient Bed Days in a Service Year, the actual minimum number of In-Patient Bed Days to be provided through Standard Beds as a Package Service to Eligible Persons should be 3000.

- 4.2 When determining if the Minimum Number of In-Patient Bed Days to be provided through Standard Beds as a Package Service to Eligible Persons in a Service Year has been met, the number of In-Patient Bed Days provided as Obstetric Beds shall be disregarded.
- 4.3 In the event that the Purchaser fails to provide the Minimum Number of the In-Patient Bed Days in a Service Year (Year A) through Standard Beds as a Package Service to Eligible Persons, the Purchaser shall provide at least the following number of In-Patient Bed Days through Standard Beds as a Package Service to Eligible Person in the Service Year immediately following the Service Year in which the shortfall occurred (Year B):
- (a) two times (2 x) the number of In-Patient Bed Days that were in shortfall from the Actual Minimum Number in Year A ("**Shortfall Add-on**"); and
 - (b) the Actual Minimum Number in Year B.

For example, if the total number of In-Patient Bed Days in Year A is 10000 and only 2700 In-Patient Bed Days provided through Standard Beds as a Package Service to Eligible Persons, then there is a shortfall of 300 In-Patient Bed Days in Year A. Therefore, if in Year B there are again 10000 total In-Patient Bed Days, then in Year B, the Purchaser will need to provide:

- (i) 600 In-Patient Bed Days (i.e. 2 x 300= 600) (the Year A Shortfall Add-on); plus*
 - (ii) the 3000 In-Patient Bed Days as Standard Beds as a Package Service to Eligible Persons (i.e. 30% x 10000) (the Year B Minimum Number),*
- being a total of 3600 In-Patient Bed Days through Standard Beds as a Package Service to Eligible Persons.*

- 4.4 In relation to the Shortfall Add-on:
- (a) any In-Patient Bed Days taken up through Standard Beds provided as a Package Service to Eligible Persons in Year B shall first offset any Year A Shortfall Add-on before being offset against the Actual Minimum Number in Year B;
 - (b) the Shortfall Add-on shall only be redeemable in the Service Year immediately following the Service Year in which the shortfall occurred, that is Year B; and
 - (c) if the number of In-Patient Bed Days taken up through Standard Beds provided as a Package Service to Eligible Persons in Year B fails to meet the Year A Shortfall Add-on, then Liquidated Damages shall be payable for the deficit of the Shortfall Add-on in accordance with clause 18.2 (Liquidated Damages).

For example, if the Shortfall Add-on in Year A is 600 In-Patient Bed Days and the total number of In-Patient Bed Days in Year B is also 10000, then 3600 In-Patient Bed Days shall be provided through Standard Beds as Package Service to Eligible Persons in Year B.

Scenario 1: If only 300 In-Patient Bed Days were provided through Standard Beds as a Package Service in Year B, there would be a deficit from the Shortfall Add-on of 300 In-Patient Bed Days (i.e. 300 (In-Patient Bed Days actually provided) – 600 (Shortfall Add-on) = -300 In-Patient Bed Days).

Therefore Liquidated Damages would be payable in respect of 300 In-Patient Bed Days at the end of Year B and the Year B Shortfall Add-on would be 6000 In-Patient Bed Days (2 x 3000).

Scenario 2: If 3000 In-Patient Bed Days were provided through Standard Beds as a Package Service to Eligible Persons in Year B, then the Year A Shortfall Add-on of 600 has been met and Liquidated Damages are not payable. However, as the number of In-Patient Bed Days provided through Standard Beds as a Package Service to Eligible Persons in Year B shall first offset the Year A Shortfall Add-on of 600 In-Patient Bed Days, only 2400 In-Patient Bed Days will offset against the Actual Minimum Number for Year B. Therefore, 1200 In-Patient Bed Days will be the Year B Shortfall Add-on ((3000-2400) x 2 = 1200).

- 4.5 The Purchaser shall offer the Package Service on the basis of the DRG System.

5 Services for Eligible Persons

- 5.1 The Purchaser shall ensure that more than fifty percent (50%) (or higher percentage if designated in the Schedule 2 Annexes) of the total In-Patient Bed Days in a Service Year shall be for Services to Eligible Persons. For the avoidance of doubt, the Minimum Number of the In-Patient Bed Days in a Service Year provided through Standard Beds as a Package Service to Eligible Persons can be counted as part of the foregoing requirement.

Schedule 2 Annexes

[Insert Tenderer's proposals accepted by the Government]

[Schedule 2 Annexes must include:

- *Specialty Services*
- *Percentage cap of the number of Obstetric Beds as against the total number of Hospital Beds to be provided in the Hospital*
- *"Minimum Number" of the In-Patient Bed Days in a Service Year provided through Standard Beds as a Package Service to Eligible Persons.*
- *Percentage of In-Patient Bed Days in a Service Year for Services to Eligible Persons.*
- *Schedule of Development of the Lot*
- *Key Personnel and their respective key responsibilities*
- *Any additional proposals by the Purchaser which are accepted by the Government, for example:*
 - *Patient-care related facilities;*
 - *Manpower-to-bed ratios;*
 - *Provision of training programmes/ facilities;*
 - *Clinical governance structure].*

Schedule 3 – Escalation and Dispute Resolution

1 Mediation

- 1.1 The Parties agree to attempt to resolve any Dispute (including, for the avoidance of doubt, any question as to the existence, validity, termination or interpretation of this Deed) by first referring the Dispute to mediation at the Hong Kong International Arbitration Centre (“**HKIAC**”) and in accordance with its then current mediation rules (“**Mediation Rules**”).
- 1.2 The Parties shall agree on the appointment of a mediator. If the Parties fail to agree on the appointment of a mediator within fourteen (14) days of the receipt of a request for mediation by one Party from the other, the HKIAC shall appoint a single accredited mediator.
- 1.3 Each Party shall bear its own costs of the mediation. The language of the mediation shall be English.
- 1.4 If the mediation is either (i) terminated by the agreement of the Parties or by reason of any of the matters set out in the Mediation Rules; or (ii) abandoned by the mediator; or (iii) otherwise concluded without the Dispute being resolved (“**Cessation of the Mediation**”), then such Dispute shall be referred to the Hong Kong courts for resolution, unless the Government decides in its absolute discretion to refer the Dispute to arbitration in accordance with paragraph 2 (Arbitration) herein, in which case the Governments shall notify the Purchaser of its election within 60 days of the Cessation of the Mediation and thereafter the Dispute shall be settled exclusively and finally in accordance with paragraph 2 (Arbitration).

2 Arbitration

- 2.1 Any Dispute that cannot be resolved by the Parties pursuant to paragraph 1 (Mediation) and which the Government has notified the Purchaser of its election to settle the Dispute by arbitration within 60 days of the Cessation of the Mediation as provided for in paragraph 1.4, shall be submitted by either Party to arbitration in accordance with this paragraph 2 (Arbitration) irrespective of the amount in Dispute or whether such Dispute would otherwise be considered justifiable or ripe for resolution by any court. This Deed and the rights and obligations of the Parties shall remain in full force and effect pending the award of such arbitration proceeding, which award, if appropriate, shall determine whether and when any termination shall become effective.
- 2.2 Each arbitration between the Parties shall be held and finally settled in the HKIAC in Hong Kong, and shall be conducted pursuant to the UNCITRAL Arbitration Rules in force at the time the arbitration commences. The seat of arbitration shall be Hong Kong. The appointing authority shall be the HKIAC.
- 2.3 The arbitration shall be conducted by an arbitration tribunal (“**Tribunal**”) consisting of three (3) arbitrators. Subject to paragraph 2.5, each Party shall appoint one (1) arbitrator with, in the case of a Dispute of a technical nature, knowledge and experience in such technical matters. The two (2) arbitrators so appointed shall, subject to paragraph 2.5, jointly nominate the third (3rd) arbitrator who shall serve as the chairperson of the Tribunal. If within thirty (30) days after the receipt of a Party’s notification of the appointment of an arbitrator the other Party has not notified the first

party of the arbitrator it has appointed, the first party may request the HKIAC to appoint the second arbitrator. Likewise, if within thirty (30) days after the confirmation of both arbitrators appointed, the two (2) arbitrators have not agreed on the choice of the third arbitrator (the chairperson), the third arbitrator (the chairperson), then such arbitrator shall, subject to paragraph 2.5, be appointed by the HKIAC.

- 2.4 Any arbitration commenced pursuant to paragraph 2 shall be completed within two hundred and forty (240) days of the confirmation of the composition of the Tribunal absent agreement of the Parties to an extension of such time limit or unless the Tribunal determines that the interest of justice or the complexity of the case requires that such limit be extended. The Parties shall be entitled to discovery of documents in accordance with the direction of the Tribunal. All direct testimony shall be offered by way of affidavit. The Party submitting an affidavit shall make the affiant available for cross-examination before the Tribunal. The Parties waive any claim to any damages in the nature of punitive, exemplary or statutory damages in excess of compensatory damages, and the Tribunal is specifically divested of any power to award such damages. The award of the Tribunal shall be final and binding on the Parties (i.e., not subject to appeal), and the Parties agree that an arbitration award may be entered in any court having jurisdiction thereof. The Tribunal shall have the right and authority to grant injunctive, declaratory and other equitable relief.
- 2.5 Only persons who are engineers, attorneys, financial advisors, former judges, managers, executives and other professionals with technical or legal experience related to the design, construction, financing, ownership, operation and/or maintenance of medical or healthcare facilities shall be appointed as arbitrators. No arbitrator shall be a present or former employee or agent of, or consultant or counsel to the Purchaser or its affiliates or any Governmental Instrumentality or a national of a state with which the domicile of any Party does not maintain diplomatic relations. The chairperson of the Tribunal shall not be a permanent resident of Hong Kong.
- 2.6 The arbitration shall be conducted in the English language and all documents submitted in connection with such proceeding shall be in the English language or, if in another language, accompanied by a certified English translation.
- 2.7 The Parties further undertake to carry out without delay the provisions of any arbitration award or decision, and each agrees that any such award or decision may be enforced by any court or tribunal having jurisdiction.
- 2.8 The Parties shall each pay one-half (½) of any advances on costs required under the UNCITRAL Arbitration Rules or as otherwise requested by the Tribunal. The costs of such arbitration shall be finally determined and allocated between the Parties by the Tribunal in its award.
- 2.9 The Parties consent to the consolidation of arbitrations commenced under this paragraph 2 as follows:
- (a) if two or more arbitrations are commenced under this paragraph 2, any Party named as claimant or respondent in any of these arbitrations may petition to any of the arbitral tribunals appointed in these arbitrations for an order that all or any of these arbitrations be consolidated in a single arbitration ("**Consolidation Order**"). The petition for a Consolidation Order shall be made as soon as practicable and the Party making such application shall give notice to the other Parties to the arbitrations sought to be consolidated;

- (b) in deciding whether to make a Consolidation Order, the arbitral tribunal petitioned shall consider any and all of the following:
 - (i) whether the several arbitrations raise common issues of fact and/or law which could result in conflicting awards or obligations;
 - (ii) whether any Dispute raises issues which are substantially the same as, or connected with issues, either based on facts or law, raised in a dispute which has already been referred to arbitration under any other agreement to which the Parties are also parties; and
 - (iii) whether to consolidate the several arbitrations would serve the interests of justice and efficiency;
- (c) where such a Consolidation Order is made, the arbitral tribunals involved may give such directions as the interests of fairness, economy and expedition require including:
 - (i) that the documents disclosed by the Parties in one arbitration shall be made available to the other Parties to the other arbitration upon such conditions as the tribunals may determine; and
 - (ii) that the evidence given in one arbitration shall be received and admitted in the other arbitration, subject to all Parties being given a reasonable opportunity to comment upon it and subject to such other conditions as the arbitral tribunals may determine;
- (d) on the making of a Consolidation Order, the arbitral tribunals involved may determine amongst themselves as to which arbitral tribunal is to have carriage of the consolidated arbitral proceeding, having regard to the facts or law in issue and the interests of justice and efficiency;
- (e) in the absence of an agreement between the arbitral tribunals under paragraph 2.9(d), the HKIAC shall determine which arbitral tribunal is to have carriage of the consolidated arbitral proceeding, having regard to the facts or law in issue and the interests of justice and efficiency;
- (f) on the making of a determination under paragraph 2.9(d) or 2.9(e), the appointments of those arbitral tribunal members that do not have carriage of the consolidated arbitral proceeding shall be considered terminated on the making of the determination. Such termination is without prejudice to:
 - (i) the validity of any acts done or orders made by them prior to the termination;
 - (ii) their entitlement to be paid their proper fees and disbursements; and
 - (iii) the date on which any claim or defence was raised for the purpose of applying any limitation period or any like rule or provision;
- (g) in any arbitration consolidated in accordance with this paragraph 2, the arbitral tribunal granted carriage of the consolidated arbitral proceeding may exercise jurisdiction with respect to all issues arising out of the arbitral proceedings so consolidated; and

- (h) each of the Parties waives any objections it may have as to the validity and/or enforcement of any arbitral awards made by the arbitral tribunal following the consolidation of arbitral proceedings in accordance with this sub-paragraph 2.9 to the extent such objections are based on the fact that consolidation of the same has occurred.

2.10 The provisions of schedule 2 of the Arbitration Ordinance (Cap. 609 Laws of Hong Kong) shall not apply to any arbitration commenced pursuant to this paragraph 2.

3 Obligations Continuing

Unless otherwise agreed in writing, the existence of a Dispute shall not relieve either Party from the performance of its obligations under this Deed which is not the subject of the Dispute.

Schedule 4 – Subcontracting

1 Services which may be subcontracted without consent

1.1 Services of a non-clinical nature provided at any of the following venues may be subcontracted without consent:

- Offices;
- Storerooms;
- Supplies rooms;
- Healthcare training facilities;
- Kitchens for providing meals to patients;
- Canteens;
- Retail shops;
- Food and beverage outlets;
- Automatic Teller Machines;
- Laundry
- Parking spaces;
- Accommodation Facilities;
- Staff Quarters.

2 Terms which shall be included in any Subcontract

2.1 Confidentiality

1 [A] Subject to clause 1[B], the Subcontractor shall not use or disclose and shall keep confidential all matters relating to this contract and shall use its best endeavours to prevent its employees, agents, representatives and subcontractors from making any use or disclosure to any person of any matters relating hereto.

1 [B] Clause 1[A] shall not apply to any disclosure of information:

(i) required by any Applicable Law;

(ii) that is reasonably required by persons engaged by the Subcontractor in the performance of the Subcontractor's obligations under this contract (provided such third person is itself subject to confidentiality obligations with respect to the information);

(iii) where the Subcontractor can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of this contract; or

(iv) which is already lawfully in the possession of the Subcontractor, prior to its disclosure by the Purchaser.

2.2 Probity

2 [A] The Subcontractor shall prohibit its employees, agents and subcontractors who are involved in or in relation to this contract from offering, soliciting or accepting any advantage as defined in the Prevention of Bribery Ordinance, (Cap. 201 Laws of Hong Kong) when conducting business in connection with this contract.

2 [B] The Subcontractor shall issue to each of its employees, agents and its subcontractors who are involved in or in relation to this contract a copy of this clause on the commencement date of this contract (or if such employees, agents or subcontractors are engaged after the commencement date of this contract, on the date of engagement).

2 [C] The Subcontractor shall give and shall ensure that each representative of the Purchaser (the "Representative") and any persons authorised by him in writing are given all relevant information relating to the performance of the obligations set out in this clause (Probity) on request.

2 [D] If the whole or any part of this contract is subcontracted to any person, the Subcontractor shall ensure that the terms of this clause (Probity) are included in all subcontracts at all levels (whether or not the Subcontractor is a party to such subcontracts).

2 [E] The Subcontractor shall:

- (a) procure any contracts pursuant to this contract by a fair, transparent and competitive bidding process;
- (b) during any procurement process pursuant to this contract, follow procedures reasonably intended to identify subcontractors and other professionals of appropriate quality, capabilities and calibre so that the services meet appropriate quality standards and are provided in a cost-efficient manner; and
- (c) report agreements or transactions with its related companies/persons in relation to the Services, this contract or Land Grant as when and required by the Government.

2 [F] If the Subcontractor commits a breach of any provision of 2 [A] or 2 [E] of this clause (Probity), the Purchaser shall have the right to terminate this contract by five (5) Business Days' prior notice in writing to the Subcontractor, without entitling the Subcontractor to any compensation whatsoever, and due notice will be taken by the Government of the breach which may prejudice the standing, approval or eligibility of the Subcontractor (as contractor or subcontractor) for inclusion or consideration in any approved list or pre-qualification exercise for Government contracts. The parties to this contract acknowledge and agree that damages may not be an adequate remedy for any breach of this clause (Probity), and that in the event of any such breach, specific performance shall be an appropriate remedy.

2 [G] The Purchaser declares that to the extent that any of its rights or interests arises out of, relates to or results from any of the provisions of clauses 2 [B], 2 [C], 2 [D] and 2 [F], it acquires, holds and maintains such rights and interests on its own behalf and on behalf of and for the benefit of the Government.

2.3 Data Protection

3 [A] The Subcontractor shall (and shall procure that any of its employees, agents and subcontractors involved in the provision of the services under this contract):

- (a) comply with its obligations under the PDPO;
- (b) only use the Personal Data as reasonably required in connection with the provision of the services;
- (c) comply with the procedures or processes notified to the Subcontractor by the Purchaser with respect to Personal Data from time to time;
- (d) implement and maintain all reasonable technical and organizational measures to maintain security, prevent unauthorized or unlawful access to or processing of Personal Data and accidental loss or destruction of, or damage to, Personal Data; and
- (e) give the Purchaser notice as soon as the Subcontractor becomes aware of any breach of its data protection obligations under the agreement or of any enforcement proceeding against it under the PDPO or any unauthorised access to, or accidental disclosure of, any Personal Data.

3 [B] Unless the Purchaser requires in writing otherwise, the Subcontractor shall not disclose the Personal Data to any third parties other than:

- (a) to employees and subcontractors to whom the disclosure is necessary for the provision of the services, provided it is made subject to obligations of confidentiality no less onerous than those imposed upon the Supplier and is consistent with any procedures specified by the Government from time to time; or
- (b) to the extent required by any regulatory authority, provided the Subcontractor gives notice to the Purchaser of any such disclosure promptly after it becomes aware of that requirement.

3 [C] At the time of collection of Personal Data from a data subject by the Subcontractor or its employees or subcontractors, the Subcontractor shall or shall ensure that:

- (a) it notifies such data subjects; and
- (b) each of its subcontractor notifies such data subjects,

that the data may be used or accessed by the Government or a third party in the event that the Government or a third party assumes the operation of the Hospital for any reason.

Schedule 5 – Liquidated Damages

Ref	Performance Obligation	Default	Amount
1	Limit the number of Obstetric Beds to the percentage designated in the Schedule 2 Annexes of the total number of Hospital Beds to be provided in the Hospital by the Purchaser as specified in the Land Grant for the relevant Service Year, in accordance with paragraph 2.1 of Schedule 2.	Making available Obstetric Beds in excess of the percentage cap as specified in Schedule 2 Annexes	For each Obstetric Bed made available exceeding the cap, the additional revenue generated through the provision of an Obstetric Bed when compared with the average revenue generated by other Hospital Beds.
2	Provide the number of In-Patient Bed Days equivalent to the Shortfall Add-on as In-Patient Bed Days through Standard Beds as a Package Service to Eligible Person in the Service Year immediately following the Service Year in which the original shortfall occurred (as further detailed in paragraph 4 of Schedule 2)	Failure to provide the number of In-Patient Bed Days equivalent to the Shortfall Add-on as In-Patient Bed Days through Standard Beds as a Package Service to Eligible Person in the Service Year immediately following the Service Year in which the original shortfall occurred	For each In-patient Bed Day in deficit of the Shortfall Add-on, the difference between the average revenue generated through the provision of non-packaged in-patient service per patient day and that of packaged in-patient service per patient day.
3	Provide more than fifty (50)% (or higher percentage if designated in the Schedule 2 Annexes) of In-Patient Bed Days taken up for service in a Service Year to Eligible Persons in accordance with paragraph 5 of Schedule 2.	Failure to provide more than 50% (or higher percentage if designated in the Schedule 2 Annexes) of In-Patient Bed Days taken up for Service in a Service Year to Eligible Persons.	For each In-Patient Bed Day in deficit of 50% or the designated percentage, the difference between average additional revenue generated for in-patient service for non-Eligible Persons per bed day and the prevailing unit cost of inpatient services per bed day of public hospital managed by Hospital Authority.

Form of Performance Guarantee

THIS PERFORMANCE GUARANTEE (the “**Guarantee**”) is made by way of deed the [] day of [], 2012.

BY

[*INSERT NAME*] [a company incorporated] in accordance with the laws of [] whose registered office address is at [] (the “**Guarantor**”); and

IN FAVOUR OF

The Government of the Hong Kong Special Administrative Region as represented by [●] whose address is at [●] (the “**Government**”, which expression shall, where the context so permits, include its successors and permitted assigns).

WHEREAS:

- (A) By a service deed and all its schedules and annexures (the “**Service Deed**”, which term includes all amendments to, variations of or supplements to it from time to time in force), the Government agrees to engage [*INSERT NAME*], [a company incorporated in accordance with the laws of [] whose registered office address is at []] [[a [*INSERT TYPE*] partnership established in accordance with the laws of [] whose registered office address is at []] (the “**Tenderer**”) in connection with the design, planning, engineering, procurement, construction, completion, pre-commissioning, commissioning, testing, insurance, labour, operation and maintenance and other work necessary to develop, construct, operate and maintain a hospital and its related facilities at Chuen On Road, Tai Po, Hong Kong (Tai Po Town Lot No. 207), in accordance with the terms of the Service Deed. The Service Deed together with the land grant relating to Tai Po Town Lot No. 207 and all its schedules and annexures (the “**Land Grant**”, which term includes all amendments to, variations of or supplements to it from time to time in force), are hereinafter collectively referred to as the “**Contract Documents**”.
- (B) It is a condition of awarding the Contract Documents that the Tenderer procures the execution and delivery to the Government of a guarantee in respect of the obligations of the Tenderer under the Service Deed from the Guarantor in the form of this Guarantee.
- (C) The Guarantor has agreed to guarantee due and prompt performance under the Service Deed by the Tenderer upon their execution.
- (D) It is the intention of the parties that this document be executed as a deed.

NOW IT IS HEREBY AGREED as follows:

- 1. In consideration of the Government entering into the Service Deed with the Tenderer, the Guarantor irrevocably and unconditionally:
 - (a) as primary obligor and not as surety guarantees to the Government the due and punctual performance by the Tenderer of each and all the obligations, warranties, duties and undertakings of the Tenderer under and pursuant to the Service Deed when and if such obligations, duties and undertakings shall become due and performable according to the terms of such contract; and

- (b) agrees, in addition to its obligations set out in Clause 1(a) above, to indemnify the Government against all losses, liabilities, damage and/or reasonable costs and expenses (including in-house and external legal costs) which the Government may incur by reason of any breach by the Tenderer of its obligations, warranties, duties and undertakings under and pursuant to the Service Deed save that this shall not be construed as imposing greater or different obligations or liabilities on the Guarantor than are imposed on the Tenderer under the Service Deed.
2. The Guarantor agrees that it shall not in any way be released from liability under this Guarantee by any act, omission, matter or other thing whereby (in absence of this provision) the Guarantor would or might be released in whole or in part from liability under this Guarantee including, without limitation, and whether or not known to the Guarantor:
- (a) any modification, amendment, alteration or variation in or to any of the conditions or provisions of any of the Contract Documents or the works or the services thereunder; or
 - (b) any arrangement made between the Tenderer and the Government; or
 - (c) any breach or breaches of any of the Contract Documents, whether by the Tenderer or by the Government, or any other default or defaults of the Tenderer or the Government, and whether the same is or are made or occur with or without the Guarantor's knowledge or consent;
 - (d) any waiver, compromise, indulgence, forbearance or forgiveness by the Government whether as to time, payment, performance or any other matter or thing afforded to the Tenderer under any of the Contract Documents; or
 - (e) the taking, variation, renewal or release of, the enforcement of or neglect to perfect or enforce, any right, guarantee, remedy or security from or against the Tenderer or any third party; or
 - (f) any unenforceability, illegality or invalidity of any of the Contract Documents or any of the provisions of any of the Contract Documents or any of the Tenderer's obligations under any of the Contract Documents, so that this Guarantee shall be construed as if there were no such unenforceability, illegality or invalidity; or
 - (g) any avoidance, suspension or termination of any of the Contract Documents; or
 - (h) the dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, bankruptcy, liquidation, winding-up, the appointment of an administrator or receiver, other failure or financial disability or any other analogous event affecting the Tenderer or the Guarantor; or
 - (i) any disability, incapacity or change in the constitution of any or all of the Tenderer, the Government and the Guarantor; or
 - (j) any dispute between the Government and the Tenderer under or in relation to any of the Contract Documents; or
 - (k) any other matter or things (whether similar to the foregoing or otherwise) whereby the obligations of the Guarantor hereunder might under any applicable law be discharged or affected,

and the Guarantor hereby waives notice of the foregoing.

The Guarantor shall be entitled to assert as a defence to any claim for payment or performance of any obligation that (i) such payment obligation has previously been discharged or is not due or (ii) such performance of an obligation is not due or has been performed or satisfied, in each case either as set out under the terms of the Service Deed or in accordance with the no double recovery provisions set out in Clause 4.

3. The Guarantor by this Guarantee authorises the Tenderer and the Government to make any addendum, variation or amendment to the Contract Documents, or the works or services thereunder, the due and punctual performance of which addendum and variation shall be likewise guaranteed by the Guarantor in accordance with the terms of this Guarantee.
4. This Guarantee shall be a primary obligation of the Guarantor but the Government shall be obliged before enforcing this Guarantee (save in the case of a payment default by the Tenderer under the Service Deed where the amount available to be drawn under the bank bonds provided by the Tenderer is insufficient to cover the amount of the payment in default) to give the Guarantor fifteen (15) Business Days notice in writing of its intention to enforce this Guarantee and the Government shall not enforce this Guarantee if within such fifteen (15) Business Day period the Guarantor or the Tenderer remedies the default for which the Government intended to enforce the Guarantee to the Government's satisfaction, as shall be evidenced by a settlement in writing between the Government and the Guarantor. The Government shall not be obliged to: (i) take any action in any court or arbitral proceedings or to obtain any judgment or award against the Tenderer; (ii) subject to the provisions above, grant any time or indulgence to the Tenderer; (iii) make any claim against or any demand of the Tenderer; (iv) enforce any other security held by it; or (v) pursue or exhaust any other right or remedy against the Tenderer or any other person in respect of the obligations of the Tenderer under the Service Deed. In the event that the Government brings proceedings against the Tenderer, the Guarantor will be bound by any findings of fact, interim or final award or judgment made by an arbitrator or the court in such proceedings. For the avoidance of doubt, the Government will not be entitled to double recovery in respect of the same portion of claim and any payments made by the Guarantor hereunder shall automatically release the Tenderer to the extent of such recovery from the Guarantor.
5. This Guarantee is a continuing guarantee and accordingly shall remain in full force and effect from the date first written above (notwithstanding the occurrence of any event set out in Clause 2) until all obligations, warranties, duties and undertakings now or hereafter to be carried out or performed by the Tenderer under the Service Deed shall have been satisfied or performed in full and is not revocable. This Guarantee is in addition to and not in substitution for and shall not merge with any other right, remedy, guarantee or security which the Government may at any time hold for the performance of such obligations and may be enforced without first having recourse to any such security. When all obligations, warranties, duties and undertakings now or hereafter to be carried out or performed by the Tenderer under the Service Deed shall have been satisfied and performed in full, pursuant to the Service Deed, this Guarantee shall become of no further effect and shall be returned to the Guarantor by the Government.
6. Until all amounts which may be or become payable under the Service Deed or this Guarantee have been irrevocably paid in full, the Guarantor shall not, as a result of this Guarantee or any payment or performance under this Guarantee, be subrogated to any right or security of the Government or claim or prove in competition with the Government against the Tenderer, demand or accept repayment of any monies or claim any right of contribution, set-off or indemnity from and against the Tenderer, and any sums received by the Guarantor or the amount of any set-off exercised by the Guarantor in breach of this provision shall be held by the Guarantor in trust for and shall be promptly paid to the Government.

7. Each payment to be made by the Guarantor under this Guarantee shall be made in full in Hong Kong Dollars, without any set off or counterclaim or restriction or condition whatsoever or howsoever arising and free and clear of all deductions or withholdings of any kind whatsoever or howsoever arising. If any deduction or withholding must be made by law (including double taxation treaties), the Guarantor will pay that additional amount which is necessary to ensure that the Government receives on the due date a net amount equal to the full amount which it would have received if the payment had been made by the Tenderer under the Service Deed. The Guarantor shall promptly deliver to the Government any receipts, certificates or other proof evidencing the amounts paid or payable in respect of any such deduction or withholding.
8. The Guarantor shall upon receipt of first written demand (the date of such receipt being the "**Due Date**") make payment in full to the Government of any amount due under this Guarantee. The Guarantor shall pay interest on any amount due under this Guarantee from the Due Date until the date of payment in full calculated on a daily basis at the rate of two (2) percent per annum above the average best lending rate announced by the prevailing note-issuing banks in Hong Kong, namely, the Hongkong and Shanghai Banking Corporation Limited, Standard Chartered Bank (Hong Kong) Limited and Bank of China (Hong Kong) Limited for the time being.
9. The Guarantor will reimburse the Government for all legal and other costs incurred by the Government in connection with the enforcement of this Guarantee.
10. The Government may appropriate any sum paid by the Tenderer, the Guarantor or any other person or recovered or received on account of the obligations which are the subject of this Guarantee as it sees fit and correct.
11. Any settlement or discharge between the Government and the Tenderer and/or the Guarantor shall be conditional upon no settlement with security or payment to the Government by the Tenderer or the Guarantor or any other person being avoided or set aside or ordered to be refunded or reduced by virtue of any provision of enactment relating to bankruptcy, insolvency or liquidation for the time being in force, and accordingly (but without limitation the Government's other rights hereunder), the Government shall be entitled to recover from the Guarantor, as if such settlement or discharge had not occurred, the value of such settlement or security or the amount of any such payment.
12. The Guarantor warrants that this Guarantee is its legally binding obligation and enforceable in accordance with its terms.
13. The Guarantor warrants that it has full power, authority and legal right to enter into and engage in the transactions contemplated by this Guarantee and has taken or obtained all necessary governmental and other consents and authorisations for the giving and implementation of this Guarantee.
14. The Guarantor warrants and confirms to the Government that it has not entered into this Guarantee in reliance upon, nor has it been induced to enter into this Guarantee by any representation, warranty or undertaking made by or on behalf of the Government (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this Guarantee or the Service Deed.
15. Any notice to or demand on the Guarantor to be served under this Guarantee may be delivered or sent by registered post or courier to the Guarantor at:

Address:

Attention:

Telephone: []

or at such other address as it may have notified to the Government in accordance with this Clause.

16. Any such notice or demand shall be deemed to have been served:
 - (a) if delivered by hand, at the time of delivery;
 - (b) if delivered by courier, at the time of delivery as established by a courier's receipt; or
 - (c) if posted, at the time of delivery as established by a postal receipt.
17. In proving service of a notice or demand, it shall be sufficient to prove that delivery was made in accordance with Clause 16.
18. For the purposes of this Guarantee, "**Business Day**" means a day (other than a Saturday or a Sunday) on which banks are generally open in Hong Kong for normal business.
19. No delay or omission of the Government in exercising any right, power or privilege under this Guarantee shall impair or be construed as a waiver of such right, power or privilege nor shall any single or partial exercise of any such right, power or privilege preclude any further exercise of such right, power or privilege or the exercise of any other right, power or privilege.
20. A waiver given or consent granted by the Government under this Guarantee will be effective only if given in writing and then only in the instance and for the purposes for which it is given in writing.
21. A waiver by the Government shall not constitute a continuing waiver and shall not prevent the Government from subsequently enforcing any of the provisions of this Guarantee.
22. If any provision of this Guarantee 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 Guarantee in that jurisdiction, but it shall not affect the validity, enforceability or legality of that provision in another jurisdiction.
23. The Guarantor shall pay all stamp duties and taxes, if any, to which the execution and delivery of this Guarantee may be subject in Hong Kong, or elsewhere and shall indemnify the Government against any and all liabilities arising from any delay or omission to pay any such duties and taxes.
24. This Guarantee is irrevocable. Further, this Guarantee and any rights and obligations of the Government and the Guarantor thereunder shall not be assigned or transferred by the Guarantor except with the prior approval in writing of the Government and on the conditions that:
 - (a) this Guarantee and all rights and obligations of the Government and the Guarantor thereunder shall be assigned or transferred as a whole; and
 - (b) the assignee shall covenant in writing with the Government to perform all the obligations of the Guarantor under this Guarantee.

The Guarantor shall ensure that notice in writing of any assignment or transfer of this Guarantee and all rights and obligations thereunder shall be given to the Tenderer.

25. The Guarantor agrees that any legal action or proceeding arising out of or relating to this Guarantee may be brought in the courts of Hong Kong and irrevocably submits to the jurisdiction of such courts. The Guarantor irrevocably appoints [] to receive for it and on its behalf, service of process issued out of the Hong Kong courts in any legal action or proceedings concerned. Nothing in this paragraph shall affect the right of the Government to join other parties in any proceedings to serve process in any other manner permitted by law but if the said process agent ceases to exist or have an office in Hong Kong, the Guarantor shall forthwith appoint another process agent which shall be a company incorporated in and having its registered office in Hong Kong. The Guarantor expressly consents to the enforcement of any judgment of the Hong Kong courts pursuant to this Clause in any court of any other competent jurisdiction.
26. This Guarantee shall be governed by the laws of Hong Kong.
27. This Guarantee may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument.

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IN WITNESS WHEREOF, this Guarantee has been executed as a deed and has been delivered on the day and year first above written.

EXECUTED as a DEED by)
[NAME OF THE GUARANTOR])
acting by *[NAME]*, *[TITLE]*)
acting under the authority)
of that company, in the presence of:)

Witnesses

Signature: _____

Name: _____

Address: _____

Form of Bank Bond

[LETTERHEAD OF BANK]

To: [THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION]
[]

[]

Dear Sirs,

BANK BOND IN RESPECT OF THE PRIVATE HOSPITAL PROJECT AT CHUEN ON ROAD, TAI PO, HONG KONG (TAI PO TOWN LOT No. 207)

THIS BANK BOND is given the [] day of [] by [NAME OF BANK] a company incorporated in [] and having its registered office at [] (the "**Obligor**") in favour of the Government of the Hong Kong Special Administrative Region (the "**Government**") and is supplemental to a service deed and all its schedules and annexes (the "**Service Deed**", which term includes all amendments to, variations of or supplements to it from time to time in force), by and between

[INSERT NAME], [a company incorporated in accordance with the laws of [] whose registered office address is at []] [a [INSERT TYPE] partnership established in accordance with the laws of [] whose registered office address is at []] (the "**Tenderer**"), and the Government. The Service Deed together with the land grant relating to the captioned lot and all its schedules and annexes (the "**Land Grant**", which term includes all amendments to, variations of or supplements to it from time to time in force), are hereinafter collectively referred to as the "Contract Documents".

Under the Service Deed, the Tenderer agrees to design, carry out planning, engineering, procurement, construction, completion, pre-commissioning, commissioning, testing, insurance, labour and other work necessary to develop, construct, operate and maintain a hospital and its related facilities at Chuen On Road, Tai Po, Hong Kong (Tai Po Town Lot No. 207) as more particularly described in the Service Deed (the "**Project**") and to provide a bank bond in connection with its obligations under the Service Deed up to a maximum aggregate amount of fifty million Hong Kong Dollars (HK\$50,000,000) (the "**Maximum Sum**").

The Obligor has agreed, at the request of the Tenderer, to enter into this on-demand Bank Bond with the Government as a security for the Tenderer's performance of its obligations under the Service Deed (including the Tenderer's obligation to pay for any liquidated damages and other damages and costs).

NOW IT IS HEREBY AGREED as follows:

1. In consideration of the Government entering into the Service Deed with the Tenderer, the Obligor hereby irrevocably and unconditionally undertakes and covenants to pay to the Government, as primary obligor and not merely as surety, on first written demand by way of the demand notice attached hereto without proof or condition, and waiving all rights of objection and defence, any sum or sums which from time to time may be demanded in writing by the Government, provided always that the Obligor shall only be liable to pay the sum or sums so demanded up to the Maximum Sum.

2. A written demand under Clause 1 above must be sent by hand, by registered post or by courier to the address of the Obligor stated above or at such other address as may be notified by the Obligor in writing to the Government from time to time. The Government may make one or more demands under this Bank Bond (subject always to Clause 1).
3. Any such notice or demand shall be deemed to have been served:
 - (a) if delivered by hand, at the time of delivery;
 - (b) if delivered by courier, at the time of delivery as established by a courier's receipt; or
 - (c) if posted, at the time of delivery as established by a postal receipt.
4. In proving service of a notice or demand, it shall be sufficient to prove that delivery was made in accordance with Clause 3.
5. Upon the Government making a written demand on the Obligor, the Obligor shall pay the sum so demanded to the Government unconditionally and immediately on demand without any reference to the Tenderer, and notwithstanding any dispute or difference which may have arisen under or in connection with the Service Deed, or in respect of any amount payable thereunder, and notwithstanding any defence which the Tenderer may have, or request or instruction which may be given to the Obligor by the Tenderer not to pay the same.
6. The Obligor hereby confirms and agrees that it shall not be required or permitted to enquire or make investigations into:
 - (a) the reason(s) or circumstance(s) of any demand hereunder;
 - (b) the respective rights, obligations, duties and/or liabilities of the Government and the Tenderer under the Service Deed; or
 - (c) the authenticity of the Government's written demand or the authority or entitlement of persons signing such demand for and on behalf of the Government,and the aforesaid written demand shall be conclusive of the Obligor's liability under this Bank Bond and as to the amount which the Obligor has to pay to the Government.
7. Payment of any sum demanded under this Bank Bond shall be made in full without any set-off or counterclaim whatsoever or howsoever arising and free and clear of all deductions or withholdings of any kind whatsoever or howsoever arising.
8. Payment of any sum demanded under this Bank Bond shall be made in Hong Kong Dollars to the account specified in the relevant demand.
9. For the avoidance of doubt, the Obligor agrees that its liability hereunder shall not be discharged, released, affected or impaired in any way by:
 - (a) any modification, amendment, alteration or variation in or to any of the conditions or provisions of any of the Contract Documents or the works or the services thereunder; or
 - (b) any arrangement made between the Tenderer and the Government; or
 - (c) any breach or breaches of any of the Contract Documents, whether by the Tenderer or by the Government, or any other default or defaults of the Tenderer or the Government, and whether the same is or are made or occur with or without the Obligor's knowledge or consent; or

- (d) any waiver, compromise, indulgence, forbearance or forgiveness by the Government whether as to time, payment, performance or any other matter or thing afforded to the Tenderer under any of the Contract Documents; or
- (e) the taking, variation, renewal or release of, the enforcement of or neglect to perfect or enforce, any right, guarantee, remedy or security from or against the Tenderer or any third party; or
- (f) any unenforceability, illegality or invalidity of any of the Contract Documents or any of the provisions of any of the Contract Documents or any of the Tenderer's obligations under any of the Contract Documents, so that this Bank Bond shall be construed as if there were no such unenforceability, illegality or invalidity; or
- (g) any avoidance, suspension or termination of any of the Contract Documents; or
- (h) the dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, bankruptcy, liquidation, winding-up, the appointment of an administrator or receiver, other failure or financial disability or any other analogous event affecting the Tenderer or the Obligor; or
- (i) any disability, incapacity or change in the constitution of any or all of the Tenderer, the Government and the Obligor; or
- (j) any dispute between the Government and the Tenderer under or in relation to any of the Contract Documents; or
- (k) any other matters or things (whether similar to the foregoing or otherwise) whereby the obligations of the Obligor hereunder might under any applicable law be discharged or affected,

and the Obligor hereby waives notice of the foregoing.

10. The Obligor confirms that its liability hereunder shall be a continuing liability and that this Bank Bond shall remain in full force and effect from the date first written above until the date (the "**Expiry Date**") when the first of the following events occurs:
 - (a) the original of this Bank Bond is returned by the Government to the Obligor accompanied by the Government's notice in writing that it is to be cancelled; or
 - (b) *[INSERT THE DATE]*; or
 - (c) the Maximum Sum has been duly paid to the Government unless the date for making such payment has been further renewed or extended by the Obligor in writing.
11. This Bank Bond shall expire as to any undrawn portion of the Maximum Sum at the close of normal banking business on the Expiry Date. "**Undrawn portion**" shall mean the Maximum Sum less the aggregate amount which shall have been the subject of the Government's demand or demands for payment as herein before provided. The expiry of this Bank Bond under Clause 10 above shall not affect or discharge the liability of the Obligor to make payment of any demand made in accordance with the provisions of Clauses 1 and 2 above and received by the Obligor on or before the Expiry Date.
12. This Bank Bond is irrevocable. Further, this Bank Bond and any rights and obligations of the Government and the Obligor thereunder shall not be assigned or transferred by the Obligor except with the prior approval in writing of the Government and on the conditions that:

- (a) this Bank Bond and all rights and obligations of the Government and the Obligor thereunder shall be assigned or transferred as a whole; and
- (b) the assignee shall covenant in writing with the Government to perform all the obligations of the Obligor under this Bank Bond.

The Obligor shall ensure that notice in writing of any assignment or transfer of this Bank Bond and all rights and obligations thereunder shall be given to the Tenderer.

- 13. Any waiver by the Government of the terms of this Bank Bond or any consent or approval given by the Government shall only be effective if given in writing and then only for the purpose and upon the terms and conditions if any on which it is given.
- 14. If any provision of this Bank Bond 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 Bank Bond in that jurisdiction, but it shall not affect the validity, enforceability or legality of that provision in another jurisdiction.
- 15. This Bank Bond shall be governed by and construed in accordance with the laws of Hong Kong and the Obligor hereby irrevocably agrees to submit to the jurisdiction of the courts of Hong Kong and agrees not to claim that such courts are not a convenient or proper forum. Such submission shall not (and shall not be construed to) limit the right of the Government to proceed against the Obligor in any other court of competent jurisdiction, and proceeding in any one or more jurisdictions shall not preclude proceedings in any other jurisdiction (whether concurrent or not) if and to the extent permitted by the applicable law.
- 16. The Obligor shall reimburse the Government for all legal and other costs incurred by the Government in connection with the enforcement of this Bank Bond. All sums payable by the Obligor pursuant to this Clause 16 shall not be regarded as part of the Maximum Sum and shall be payable in addition to the Maximum Sum.
- 17. The Obligor hereby represents and warrants that the undersigned has full authority to execute this Bank Bond on behalf of the Obligor.

IN WITNESS WHEREOF the Obligor has caused this Bank Bond to be executed as a deed on the day and year first above written.

EXECUTED as a DEED by)
[NAME OF THE OBLIGOR])
acting by *[NAME]*, *[TITLE]*)
acting under the authority)
of that company, in the presence of:)

Witnesses

Signature: _____

Name: _____

Address: _____

Form of Demand Notice

To: [OBLIGOR]
[ADDRESS]

Bank Bond Reference/No.: [INSERT DETAILS]

Dear Sirs,

Demand Notice

We refer to the above referenced Bank Bond. This is the demand notice referred to therein.

Capitalised terms used in this demand notice shall have the meaning given to such terms in the Bank Bond.

The Tenderer has failed to perform the Service Deed in accordance with its terms and conditions in particular in connection with [PLEASE SPECIFY IN WHAT ASPECT THE TENDERER HAS SO FAILED].

Pursuant to Clause 1 of the Bank Bond we hereby demand payment of [_____] Hong Kong Dollars (HK\$[●]) in immediately available funds to the following account: [INSERT ACCOUNT DETAILS].

Yours faithfully,

[AUTHORIZED SIGNATORY]

**Matters to be Contained in the Legal Opinion Required for a
Successful Tenderer and/or Performance Guarantor Incorporated or Established
Outside the Hong Kong Special Administrative Region**

1. Overview

- 1.1 Capitalised terms not otherwise defined herein shall have the meaning given in the Tender Notice.
- 1.2 In this Annex VI:
- (a) “**Successful Tenderer**” shall mean the successful tenderer receiving notification of award as referred to in paragraph 19.1 of the Tender Notice; and
 - (b) “**Performance Guarantor**” shall mean a performance guarantor meeting the requirements of the Tender Notice.

Drafting Notes:

Note 1 - refer to the Successful Tenderer and/or Performance Guarantor, as appropriate.

Note 2 - refer to the documents executed by the Successful Tenderer and/or Performance Guarantor, as appropriate.

Note 3 - adopt as appropriate depending on whether there is/are one or more executed documents.

2. Content of the Legal Opinions

- 2.1 The legal opinion[s] shall contain legal advice confirming that:
- (a) the [Successful Tenderer/Performance Guarantor] [Note 1] is duly incorporated or established, validly existing and in good standing under the laws of the place where it is incorporated or established (“**Place of Incorporation**”);
 - (b) the [Successful Tenderer/ Performance Guarantor] [Note 1] has the full power, authority and legal capacity to execute the [Memorandum of Agreement and the Service Deed/Performance Guarantee] [Note 2] ([each a] [Note 3] “**Relevant Document**”) and to incur the liabilities and to perform the obligations therein;
 - (c) the execution and delivery of [each/the] [Note 3] Relevant Document has been duly authorized by all necessary corporate action. Once the Relevant Document[s] [Note 3] are executed, [they/it] [Note 3] constitute[s] [Note 3] legal, valid and binding obligations of the [Successful Tenderer/Performance Guarantor] [Note 1] and are enforceable against the [Successful Tenderer/Performance Guarantor] [Note 1] in accordance with [its/their] [Note 3] terms;
 - (d) the execution, and delivery of the [each/the] [Note 3] Relevant Document and performance of all obligations under [each/the] [Note 3] Relevant Document:
 - (i) do not violate any provision of any applicable law, regulation or decree of the Place of Incorporation;

- (ii) do not violate any judgement, order, or decree by which the [Successful Tenderer/Performance Guarantor] [Note 1] is bound; and
- (iii) do not breach or conflict with, or constitute a default under, the constitutional documents of the [Successful Tenderer/Performance Guarantor] [Note 1];
- (e) any arbitration awards or judgements obtained in connection with the provisions of the Relevant Document[s] [Note 3] will be enforceable in the Place of Incorporation and without any retrial of the issues which were the subject of such judgement, or any re-examination of the underlying claims;
- (f) any authorizations, consents or approvals required from any governmental authorities or agencies or other official bodies in the Place of Incorporation in connection with the execution of and delivery of the Relevant Document[s] [Note 3] or the performance of the obligations of the [Successful Tenderer/Performance Guarantor] [Note 1] under the Relevant Document[s] [Note 3], have been fully obtained, and no consent, approval or authorization of, or registration, filing or declaration with any governmental authority of any kind, in connection with the execution, delivery or performance of the Relevant Document[s] [Note 3] is required;
- (g) [each/the] [Note 3] Relevant Document[s] [Note 3] does not need to be registered or filed in the Place of Incorporation [or any other jurisdiction] in order to secure its validity and/or priority or, if [it/they] [Note 3] do so need to be registered or filed, such registration or filing has been completed;
- (h) there is no restriction under the laws of the Place of Incorporation on the assumption and performance of the [Successful Tenderer's/Performance Guarantor's] [Note 1] obligations under the Relevant Document[s] [Note 3];
- (i) the choice of the laws of Hong Kong to govern the [the Service Deed/ Performance Guarantee] [Note 3] is a valid choice of law and would be recognized and given effect to by the courts of the Place of Incorporation;
- (j) it is not necessary under the laws of the Place of Incorporation that the Government be licensed, qualified or otherwise registered in the Place of Incorporation in order to enable it to enforce its right under the Relevant Document[s] [Note 3];
- (k) no taxes, duties or levies in the Place of Incorporation are imposed by withholding or otherwise on any payment to be made by the [Successful Tenderer/Performance Guarantor] [Note 1] under the Relevant Document[s] [Note 3] or are imposed on, or by virtue of, the execution or delivery of the Relevant Document[s] [Note 3] or any document or instrument to be executed or delivered thereunder;
- (l) the execution and delivery of the Relevant Document[s] [Note 3] will not, of itself, be subject to any tax, duty, levy or fee, including without limitation any stamp duty or similar levy, imposed by or within the Place of Incorporation, or any political subdivision or taxing authority thereof or therein;
- (m) there is no applicable usury or interest limitation law in the Place of Incorporation which would restrict the recovery of payments or the performance by the [Successful Tenderer/Performance Guarantor] [Note 1] of its obligations under the Relevant Document[s] [Note 3];
- (n) the Government is not or will not be deemed to be resident, domiciled, carrying on a business or be subject to taxation in the Place of Incorporation by reason only of negotiation, preparation, execution, performance, enforcement of and/or receipt of

payment due from the [Successful Tenderer/Performance Guarantor] under the Relevant Document[s] [Note 3]; and

- (o) in any proceedings taken against the [Successful Tenderer/Performance Guarantor] [Note 1] by the Government in the Place of Incorporation in relation to the Relevant Document[s] [Note 3], the [Successful Tenderer/Performance Guarantor] [Note 1] will not be entitled to claim for itself or for any of its assets immunity from suit, execution, attachment or other legal process.

Annex VII to the Tender Notice

RESTRICTED

Undertakings to be submitted by each Key Personnel

To: The Government of the Hong Kong Special Administrative Region (the “Government”)

Re.: Tender for the grant of Tai Po Town Lot No.207 for private hospital development (“the Lot”)

I, *name and address*, refer to the tender (the “Tender”) to be submitted by *name of tenderer* (the “Tenderer”) in relation to the development of a private hospital at the Lot. In consideration of the Government agreeing to consider the Tender in accordance with the terms of the Tender Notice issued by the Government in relation to the Lot (the “Tender Notice”), I undertake, acknowledge and agree in favour of the Tenderer and the Government as follows:

1. I undertake to take up employment with the Tenderer and join the Project Team in the development of a private hospital at the Lot should the Government award the Memorandum of Agreement and Service Deed to the Tenderer; and
2. I am not subject to any restrictive covenants or otherwise restrained from taking up employment as described above pursuant to any existing agreement or arrangement.

Unless otherwise defined herein, capitalized terms herein shall have the meanings attributed to them in the Tender Notice.

Signed, and delivered)
by *name of individual*)
in the presence of:)

Name: *witness name*

Address: *witness address*

Annex VIII to Tender Notice

Schedule of Development of the Lot

Tenderers shall submit the proposed schedule of development of a private hospital to be developed at the Lot in accordance with Paragraph 9.1(vii) of the Tender Notice in this form. The schedule shall cover the period from the date of execution of the Memorandum of Agreement to the date specified in column 1 of paragraph (III)(iv) in Part B of the schedule annexed to the Land Grant. The items set out in the column "Major Milestones" in the table below are for reference only. Tenderers may suitably adjust these items in the table below with reference to its proposed schedule of development.

	Major Milestones (Note: Items listed below are for reference only)	Description of the milestones	Time of completion of the milestone
1.	Service planning		
2.	Site investigation and survey		
3.	Conduct of various impact assessment		
4.	Detailed design of hospital		
5.	Construction		
6.	Installation of equipment and furniture		
7.	Testing of building systems and defect rectifications		
8.	Recruitment of staff and training		
9.	Commissioning of hospital		

Annex IX to Tender Notice

Form of Tender Bond

[LETTERHEAD OF BANK]

BANK REF: []

DATED: []

To: THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION

[]
[]

Dear Sirs,

BANK GUARANTEE NO.: []

TENDER BOND IN RESPECT OF THE PRIVATE HOSPITAL PROJECT AT CHUEN ON ROAD, TAI PO, HONG KONG (TAI PO TOWN LOT No. 207)

- (A) The undersigned issuing bank (the “**Obligor**”) refers to the invitation to tender set out in the Tender Notice (the “**Invitation**”) issued by the Government of the Hong Kong Special Administrative Region (the “**Government**”) on [13 April 2012] in connection with the grant of a lot of land at Chuen On Road, Tai Po, Hong Kong (Tai Po Town Lot No. 207) and developing and operating a private hospital thereat (the “**Project**”).
- (B) Under the Invitation, a tenderer is required to submit a tender deposit in the form of a tender bond which shall be irrevocable and unconditional in the amount of five million Hong Kong Dollars (HK\$5,000,000) (the “**Guaranteed Sum**”) issued in favour of the Government as a security for its proposal to undertake the Project in accordance with the terms and conditions of the Invitation.
- (C) In compliance with such requirement and at the request of our client(s), *[INSERT THE NAME OF THE PERSON(S) WHO WILL BE SUBMITTING THE TENDER]* (the “**Tenderer**”) who will be submitting a tender in response to the Invitation (the “**Tender**”), the Obligor hereby signs and issues this irrevocable and unconditional tender bond (this “**Tender Bond**”).

NOW IT IS HEREBY AGREED as follows:

1. In consideration of the Government considering the Tender, the Obligor hereby irrevocably and unconditionally undertakes and covenants to pay to the Government, as primary obligor and not merely as surety, on first written demand by way of the demand notice in the form attached hereto (“**Payment Demand**”) without proof or condition, and waiving all rights of objection and defence, the entire amount of the Guaranteed Sum.
2. The Payment Demand must be sent by hand, by registered post or by courier to the address of the Obligor stated above or at such other address as may be notified by the Obligor in writing to the Government from time to time.

3. The Payment Demand shall be deemed to have been served:
 - (a) if delivered by hand, at the time of delivery;
 - (b) if delivered by courier, at the time of delivery as established by a courier's receipt; or
 - (c) if posted, at the time of delivery as established by a postal receipt.
4. In proving service of the Payment Demand it shall be sufficient to prove that delivery was made in accordance with Clause 3.
5. Upon the Government making the Payment Demand on the Obligor, the Obligor shall pay the Guaranteed Sum in full to the Government unconditionally and immediately on demand without any reference to the Tenderer, and notwithstanding any dispute or difference which may have arisen under or in connection with the Tender and notwithstanding any defence which the Tenderer may have, or request or instruction which may be given to the Obligor not to pay the Guaranteed Sum or any part thereof.
6. The Obligor hereby confirms and agrees that it shall not be required or permitted to enquire or make investigations into:
 - (a) the reasons or circumstance(s) of the Payment Demand;
 - (b) the respective rights, obligations, duties and/or liabilities of the Government and the Tenderer under the Invitation; or
 - (c) the authenticity of the Government's written Payment Demand or the authority or the entitlement of persons signing such demand for and on behalf of the Government,and the aforesaid written demand shall be conclusive of the Obligor's liability under this Tender Bond as to the amount which the Obligor has to pay to the Government.
7. Payment of the Guaranteed Sum demanded under this Tender Bond shall be made in full without any set-off or counterclaim whatsoever and howsoever arising, and free and clear of all deductions or withholdings of any kind whatsoever or howsoever arising.
8. Payment of the Guaranteed Sum under this Tender Bond shall be made in Hong Kong Dollars to the Government to the account specified in the Payment Demand.
9. The undertakings in this Tender Bond constitute direct, unconditional and irrevocable obligations on the part of the Obligor. The Obligor shall not be exonerated from all or any part of such obligations for any reason or cause whatsoever, including but not limited to:
 - (a) any changes in the terms and conditions of the Invitation; or
 - (b) any changes in the scope of the Project or nature of the work or services required to be executed by the Tenderer; or
 - (c) the withdrawal of the Tender by the Tenderer; or
 - (d) any failure to perform or to carry out any act or procedure by the Government or by a third party that would or could exempt or release the Obligor from its obligations and liabilities stipulated in this Tender Bond.
10. The Obligor confirms that its liability hereunder shall be a continuing liability and this Tender Bond shall remain in full force and effect from the date first written above until the date (the "Expiry Date") when the first of the following events occurs:

- (a) the original of this Tender Bond is returned by the Government to the Obligor accompanied by the Government's notice in writing that it is to be cancelled; or
 - (b) the 26th day of July 2013; or
 - (c) the Guaranteed Sum has been duly paid to the Government.
11. The Payment Demand must be submitted during days and hours when the Obligor is open for business in Hong Kong. The Obligor agrees to pay the Guaranteed Sum to the Government in immediately available funds, using its own funds, no later than forty eight (48) hours after the hour in which the Payment Demand was submitted by the Government, excluding any hours during days on which the Obligor is not open for business in Hong Kong, and provided that the documentation presented satisfies the requirements contained in this Tender Bond. If the Payment Demand fails to comply with any of the requirements established in this Tender Bond, the Obligor will immediately notify the Government in writing at the address stated above for the Government. The Obligor shall explain in such notice in what respect the Payment Demand does not comply with the terms of this Tender Bond and shall return the Payment Demand to the Government. The Government may resubmit any Payment Demand so returned.
 12. This Tender Bond is irrevocable and shall not be assigned or transferred by the Obligor.
 13. Any waiver by the Government of the terms of this Tender Bond or any consent or approval given by the Government shall only be effective if given in writing and then only for the purpose and upon the terms and conditions if any on which it is given.
 14. If any provision of this Tender Bond 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 Tender Bond in that jurisdiction, but it shall not affect the validity, enforceability or legality of that provision in another jurisdiction.
 15. This Tender Bond shall be governed and construed in accordance with the laws of Hong Kong and the Obligor hereby irrevocably agrees to submit to the jurisdiction of the courts of Hong Kong and agrees not to claim that such courts are not a convenient or proper forum. Such submission shall not (and shall not be construed to) limit the right of the Government to proceed against the Obligor in any other court of competent jurisdiction, and shall not preclude proceedings in any other jurisdiction (whether concurrent or not) if and to the extent permitted by the applicable law.
 16. The Obligor shall reimburse the Government for all legal and other costs incurred by the Government in connection with the enforcement of this Tender Bond. All charges of the Obligor related to the issuance or performance of this Tender Bond (including, but not limited to, the negotiation and payment) shall be borne by the Tenderer and under no circumstances shall be charged to the Government by the Obligor.
 17. The Obligor hereby represents and warrants that the undersigned has full authority to execute this Tender Bond on behalf of the Obligor.

IN WITNESS WHEREOF, the Obligor has caused this Tender Bond to be executed as a deed on the day and year first above written.

EXECUTED as a **DEED** by)
[**NAME OF THE OBLIGOR**])
acting by [*NAME*], [*TITLE*])
acting under the authority)
of that company, in the presence of:)

Witnesses
Signature: _____

Name: _____

Address: _____

Form of Payment Demand Notice

To: [OBLIGOR]
[ADDRESS]

BANK GUARANTEE NO.: [_____]

Dear Sirs,

Payment Demand Notice

We refer to the above referenced Tender Bond. This is the Payment Demand notice referred to therein.

Pursuant to Clause 1 of the Tender Bond we hereby demand payment of five million Hong Kong Dollars (HK\$5,000,000) to the following account:

[INSERT ACCOUNT DETAILS]

Yours faithfully,

()

for Director of Lands

**CONDITIONS OF SALE
REFERRED TO IN THE FOREGOING TENDER NOTICE**

GENERAL CONDITIONS

- | | |
|--------------------------------|--|
| Completion of tender documents | 1. Within fourteen working days of the date of the letter referred to in paragraph 19.1 of the Tender Notice annexed hereto, the successful tenderer (hereinafter referred to as "the Purchaser") shall sign, or in the case of a limited company duly execute under its common seal, the Memorandum of Agreement annexed hereto, the sale plan annexed hereto and the Service Deed pursuant to paragraph 19.1 of the Tender Notice annexed hereto for completing the purchase according to these Conditions. |
| Completion of sale | 2. Within twenty eight days of the date of this Agreement, the Purchaser shall pay to the Government of the Hong Kong Special Administrative Region (hereinafter referred to as "the Government") in one lump sum the balance of the premium tendered by him. |
| Failure to pay premium | <p>3. If the Purchaser shall fail to pay the balance of the premium as provided in General Condition No. 2 hereof, the Government may either enforce or cancel the sale. On cancellation, the tender deposit in the form of the tender bond forwarded by the defaulting Purchaser with his tender and in part payment of the premium tendered by him shall be wholly forfeited to the Government, and the Government shall be at liberty to resell the Lot at such time and place and in such manner as the Government shall deem fit, and all losses and expenses attending a resale or attempted resale, including :</p> <ul style="list-style-type: none">(a) interest equivalent to 2 (two) per centum per annum above the average Best Lending Rate announced by the current note-issuing banks in Hong Kong, namely, The Hongkong and Shanghai Banking Corporation Limited, Standard Chartered Bank (Hong Kong) Limited and Bank of China (Hong Kong) Limited for the time being (hereinafter referred to as "the Agreed Rate") on the balance of the premium for the period from the latest date upon which such balance should have been paid in accordance with General Condition No. 2 hereof up to and including the date upon which the balance of the premium upon a resale is paid,(b) any deficiency which may result on a resale, and(c) interest at the Agreed Rate on any such deficiency for the period from the date upon which the balance of the premium upon a resale is paid up to and including the date of payment of the deficiency, <p>shall be made good and paid by the defaulting Purchaser and be recoverable by the Government as liquidated damages. Any increase of price on a resale shall belong to the Government.</p> |
| Rent | 4. Rent as specified in the Particulars of the Lot in the Tender Notice annexed hereto shall commence and be payable from the date of this Agreement until the expiry of the term hereby agreed to be granted, and shall be governed by the provisions of the Government Rent (Assessment and Collection) Ordinance, any regulations made thereunder and any amending legislation and also subject to a minimum rent of \$1 per annum (if demanded). |
| Acknowledgement by Purchaser | <p>5. (a) The Purchaser hereby expressly acknowledges :</p> <ul style="list-style-type: none">(i) that the Government shall be under no liability whatsoever to the Purchaser (which expression shall for the purpose of this General Condition only include his successors, assigns, mortgagees, tenants or other occupiers of the Lot whether lawful or otherwise) for any loss or damage howsoever arising in connection with or as a consequence of his purchase of the Lot and its subsequent |

development;

- (ii) that he has purchased the Lot based upon his own evaluation of land records and available geotechnical information whether obtained from Government sources or otherwise and has satisfied himself as to the state and condition of the Lot in relation to the purposes for which the Lot is to be developed or redeveloped;
- (iii) that he takes the Lot, whether on, above or below the surface of the ground, in the state and condition as it exists on the date on which possession of the Lot is deemed to be given in accordance with Special Condition No. (1) of these Conditions; and
- (iv) that he shall not be entitled to revoke, withdraw, cancel or resile in any way whatsoever from this Agreement nor be entitled in any way whatsoever to compensation or a reduction in the sale price or any other compromise whatsoever should he subsequently determine that the Lot is not fit for the purposes for which he purchased the Lot.

Exclusion of warranty

- (b) (i) The Government has given no warranty, express or implied, as to the suitability or fitness of the Lot or any part thereof for development whether in accordance with these Conditions or otherwise. The Purchaser for himself, his successors or assigns undertakes not to make any claim against the Government for any loss or damage whatsoever which he may suffer as a result of or arising from the state and condition of the Lot making it either unfit for the purpose for which he purchased the Lot or rendering it impossible to achieve the scale of development originally intended.
- (ii) The Government in no way warrants the accuracy or correctness in any way whatsoever of any information made available or obtained, and in particular does not warrant that the Lot is fit and suitable for any particular purpose.

Indemnity by Purchaser

(c) The Purchaser hereby indemnifies and shall keep indemnified the Government against all actions, proceedings, liabilities, demands, costs, expenses, losses (whether financial or otherwise) and claims whatsoever and howsoever arising from any breach of these Conditions or any damage or soil and groundwater contamination caused to adjacent or adjoining land or to the Lot where such damage or soil and groundwater contamination has, in the opinion of the Director of Lands (hereinafter referred to as "the Director", and whose opinion shall be final and binding upon the Purchaser), arisen out of any use of the Lot, or any development or redevelopment of the Lot or part thereof or out of any activities carried out on the Lot or out of any other works carried out thereon by the Purchaser whether or not such use, development or redevelopment, activities or works are in compliance with these Conditions or in breach thereof.

Setting out

6. (a) The Director shall, at such time as he thinks fit or upon the application of the Purchaser, set out the Lot on the ground, and the Purchaser or his authorized representative after such setting out when called upon by the Director shall attend at the Lot to inspect the survey marks delineating the Lot on the ground and shall be given a plan showing the positions and descriptions of each such mark. The Purchaser shall not commence any operations for building on the Lot until it shall have been so set out by the Director. The Purchaser shall take or cause to be taken all proper care and precautions to safeguard the said survey marks from disturbance or removal. If, before commencing any operations for building on the Lot, any of the said survey marks are disturbed or removed, the Purchaser shall apply in writing to the Director for replacement by survey and shall pay on demand to the Government in advance the prescribed fee therefor.

Encroachment upon
Government land

(b) In the event that the Purchaser is found to have encroached upon and to be occupying Government land, the Director may in his absolute discretion either require the Purchaser to demolish any building or part of any building standing on such Government land, to reinstate such Government land to his satisfaction and deliver vacant possession of the same to the Government or pay to the Government such sum as the Director in his absolute discretion shall determine as the premium in respect of such Government land. A certificate under the hand of the Director shall be conclusive as to the extent of any such encroachment and as to the amount of the premium payable in respect thereof. If the Purchaser fails to demolish any building as required by the Director as above, it shall be lawful for the Director to demolish such building and the Purchaser shall pay on demand to the Government the amount certified by the Director as the cost of such demolition. In the event that the Director exercises his discretion to require the payment of premium as aforesaid, upon the payment of such premium, the area of Government land encroached upon shall be deemed in all respects to be part of the Lot and shall be included in the lease of the Lot when issued.

Maintenance

7. (a) The Purchaser shall throughout the tenancy having built or rebuilt (which word refers to redevelopment as contemplated in sub-clause (b) of this General Condition) in accordance with these Conditions:

- (i) maintain all buildings in accordance with the approved design and disposition and any approved building plans without variation or modification thereto; and
- (ii) maintain all buildings erected or which may hereafter be erected in accordance with these Conditions or any subsequent contractual variation of them, in good and substantial repair and condition and in such repair and condition deliver up the same at the expiration or sooner determination of the tenancy.

(b) In the event of the demolition at any time during the tenancy of any building then standing on the Lot or any part thereof, the Purchaser shall replace the same either by sound and substantial building or buildings of the same type and of no less gross floor area or by building or buildings of such type and value as shall be approved by the Director. In the event of demolition as aforesaid, the Purchaser shall within one calendar month of such demolition apply to the Director for consent to carry out building works for the redevelopment of the Lot and upon receiving such consent shall within three calendar months thereof commence the necessary works of redevelopment and shall complete the same to the satisfaction of and within such time limit as is laid down by the Director.

Boundary stones

8. The Purchaser shall permit boundary stones properly cut and marked with the number of the Lot to be fixed at each angle thereof and either in or on the land itself or in or on any building erected thereon as may be required by the Director and shall pay the fees prescribed by him therefor as well as the prescribed fees for the refixing of such boundary stones which, through being lost, damaged or removed, need replacing.

Private streets, roads
and lanes

9. Any private streets, roads and lanes which by these Conditions are required to be formed shall be sited to the satisfaction of the Director and included in or excluded from the area to be leased as may be determined by him and in either case shall be surrendered to the Government free of cost if so required. If the said streets, roads and lanes are surrendered to the Government, the surfacing, kerbing, draining (both foul and storm water sewers), channelling and road lighting thereof shall be carried out by the Government at the expense of the Purchaser and thereafter they shall be maintained at public expense. If the said private streets, roads and lanes remain part of the area to be leased, they shall be lighted, surfaced, kerbed, drained, channelled and maintained by and at the expense of the Purchaser in all respects to the satisfaction of the Director and the Director may carry out or cause to be carried out

the installation and maintenance of road lighting for the sake of public interest as required. The Purchaser shall bear the capital cost of installation of road lighting and allow free ingress and egress to and from the area to be leased to workmen and vehicles for the purpose of installation and maintenance of the road lighting.

Right to inspect

10. (a) The Purchaser shall throughout the tenancy, at all reasonable times, permit the Director or his authorized representatives, with or without notice, to enter in or upon the Lot or any part thereof or any building or part of any building erected on the Lot for the purpose of inspecting the same so as to ascertain that there is no breach of or failure to observe any of these Conditions.

Right to inspect for
assessing contamination

(b) The Purchaser shall throughout the tenancy, at all reasonable times, permit the Director and the Director of Environmental Protection or his or their authorized representatives, upon serving reasonable verbal or written notice on the Purchaser, to enter into or upon the Lot or any part thereof or any building or part of any building erected on the Lot for the purpose of carrying out site investigation works to assess the extent of contamination within the Lot, which works shall include but not be limited to conducting site inspections, taking soil and water samples and any other works and operations relating or ancillary to such contamination assessment.

Breach of lease
conditions

(c) The fulfilment by the Purchaser of his obligations under these Conditions shall be a condition precedent to the grant or continuance of the tenancy, and in the event of any default by the Purchaser in complying therewith, such default shall be deemed to be a continuing breach and the subsequent acceptance by or on behalf of the Government of any rent or rates or other payment whatsoever shall not (except where the Government has notice of such breach and has expressly acquiesced therein) be deemed to constitute any waiver or relinquishment or otherwise prejudice the enforcement of the Government's right of re-entry for or on account of such default or any other rights, remedies or claims of the Government in respect thereof under these Conditions which shall continue in force and shall apply also in respect of default by the Purchaser in the fulfilment of his obligations under these Conditions within any extended or substituted period as if it had been the period originally provided.

Re-entry

11. (a) Upon any failure or neglect by the Purchaser to perform, observe or comply with any of these Conditions, the Government shall be entitled to re-enter upon and take back possession of the Lot or any part thereof and all or any buildings, erections and works erected or to be erected on the Lot or any such part thereof or any part of such buildings, erections or works and thereupon this Agreement and the rights of the Purchaser hereunder shall absolutely cease and determine (in respect of such part if the re-entry is upon a part only) but without prejudice nevertheless to the rights, remedies and claims of the Government in respect of any breach, non-observance or non-performance of the terms and conditions hereof.

No refund of premium
on re-entry

(b) In the event of re-entry by the Government for or in respect of or arising out of the breach, non-observance or non-performance by the Purchaser of the provisions of these Conditions, the Purchaser shall not be entitled to any refund of the premium paid by him or any part thereof or to any payment or compensation whatsoever whether in respect of the value of the land or any part thereof or any building or buildings erected or to be erected on the land or any part thereof or part of any such building or buildings or any amount expended by the Purchaser in the preparation, formation or development of the Lot or any part thereof or otherwise.

Lease

12. (a) When these Conditions have been complied with to the satisfaction of the Director, the Purchaser shall subject to approval of his title by the Director be entitled to a lease of the Lot as described in the Particulars of the Lot in the Tender Notice annexed hereto for the term stated in the preamble to the said Tender Notice.

(b) The Purchaser shall execute and take up the lease for the Lot when called upon to do so by the Director and shall pay the prescribed fees therefor. In the event of more than one building being erected on the Lot, the Purchaser may be required to

take up a separate lease for the site of each separate building and shall pay the prescribed fees for every additional lease so required to be taken up.

(c) Pending the issue of the lease, the tenancy of the Lot shall be deemed to be upon and subject to and such lease when issued shall be subject to and contain all exceptions, reservations, covenants, clauses and conditions as are now inserted in the leases issued by the Government of similar lots in the Hong Kong Special Administrative Region (hereinafter referred to as "Hong Kong") as varied, modified or extended by these Conditions.

Definitions

13. (a) The expression "Purchaser" shall in these Conditions include the person entering into and executing this Agreement and where the context so admits or requires his executors, administrators and assigns and in the case of a corporation its successors and assigns, and the expression "Lot", except where the context otherwise requires, means the lot stated in the Particulars of the Lot in the Tender Notice annexed hereto. Where the context so admits or requires, words importing the masculine gender shall be deemed to include females and corporations, and words in the singular shall be deemed to include the plural.

(b) The foregoing General Conditions shall be read and construed as varied or modified by the Special Conditions hereinafter contained, and the expression "these Conditions" whenever used shall mean and include the General and Special Conditions.

Marginal notes

14. The marginal notes to these Conditions shall not be deemed to be part of these Conditions and shall not affect the interpretation or construction thereof.

SPECIAL CONDITIONS

Possession

(1) Subject to payment of the balance of the premium as provided in General Condition No. 2 hereof and subject to the provisions of General Condition No. 1 hereof, possession of the Lot shall be deemed to be given to the Purchaser on the date of this Agreement.

User

(2) (a) The Lot or any part thereof or any building or structure or part of any building or structure erected or to be erected thereon shall not be used for any purpose other than for the following purposes:

- (i) for the purpose of a hospital of the number of hospital beds as set out in column 2 of item (II) in Part B of the Schedule annexed hereto (which number of hospital beds may be varied after a period of six years from the date of the Commencement Certificate (as defined in Special Condition No (4)(b)(i) hereof) with the prior written approval of the Director of Health for the purpose of registration of the hospital under the Hospitals, Nursing Homes and Maternity Homes Registration Ordinance (Cap.165), any regulations made thereunder and any amending legislation, and subject to the prior written consent of the Director who may, in granting consent, impose any conditions at his absolute discretion) (such number of hospital beds as may be varied is hereinafter referred to as "the Total Number of Hospital Beds") in all respects to the satisfaction of the Director of Health providing (subject to Special Condition No. (9)(c)(ii) hereof) all the Clinical and Clinical Supporting Facilities (as defined in sub-clause (d)(ii) of this Special Condition) in all respects to the satisfaction of the Director of Health (which purpose is hereinafter referred to as "the Hospital Purpose"); and
- (ii) in addition to the Hospital Purpose, subject to sub-clause (b) of this Special Condition and Special Conditions Nos. (3)(b) and (9)(c)(iii) hereof, for the purpose of the Non-Clinical Supporting Facilities (as defined in Special Condition No. (3)(b) hereof).

(b) The Non-Clinical Supporting Facilities (as defined in Special Condition No. (3)(b) hereof) shall, in the opinion of the Director of Health (whose determination shall be final and binding on the Purchaser), be ancillary or essential to support the operation of the hospital referred to in sub-clause (a)(i) of this Special Condition. No part of the Non-Clinical Supporting Facilities (as defined in Special Condition No. (3)(b) hereof), excluding the spaces provided in accordance with Special Condition No. (18) hereof and the other areas referred to in Special Condition No. (17) hereof, shall be used for any purpose other than:

- (i) as to the Accommodation Facilities (as defined in sub-clause (d)(iv) of this Special Condition), as accommodation facilities (subject to Special Condition No. (9)(c)(iv) hereof) for occupation by any person duly registered as a patient attending the hospital referred to in sub-clause (a)(i) of this Special Condition for treatment (hereinafter referred to as "Registered Patient") and the bona fide carers of such Registered Patient (hereinafter referred to as "Carers", and any reference to a "Carer" shall be construed accordingly);
- (ii) as to the Staff Quarters (as defined in sub-clause (d)(v) of this Special Condition), as residential quarters for occupation by such staff employed at the hospital referred to in sub-clause (a)(i) of this Special Condition and their family members (hereinafter

collectively referred to as "Permitted Occupants", and any reference to a "Permitted Occupant" shall be construed accordingly); and

- (iii) as to the Ancillary Facilities (as defined in sub-clause (d)(iii) of this Special Condition), for the purposes of offices, canteens, retail shops, storerooms, food and beverage outlets, automatic teller machines, healthcare training facilities, kitchens for providing meals to patients, laundry and supplies rooms and any other facilities as the Director of Health may at his absolute discretion approve or require, as referred to in sub-clause (d)(iii) of this Special Condition.

(c) Without prejudice to the generality of the restrictions and provisions under sub-clauses (a) and (b) of this Special Condition, the Lot or any part thereof or any building or structure or part of any building or structure erected or to be erected thereon shall not be used for any purposes other than the purposes for which it is designed, constructed, intended and as designated to be used in accordance with these Conditions and the approved design and disposition under Special Condition No. (9)(f) hereof.

(d) For the purposes of these Conditions:

- (i) "Hospital" shall mean the hospital referred to in sub-clause (a)(i) of this Special Condition together with the Non-Clinical Supporting Facilities (as defined in Special Condition No. (3)(b) hereof) provided within the Lot in accordance with these Conditions;
- (ii) "Clinical and Clinical Supporting Facilities" shall mean in-patient wards, diagnostic facilities, therapeutic facilities, outpatient and day care facilities, central sterilization facilities, laboratory, blood bank, mortuary, pharmacy, utility facilities and such other clinical and clinical supporting facilities as the Director of Health may at his absolute discretion approve or require;
- (iii) "Ancillary Facilities" shall mean offices, canteens, retail shops, storerooms, food and beverage outlets, automatic teller machines, healthcare training facilities, kitchens for providing meals to patients, laundry and supplies rooms and any other facilities as the Director of Health may at his absolute discretion approve or require, provided within the Non-Clinical Supporting Facilities (as defined in Special Condition No. (3)(b) hereof), all of which are, in the opinion of the Director of Health (whose determination shall be final and binding on the Purchaser), ancillary or essential to support the operation of the hospital referred to in sub-clause (a)(i) of this Special Condition;
- (iv) "Accommodation Facilities" shall mean any accommodation facilities as set out in column 1 of item (II) in Part A of the Schedule annexed hereto provided within the Non-Clinical Supporting Facilities (as defined in Special Condition No. (3)(b) hereof), which are, in the opinion of the Director of Health (whose determination shall be final and binding on the Purchaser), ancillary or essential to support the operation of the hospital referred to in sub-clause (a)(i) of this Special Condition; and

- (v) "Staff Quarters" shall mean any residential quarters provided within the Non-Clinical Supporting Facilities (as defined in Special Condition No. (3)(b) hereof), which are, in the opinion of the Director of Health (whose determination shall be final and binding on the Purchaser), ancillary or essential to support the operation of the hospital referred to in sub-clause (a)(i) of this Special Condition.

(e) For the purposes of these Conditions, the Director of Health shall have the sole and absolute discretion to determine:

- (i) what constitutes a hospital bed in the hospital referred to in sub-clause (a)(i) of this Special Condition;
- (ii) what constitutes or forms part of the Hospital, the hospital referred to in sub-clause (a)(i) of this Special Condition, the Clinical and Clinical Supporting Facilities, the Non-Clinical Supporting Facilities (as defined in Special Condition (3)(b) hereof), the Accommodation Facilities, the Staff Quarters or the Ancillary Facilities;
- (iii) what constitutes or forms part of the Hospital Purpose, the purpose permitted under sub-clause (a)(ii) of this Special Condition, or the purposes specified in sub-clause (b) of this Special Condition;
- (iv) whether the use to which the hospital referred to in sub-clause (a)(i) of this Special Condition or any part thereof is to be put is a use for the Hospital Purpose;
- (v) whether the use to which the Non-Clinical Supporting Facilities (as defined in Special Condition No. (3)(b) hereof) or any part thereof is to be put is a use for the purpose permitted under sub-clause (a)(ii) of this Special Condition;
- (vi) whether the use to which the Accommodation Facilities or any part thereof is to be put is a use for the purpose permitted under sub-clause (b)(i) of this Special Condition;
- (vii) whether the use to which the Staff Quarters or any part thereof is to be put is a use for the purpose permitted under sub-clause (b)(ii) of this Special Condition;
- (viii) whether the use to which the Ancillary Facilities or any part thereof is to be put is a use for the purpose permitted under sub-clause (b)(iii) of this Special Condition;
- (ix) whether a person is duly registered as a patient attending the hospital referred to in sub-clause (a)(i) of this Special Condition for treatment and whether a person is a Registered Patient;
- (x) whether a person is a Carer; and
- (xi) whether a person is a member of staff employed at the hospital referred to in sub-clause (a)(i) of this Special Condition and whether a person is a Permitted Occupant,

and such determination shall be final and binding on the Purchaser.

Type of building

(3) (a) Upon development or redevelopment (which term refers solely to redevelopment contemplated in General Condition No. 7 hereof) of the Lot or any part thereof, the Purchaser shall at his own cost and expense and in accordance with these Conditions and all Ordinances, regulations and by-laws relating to building, sanitation and planning which are or may at any time be in force in Hong Kong erect, construct and maintain upon the Lot the hospital referred to in Special Condition No. (2)(a)(i) hereof.

(b) The Purchaser shall not erect, construct or maintain or permit or suffer to be erected, constructed or maintained upon the Lot any building or structure or buildings or structures other than the hospital referred to Special Condition No. (2)(a)(i) hereof, the spaces provided in accordance with Special Condition No. (18) hereof and the other areas referred to in Special Condition No. (17) hereof, provided that upon development or redevelopment of the Lot or any part thereof, the Purchaser may at his own cost and expense and in accordance with these Conditions and all Ordinances, regulations and by-laws relating to building, sanitation and planning which are or may at any time be in force in Hong Kong, erect, construct and maintain upon the Lot:

- (i) the Ancillary Facilities;
- (ii) the Staff Quarters; and
- (iii) the Accommodation Facilities,

which shall, in the opinion of the Director of Health (whose determination shall be final and binding on the Purchaser), be ancillary or essential to support the operation of the hospital referred to in Special Condition No. (2)(a)(i) hereof. For the purposes of these Conditions, "the Non-Clinical Supporting Facilities" shall mean collectively the Ancillary Facilities, the Staff Quarters, the Accommodation Facilities, the spaces provided in accordance with Special Condition No. (18) hereof and the other areas referred to in Special Condition No. (17) hereof.

(c) The Lot shall not be developed or redeveloped except in accordance with these Conditions and the approved design and disposition under Special Condition No. (9)(f) hereof and in all respects to the satisfaction of the Director, and no building which is not shown in the approved design and disposition under Special Condition No. (9)(f) hereof shall be erected, constructed or provided on the Lot or any part thereof.

Commence and continue to operate

(4) (a) The Purchaser shall at his own cost and expense, in accordance with these Conditions, all Ordinances, regulations and by-laws relating to hospitals which are or may at any time be in force in Hong Kong and the Service Deed (as defined in Special Condition No. (14) hereof):

- (i) (I) on or before the date as set out in column 2 of item (I) in Part B of the Schedule annexed hereto, provide services for the specialties of general medicine (with or without medical sub-specialties), general surgery (with or without surgical sub-specialties), orthopaedics and traumatology and gynaecology on a scale, in a manner and in all respects to the satisfaction of the Director of Health;
- (II) on or before the date as set out in column 2 of item (I) in Part B of the Schedule annexed hereto, provide not less than the total number of hospital beds as set out in column 2 of item (III)(i) in Part B of the Schedule annexed hereto in all respects to the satisfaction of the Director of Health; and

- (III) subject to sub-clauses (a)(ii), (a)(iii) and (a)(iv) of this Special Condition, continue to provide not less than the total number of hospital beds as set out in column 2 of item (III)(i) in Part B of the Schedule annexed hereto in all respects to the satisfaction of the Director of Health;
- (ii) on or before the date as set out in column 1 of item (III)(ii) in Part B of the Schedule annexed hereto, provide, and continue to provide subject to sub-clauses (a)(iii) and (a)(iv) of this Special Condition, not less than the total number of hospital beds as set out in column 2 of item (III)(ii) in Part B of the Schedule annexed hereto in all respects to the satisfaction of the Director of Health;
- (iii) on or before the date as set out in column 1 of item (III)(iii) in Part B of the Schedule annexed hereto, provide, and continue to provide subject to sub-clause (a)(iv) of this Special Condition, not less than the total number of hospital beds as set out in column 2 of item (III)(iii) in Part B of the Schedule annexed hereto in all respects to the satisfaction of the Director of Health; and
- (iv) on or before the date as set out in column 1 of item (III)(iv) in Part B of the Schedule annexed hereto, provide, and continue to provide throughout the term hereby agreed to be granted, the Total Number of Hospital Beds in all respects to the satisfaction of the Director of Health,

and shall, throughout the term hereby agreed to be granted, at the Purchaser's own cost and expense continue to operate the Hospital for the purposes as specified in Special Condition No. (2) hereof on a scale, in a manner and in all respects to the satisfaction of the Director of Health and conduct the Hospital in all respects to the satisfaction of the Director of Health and in accordance with these Conditions, all Ordinances, regulations and by-laws relating to hospitals which are or may at any time be in force in Hong Kong and the Service Deed (as defined in Special Condition No. (14) hereof).

(b) For the purposes of these Conditions:

- (i) the Purchaser shall not be regarded as having complied with his obligations under sub-clauses (a)(i)(I) and (a)(i)(II) of this Special Condition and Special Condition No. (18)(h) hereof unless and until the Director of Health shall have issued to the Purchaser a certificate to such effect (which certificate is hereinafter referred to as "the Commencement Certificate"); and
- (ii) the Director of Health shall have the sole and absolute discretion to determine:
 - (I) what constitutes the specialties of general medicine, general surgery, orthopaedics and traumatology and gynaecology;
 - (II) whether services for the specialties of general medicine, general surgery, orthopaedics and traumatology and gynaecology are provided in accordance with sub-clause (a)(i)(I) of this Special Condition;

- (III) whether and when the Purchaser's obligations under sub-clause (a) of this Special Condition and Special Condition No. (18)(h) hereof are complied with;
- (IV) when the Commencement Certificate is to be issued; and
- (V) whether hospital beds are provided in such number as respectively required, and in accordance with the respective provisions stipulated, in sub-clauses (a)(i)(II), (a)(i)(III), (a)(ii), (a)(iii) and (a)(iv) of this Special Condition,

and such determination shall be final and binding on the Purchaser.

(c) It is acknowledged and declared that any issue of the Commencement Certificate by the Director of Health under sub-clause (b)(i) of this Special Condition shall not be taken as any agreement, whether express or implied, on the part of the Government that any licence, permit, certificate, consent or approval required from relevant authorities or under any Ordinance, regulation, by-law or any amending legislation in connection with the use and occupation of the Lot and any buildings thereon for the purposes as specified in Special Condition No. (2) hereof can be or will be given. For the avoidance of doubt, any issue of the Commencement Certificate shall not in any way relieve the Purchaser of or release, discharge or reduce the Purchaser's obligations (whether under any Ordinance, regulation, by-law or any amending legislation or otherwise), at his own expense, to obtain and maintain in force all requisite licences, permits, certificates, consent and approvals in connection with the use and occupation of the Lot and any buildings thereon for the purposes as specified in Special Condition No. (2) hereof and to comply with the terms and conditions thereof in all respects.

Cessation of user

(5) (a) The Purchaser acknowledges that the Lot is granted on the terms and for the purposes set out in these Conditions and agrees that throughout the term hereby agreed to be granted, the Lot must be used in accordance with these Conditions.

(b) The Purchaser agrees that it shall be a breach of Special Condition No. (4) hereof and this Special Condition if, at any time during the term hereby agreed to be granted, the Director is of the opinion that the Lot or any part or parts thereof or any building or structure or part of any building or structure on it has ceased to be used for the purposes specified in Special Condition No. (2) hereof (as to which, and without prejudice to the rights of the Director under these Conditions, the non-user of the Lot or any part or parts thereof for the purposes specified in Special Condition No. (2) hereof for a total period of six calendar months shall be conclusive evidence) or the extent of the user of the Lot or any part or parts thereof or any building or structure or part of any building or structure on it for the purposes specified in Special Condition No. (2) hereof has so diminished to the extent that the Lot or any part or parts thereof is, in the opinion of the Director, either not being used or adequately used for the purposes for which it is granted; and it shall be lawful for the Government to re-enter upon and take back possession of the Lot or any part or parts thereof, or any interest in it and all or any buildings, structures, erections and works on it without notice, whether under the Government Rights (Re-entry and Vesting Remedies) Ordinance, Cap. 126, any regulations made thereunder and any amending legislation, or at common law, or otherwise. Upon the exercise of this power by the Government, the rights of the Purchaser under this Agreement shall absolutely cease and determine but without prejudice nevertheless to the rights, remedies and claims of the Government in respect of any breach, non-observance or non-performance of any of these Conditions or otherwise, and the Purchaser shall not be entitled to any refund of the premium paid by him or any part thereof or to any payment or compensation whatsoever whether in respect of the value of the Lot or any part or parts thereof or any building or buildings or

structure or structures thereon or any amount expended by the Purchaser in the preparation, formation or development of the Lot or any part or parts thereof or otherwise.

(c) The Purchaser hereby acknowledges and agrees that for the purpose of this Special Condition, the opinion of the Director will be unfettered, conclusive and binding on the Purchaser.

Access for inspection

(6) (a) The Purchaser shall throughout the term hereby agreed to be granted, at all reasonable times, permit the Government, the Director, the Director of Health, their officers, contractors and workmen and any other persons authorized by them, with or without notice, the right of ingress, egress and regress to, from and through the Lot and any building or buildings or structure or structures erected or to be erected thereon for the purpose of inspecting the Hospital.

(b) The Government, the Director, the Director of Health, their officers, contractors and workmen and any other persons authorized under sub-clause (a) of this Special Condition shall have no liability in respect of any loss, damage, nuisance or disturbance whatsoever caused to or suffered by the Purchaser or any other person whether arising out of or incidental to any exercise of the rights under sub-clause (a) of this Special Condition and no claim whatsoever shall be made against the Government, the Director, the Director of Health, their officers, contractors and workmen and any other persons authorized under sub-clause (a) of this Special Condition by the Purchaser in respect of any such loss, damage, nuisance or disturbance.

Preservation of trees

(7) No tree growing on the Lot or adjacent thereto shall be removed or interfered with without the prior written consent of the Director who may, in granting consent, impose such conditions as to transplanting, compensatory landscaping or replanting as he may deem appropriate.

Landscaping

(8) (a) The Purchaser shall at his own expense submit to the Director for his approval a landscape master plan indicating the location, disposition and layout of the landscaping works to be provided within the Lot in compliance with the requirements stipulated in sub-clause (b) of this Special Condition. No site formation works shall be commenced on the Lot or any part thereof until the landscape master plan has been approved in writing by the Director and consent, if required, has been granted in respect of the proposals for the preservation of trees under Special Condition No. (7) hereof.

(b) (i) The landscape master plan shall be at a scale of 1:500 or larger and shall contain information on the landscaping proposals including a survey and treatment of existing trees, site layout and formation levels, conceptual form of building development, illustrative layout of hard and soft landscaping areas and such other information as the Director may require.

(ii) Not less than 30% of the area of the Lot shall be planted with trees, shrubs or other plants and not less than 50% of the said 30% (hereinafter referred to as "the Greenery Area") shall be provided at such location or level as may be determined by the Director at his sole discretion so that the Greenery Area shall be visible to pedestrians or accessible by any person or persons entering the Lot. The decision of the Director on which landscaping works proposed by the Purchaser constitutes the said 30% shall be final and binding on the Purchaser. The Director at his sole discretion may accept other non-planting features proposed by the Purchaser as an alternative to planting trees, shrubs or other plants.

(c) The Purchaser shall at his own expense landscape the Lot in accordance with the approved landscape master plan in all respects to the satisfaction of the Director and no amendment, variation, alteration, modification or substitution of the approved landscape master plan shall be made without the prior written consent of the Director.

(d) The Purchaser shall thereafter at his own expense keep and maintain the landscaped works in a safe, clean, neat, tidy and healthy condition all to the satisfaction of the Director.

Development conditions	(9)	Subject to these Conditions, upon development or redevelopment of the Lot or any part thereof:
Compliance with the Buildings Ordinance	(a)	any building or buildings erected or to be erected on the Lot shall in all respects comply with the Buildings Ordinance, any regulations made thereunder and any amending legislation;
Compliance with Town Planning Ordinance	(b)	no building or buildings may be erected on the Lot or any part thereof or upon any area or areas outside the Lot specified in these Conditions, nor may any development or use of the Lot or any part thereof, or of any area or areas outside the Lot specified in these Conditions take place, which does not in all respects comply with the requirements of the Town Planning Ordinance, any regulations made thereunder and any amending legislation;
Total gross floor area	(c)	<p>(i) the total gross floor area of any building or buildings erected or to be erected on the Lot shall not be less than 38,742 square metres and shall not exceed 64,570 square metres;</p> <p>(ii) the proportion (expressed in percentage) which the total gross floor area of the building or buildings erected or to be erected on the Lot designed and constructed for the Clinical and Clinical Supporting Facilities bears to the total gross floor area of the building or buildings erected or to be erected on the Lot shall not be less than the percentage as set out in column 2 of item (I) in Part A of the Schedule annexed hereto in respect of all the Clinical and Clinical Supporting Facilities;</p> <p>(iii) the proportion (expressed in percentage) which the total gross floor area of the building or buildings erected or to be erected on the Lot designed and constructed for the Non-Clinical Supporting Facilities bears to the total gross floor area of the building or buildings erected or to be erected on the Lot shall not exceed the percentage as set out in column 2 of item (IV) in Part A of the Schedule annexed hereto in respect of all the Non-Clinical Supporting Facilities; and</p> <p>(iv) the proportion (expressed in percentage) which the total gross floor area of the building or buildings erected or to be erected on the Lot designed and constructed for the Accommodation Facilities bears to the total gross floor area of the building or buildings erected or to be erected on the Lot shall not exceed the percentage as set out in column 2 of item (II) in Part A of the Schedule annexed hereto in respect of all the Accommodation Facilities;</p>

Height	(d)	no part of any building or other structure erected or to be erected on the Lot together with any addition or fitting (if any) to such building or structure may in the aggregate exceed a height of 90 metres above the Hong Kong Principal Datum, provided that with the prior written approval of the Director, machine rooms, air-conditioning units, water tanks, stairhoods and similar roof-top structures may be erected or placed on the roof of the building so as to exceed the above height limit;
Building separation	(e)	<p>(i) except with the prior written approval of the Director, any building or group of buildings erected or to be erected on the Lot shall not have any projected façade length of 60 metres or more;</p> <p>(ii) for the purposes of sub-clause (e) of this Special Condition:</p> <p>(I) the decision of the Director as to what constitutes a building shall be final and binding on the Purchaser;</p> <p>(II) any two or more buildings shall be treated as a group of buildings if the shortest horizontal distance between any two buildings erected or to be erected on the Lot is less than 15 metres;</p> <p>(III) the decision of the Director as to what constitutes the projected façade length of a building or a group of buildings erected or to be erected on the Lot shall be final and binding on the Purchaser; and</p> <p>(IV) in calculating the projected façade length referred to in sub-clause (e)(i) of this Special Condition, the gap between any two buildings shall be taken into account and the Director's decision as to the calculation shall be final and binding on the Purchaser; and</p>
Design and disposition	(f)	the design and disposition of the building or buildings erected or to be erected on the Lot shall be subject to the approval in writing of the Director and no building works (other than site formation works) shall be commenced on the Lot until such approval shall have been obtained and for the purpose of these Conditions "building works" and "site formation works" shall be as defined in the Buildings Ordinance, any regulations made thereunder and any amending legislation.
No exempt building	(10)	No building shall be erected on the Lot of a type which by virtue of the Buildings Ordinance (Application to the New Territories) Ordinance, any regulations made thereunder and any amending legislation is exempted from the provisions of the Buildings Ordinance, any regulations made thereunder and any amending legislation.
Restriction on alienation	(11)	<p>(a) Except with the prior written consent of the Director and in conformity with any conditions imposed by him at his absolute discretion or as provided in sub-clause (b) of this Special Condition, the Purchaser shall not, throughout the term hereby agreed to be granted:</p> <p>(i) assign, mortgage, charge, underlet, part with possession of or otherwise dispose of the Lot or any part thereof or any interest therein or any building or part of any building thereon, or grant any licence or right whatsoever to use or occupy or to have possession of the Lot or any part thereof or any building or part of any building thereon, whether by way of direct or indirect reservation, the grant of any right of first refusal, option or power of attorney, or any other method, arrangement or</p>

document of any description, or enter into any agreement so to do; or

- (ii) solicit or accept, whether directly or indirectly or through a solicitor, agent, contractor or trustee or through a company in which the Purchaser or its nominee is directly or indirectly the owner of shares or which is the owner of shares in the Purchaser or otherwise, any money, money's worth or other valuable consideration of any description pursuant to any transaction, present or future, conditional or unconditional whereby the Lot or any part thereof or any interest therein or any building or part of any building thereon is or may be sold, assigned, mortgaged, charged, underlet or otherwise disposed of or affected, or made subject to a licence or any right whatsoever to use or occupy or to have possession of the Lot or any part thereof or any building or part of any building thereon, or enter into any agreement so to do.

Building mortgage as a whole prior to compliance

- (b) (i) Prior to compliance with these Conditions in all respects to the satisfaction of the Director, the Purchaser may mortgage or charge the Lot only as a whole (but not a part thereof or any interest therein) for the sole purpose of the development thereof in accordance with these Conditions and then only by way of a building mortgage or enter into any agreement so to do, it being agreed that for this purpose a building mortgage shall be one:
 - (I) whereby the Lot is mortgaged or charged in favour of a licensed bank or a registered deposit-taking company authorized under section 16 of the Banking Ordinance to secure monies (and interest thereon) advanced or to be advanced to the Purchaser for the purpose only of developing the Lot in accordance with these Conditions and for the payment of legal and other professional fees in connection with such development and the mortgage (provided that such fees do not, in the aggregate, exceed 5% of the total amount secured by the mortgage), and for no other purpose;
 - (II) under which such advances (in the case of work done) are to be made to the Purchaser only in amounts to be certified from time to time by the Authorized Person (appointed by the Purchaser under the Buildings Ordinance for the development of the Lot) as having been incurred by the Purchaser for the development of the Lot; and
 - (III) which provides that the mortgagee or chargee shall not exercise any right or power (whether under statute or the mortgage or otherwise) to foreclose, take possession, sell, assign, mortgage, charge, underlet, part with possession or otherwise dispose of the Lot or any part thereof or any interest therein or any building or part of any building thereon, or grant any licence or right whatsoever to use or occupy or to have possession of the Lot or any part thereof or any building or part of any building thereon, or enter into any agreement so to do, except with the prior written consent of the Director and in conformity with any conditions imposed by him at his absolute discretion (which may

include, without prejudice to the rights and discretion of the Director under these Conditions, the execution by the Purchaser and such other persons as may be required by the Director with the Government of a deed of novation (in such form as may be required by the Director) of the Service Deed (as defined in Special Condition No. (14) hereof), or a new service deed (in such form as may be required by the Director) in relation to the operation and management of the Hospital on such terms and conditions as may be required by the Director of Health, or such other documents as may be required by the Director).

- (ii) After these Conditions shall have been complied with in all respects to the satisfaction of the Director:

Mortgage as a whole after compliance

- (I) the Purchaser may mortgage or charge in favour of a licensed bank or a registered deposit-taking company authorized under section 16 of the Banking Ordinance the Lot and all the buildings thereon only as a whole (but not a part thereof or any interest therein or any building or part of any building thereon) or enter into any agreement so to do and then only by way of a mortgage or charge which provides that the mortgagee or chargee shall not exercise any right or power (whether under statute or the mortgage or charge or otherwise) to foreclose, take possession, sell, assign, mortgage, charge, underlet, part with possession or otherwise dispose of the Lot or any part thereof or any interest therein or any building or part of any building thereon, or grant any licence or right whatsoever to use or occupy or to have possession of the Lot or any part thereof or any building or part of any building thereon, or enter into any agreement so to do, except with the prior written consent of the Director and in conformity with any conditions imposed by him at his absolute discretion (which may include, without prejudice to the rights and discretion of the Director under these Conditions, the execution by the Purchaser and such other persons as may be required by the Director with the Government of a deed of novation (in such form as may be required by the Director) of the Service Deed (as defined in Special Condition No. (14) hereof), or a new service deed (in such form as may be required by the Director) in relation to the operation and management of the Hospital on such terms and conditions as may be required by the Director of Health, or such other documents as may be required by the Director);

Assignment as a whole after compliance

- (II) the Purchaser may, with the prior written consent of the Director and in conformity with any conditions imposed by him at his absolute discretion (which may include, without prejudice to the rights and discretion of the Director under these Conditions, the execution by the Purchaser and such other persons as may be required by the Director (including the purchaser or assignee, or the mortgagee or chargee who exercises the right or power of foreclosure or taking possession) with the Government of a deed of novation (in such

form as may be required by the Director) of the Service Deed (as defined in Special Condition No. (14) hereof), or a new service deed (in such form as may be required by the Director) in relation to the operation and management of the Hospital on such terms and conditions as may be required by the Director of Health, or such other documents as may be required by the Director), assign the Lot and all the buildings thereon only as a whole (but not a part thereof or any interest therein or any building or part of any building thereon) or enter into any agreement so to do.

Underletting of the Ancillary Portion

(iii) At any time whether prior to or after compliance with these Conditions in all respects to the satisfaction of the Director, the Purchaser may underlet any part of any building on the Lot for the purpose of providing any of the following Ancillary Facilities:

- (I) canteens;
- (II) retail shops;
- (III) food and beverage outlets; and
- (IV) automatic teller machines

and such other Ancillary Facilities as the Director of Health may at his absolute discretion approve (any such part of the building on the Lot for the purpose of providing the Ancillary Facilities referred to in the foregoing provisions of this sub-clause (b)(iii) and such other Ancillary Facilities approved as aforesaid are hereinafter collectively referred to as the "Ancillary Portion") subject to and upon the following terms and conditions:

- (1) the lease or tenancy shall be granted for the purpose of and in the course of normal operation of a hospital and in accordance with these Conditions;
- (2) the lease or tenancy shall be subject to any terms and conditions as the Director of Health may at any time at his absolute discretion impose;
- (3) the term of the lease or tenancy shall not exceed 10 years in the aggregate including any right of renewal;
- (4) the lease or tenancy shall not commence until after the issue by the Building Authority of an occupation permit or a temporary occupation permit under the Buildings Ordinance, any regulations made thereunder and any amending legislation, covering the building or that part of the building to which the lease or tenancy relates;
- (5) no premium, fine, key money or similar payment shall be paid by the tenant;
- (6) the rent payable shall not exceed a rack rent;

- (7) no rent shall be payable in advance for a period greater than 12 calendar months;
- (8) the user permitted in the lease or tenancy agreement or any agreement therefor shall comply with these Conditions; and
- (9) none of the terms and conditions in the lease or tenancy agreement or any agreement therefor shall contravene these Conditions.

Licences

- (iv) At any time whether prior to or after compliance with these Conditions in all respects to the satisfaction of the Director, the Purchaser may grant licence (hereinafter referred to as "Licence") to any person to use or occupy any part (but not the whole) of the Hospital subject to and upon the following terms and conditions:

- (A) such Licence shall be granted for the purpose of and in the course of normal operation of a hospital and in accordance with these Conditions;
- (B) such Licence shall be subject to any terms and conditions as the Director of Health may at any time at his absolute discretion impose;
- (C) any consent of the Director of Health required under clause 14.1 of the Service Deed (as defined in Special Condition No. (14) hereof) shall have been obtained before such Licence is granted;
- (D) such Licence shall not commence until after the issue by the Building Authority of an occupation permit or a temporary occupation permit under the Buildings Ordinance, any regulations made thereunder and any amending legislation, covering the building or that part of the building to which such Licence relates;
- (E) the user permitted in such Licence or any agreement therefor shall comply with these Conditions; and
- (F) none of the terms and conditions in such Licence or any agreement therefor shall contravene these Conditions

(all such terms and conditions are hereinafter collectively referred to as "the Prescribed Requirements") PROVIDED THAT:

Proviso (I):
Licence for the Ancillary
Facilities

- (I) no Licence may be granted in respect of the Ancillary Facilities or any part thereof except that the Purchaser may, subject to compliance with the Prescribed Requirements, grant Licence, which complies with the following terms and conditions, to use or occupy any part of the Ancillary Facilities:
 - (1) the term of the Licence shall not exceed 10 years in the aggregate including any right of renewal;

- (2) no premium, fine, key money or similar payment shall be paid by the licensee;
- (3) the licence fee payable shall not exceed the prevailing market fee; and
- (4) no licence fee shall be payable in advance for a period greater than 12 calendar months;

Proviso (II):
Licence for the
Accommodation Facilities

- (II) no Licence may be granted in respect of the Accommodation Facilities or any part thereof except that:

Licence to one management
agent only for the whole
Accommodation Facilities

- (1) the Purchaser may, without prejudice to Special Condition No. (2), hereof and subject to compliance with the Prescribed Requirements, grant no more than one Licence at any one time to any person as the management agent of the Purchaser to use the Accommodation Facilities as a whole (but not a part thereof) for the sole purpose of managing on behalf of the Purchaser the Accommodation Facilities as a whole (but not a part thereof) in compliance and in conformity with these Conditions, in particular Special Condition No. (2)(b)(i) hereof, on condition that:

- (aa) the Licence complies with the same terms and conditions as stipulated in sub-clause (I) of this sub-clause (b)(iv);

- (bb) the Accommodation Facilities may only be used as accommodation facilities for occupation by any Registered Patient or his Carer in accordance with Special Condition No. (2) hereof; and

- (cc) the Licence shall not be transferable and the Purchaser shall not allow the licensee to, nor may the licensee, assign, mortgage, charge or otherwise dispose of the licence granted under the Licence or any interest therein or enter into any agreement so to do;

Licence to Registered
Patient or his Carers

- (2) notwithstanding the grant of Licence by the Purchaser in respect of the Accommodation Facilities as a whole under sub-clause (II)(1) of this sub-clause (b)(iv), the Purchaser may, subject to compliance with the Prescribed Requirements, grant Licence to any Registered Patient or his Carers to occupy any part of the Accommodation Facilities, on condition that the Licence complies with the following terms and conditions:

- (aa) the term of the Licence shall not exceed 30 days in the aggregate including any right of renewal;
- (bb) no premium, fine, key money or similar payment shall be paid by the licensee;
- (cc) the licence fee payable shall not exceed the prevailing market fee;
- (dd) no licence fee shall be payable in advance for a period greater than 30 days;
- (ee) the term of the Licence for a Carer of a Registered Patient shall coincide with the period of occupation of the Registered Patient at the Accommodation Facilities or the period during which the Registered Patient is admitted to the hospital referred to in Special Condition No. (2)(a)(i) hereof (as the case may be), and in any event shall not exceed 30 days in the aggregate, including any right of renewal; and
- (ff) for each Registered Patient granted Licence under sub-clause (II)(2) of this sub-clause (b)(iv) to occupy any part of the Accommodation Facilities or each Registered Patient admitted to the hospital referred to in Special Condition No. (2)(a)(i) hereof (as the case may be), no more than two Carers of any such Registered Patient shall be granted Licence under sub-clause (II)(2) of this sub-clause (b)(iv);

Proviso (III):
Licence for parking spaces

- (III) (1) no Licence may be granted in respect of the spaces provided in accordance with Special Condition No. (18)(a) hereof or any part thereof except that the Purchaser may, subject to compliance with the Prescribed Requirements, grant Licence, which complies with the following terms and conditions, to use or occupy any part of the spaces provided in accordance with Special Condition No. (18)(a) hereof:
 - (aa) the term of the Licence shall not exceed 1 calendar month in the aggregate including any right of renewal;
 - (bb) no premium, fine, key money or similar payment shall be paid by the licensee;

Licence to one management
agent only for spaces

(cc) the licence fee payable shall not exceed the prevailing market fee; and

(dd) no licence fee shall be payable in advance for a period greater than 1 calendar month;

(2) notwithstanding the restriction under sub-clause (III)(1) of this sub-clause (b)(iv) against granting Licence in respect of the spaces provided in accordance with Special Condition No. (18)(a) hereof or any part thereof, the Purchaser may, subject to compliance with the Prescribed Requirements, grant Licence to any person as the management agent of the Purchaser to use the spaces provided in accordance with Special Condition No. (18) hereof and the other areas referred to in Special Condition No. (17) hereof, or any part thereof, for the sole purpose of managing on behalf of the Purchaser the said spaces and the said other areas, or any part thereof, in compliance with these Conditions on condition that the Licence complies with the following terms and conditions:

(aa) the term of the Licence shall not exceed 3 years in the aggregate including any right of renewal;

(bb) no premium, fine, key money or similar payment shall be paid by the licensee;

(cc) the licence fee payable shall not exceed the prevailing market fee; and

(dd) no licence fee shall be payable in advance for a period greater than 12 calendar months,

and further on condition that at any one time no more than one management agent may be granted Licence under sub-clause (III)(2) of this sub-clause (b)(iv) and that the Licence shall not be transferable and the Purchaser shall not allow the licensee to, nor may the licensee, assign, mortgage, charge or otherwise dispose of the licence granted under the Licence or any interest therein or enter into any agreement so to do.

(c) For the purposes of these Conditions, the Director of Health shall have the sole and absolute discretion to determine:

(i) what constitutes or forms part of the Ancillary Portion;

- (ii) what constitutes the purpose of normal operation of a hospital or the course of normal operation of a hospital;
- (iii) whether any lease or tenancy is granted, or any part of the Ancillary Portion is underlet, for the purpose of and in the course of normal operation of a hospital in accordance with sub-clause (b)(iii) of this Special Condition;
- (iv) whether any licence is granted for the purpose of and in the course of normal operation of a hospital; and
- (v) whether sub-clause (II) in sub-clause (b)(iv) of this Special Condition is complied with,

and such determination shall be final and binding on the Purchaser.

Restriction on assignment
and mortgage except as a
whole

(d) Without prejudice to the restrictions and requirements under sub-clause (a) of this Special Condition, the Purchaser shall not throughout the term hereby agreed to be granted, in any event, be allowed to assign, mortgage or charge the Lot or any part thereof or any interest therein or any building or part of any building thereon or enter into any agreement so to do except the Lot and the buildings thereon as a whole provided that any assignment, mortgage or charge of the Lot and all the buildings thereon as a whole or any agreement so to do shall be subject to sub-clauses (b)(i) and (b)(ii) of this Special Condition.

(e) Without prejudice to the generality of General Condition No. 13 hereof and the provisions of Special Condition No. (34) hereof and section 40 of the Conveyancing and Property Ordinance:

- (i) the expression "the Purchaser" in this Special Condition No. (11) shall be deemed to include any mortgagee or chargee (whether equitable or legal) of the Lot or any part thereof or any interest therein or any building or part of any building thereon (including the mortgagee or chargee under the building mortgage referred to in sub-clause (b)(i) of this Special Condition); and
- (ii) the provisions of this Special Condition No. (11) shall apply to the exercise by any such mortgagee or chargee of any right or power (whether under statute or the relevant mortgage or charge or otherwise) to foreclose, take possession, sell, assign, mortgage, charge, part with possession, underlet or otherwise dispose of the Lot or any part thereof or any interest therein or any building or part of any building thereon, or grant any licence or right whatsoever to use or occupy or to have possession of the Lot or any part thereof or any building or part of any building thereon, or enter into any agreement so to do, and the exercise by any such mortgagee or chargee of the right or power to foreclose any interest shall be deemed to be the exercise of the right or power to assign such interest to such mortgagee or chargee.

(f) Notwithstanding sub-clause (e) of this Special Condition, no mortgagee or chargee (whether equitable or legal) of the Lot or any part thereof or any interest therein or any building or part of any building thereon (including the mortgagee or chargee under the building mortgage referred to in sub-clause (b)(i) of this Special Condition) may invoke the provisions of sub-clause (b) of this Special Condition or any of them except with the prior written consent of the Director and in conformity with any conditions imposed by him at his absolute discretion.

- Restriction on partitioning (12) Notwithstanding anything to the contrary herein contained, throughout the term hereby agreed to be granted, the Purchaser shall not partition (whether by way of assignment or other disposal or by any other means) the Lot or any part thereof or enter into any agreement so to do.
- Registration (13) Every assignment, mortgage, charge, underletting for more than three years or other alienation of the Lot or any part thereof or any interest therein shall be registered at the Land Registry.
- Termination (14) (a) It is hereby agreed that upon termination of the service deed dated the day of 20 made between the Government and the Purchaser (such service deed together with any amendment thereof as may be agreed between the Government and the Purchaser, or any new service deed entered into in accordance with the requirements of the Director pursuant to these Conditions, or such service deed or any such new service deed together with any deed of novation entered into in accordance with the requirements of the Director pursuant to these Conditions, is referred to in these Conditions as "the Service Deed") by the Government in accordance with the provisions of the Service Deed the Government shall be entitled to re-enter upon and take back possession of the Lot or any part or parts thereof and all or any buildings, structures, erections and works thereon without notice and upon the exercise of this power by the Government the rights of the Purchaser under this Agreement shall absolutely cease and determine but without prejudice nevertheless to the rights, remedies and claims of the Government in respect of any breach, non-observance or non-performance of any of these Conditions or otherwise, and the Purchaser shall not be entitled to any refund of the premium paid by him or any part thereof or to any payment or compensation whatsoever whether in respect of the value of the Lot or any part or parts thereof or any building or buildings or structure or structures erected or to be erected on the Lot or any part or parts thereof or part of any such building or buildings or structure or structures or any amount expended by the Purchaser in the preparation, formation or development of the Lot or any part or parts thereof or otherwise.
- (b) Save as provided in these Conditions, nothing in the Service Deed shall affect the interpretation, operation and enforcement of any of these Conditions and nothing in these Conditions shall affect the interpretation, operation and enforcement of any of the provisions in the Service Deed.
- (c) For the avoidance of doubt, the rights, remedies and claims available to the Government under the Service Deed (including the rights, remedies and claims of the Government in respect of any breach, non-observance or non-performance of any of the provisions under the Service Deed) shall not prejudice any of the rights, remedies and claims available to the Government under these Conditions or in respect of any breach, non-observance or non-performance by the Purchaser of any of these Conditions or any other rights or remedies of the Government.
- Pink Hatched Red Area (15) (a) There is reserved unto the Government, the Director, the existing occupier (currently the Hospital Authority) and any grantee or purchaser, tenant or occupier of the adjoining site as shown and marked "TAI PO HOSPITAL" on the plan annexed hereto, members of the public and such other officers, agents, contractors, servants, visitors, patients, workmen and other persons as the Government may authorize a right of way for vehicular and pedestrian traffic over that portion of the Lot shown coloured pink hatched red on the plan annexed hereto (which said portion is hereinafter referred to as "the Pink Hatched Red Area").
- Formation of the Pink Hatched Red Area (time limit, manner and purpose) (b) The Purchaser shall, on or before the date as set out in column 2 of item (I) in Part B of the Schedule annexed hereto or within such other time limit as may be specified by the Director, at his own expense, in such manner, with such materials and to such standards as the Director shall require or approve, construct a paved way with the associated

street furnitures, traffic aids, street lighting, sewers, drains and other structures on the Pink Hatched Red Area with minimum disturbance to the existing occupier of the Tai Po Hospital (currently the Hospital Authority) and persons to whom right of way over the Pink Hatched Red Area has been reserved under sub-clause (a) of this Special Condition and to their continuous and existing use of the Pink Hatched Red Area for vehicular and pedestrian traffic.

(c) The Purchaser shall at his own expense uphold, maintain and repair the Pink Hatched Red Area and everything forming a portion of or pertaining to it, all to be done to the satisfaction of the Director

(d) The Purchaser shall throughout the term hereby agreed to be granted keep the Pink Hatched Red Area open for use at all times during the day and night freely and without payment of any nature whatsoever and without any interruption.

Restriction on use of the
Pink Hatched Red Area

(e) The Purchaser shall not use the Pink Hatched Red Area or any part or parts thereof for any purpose other than for vehicular and pedestrian traffic or such other purposes as the Director in his sole discretion may approve. No goods or vehicles shall be stored or parked within the Pink Hatched Red Area or any part or parts thereof.

Formation and
maintenance of the Pink
Hatched Red Area
(non-fulfilment)

(f) In the event of the non-fulfilment of the Purchaser's obligations under sub-clauses (b) and (c) of this Special Condition, the Government may carry out the necessary construction, maintenance and repair works at the cost of the Purchaser who shall pay to the Government on demand a sum equal to the cost thereof, such sum to be determined by the Director whose determination shall be final and shall be binding upon the Purchaser.

No claim on works on the
Pink Hatched Red Area

(g) The Government, the Director, his officers, contractors, his or their workmen and any other persons duly authorized by the Director shall have no liability in respect of any loss, damage, nuisance or disturbance whatsoever caused to or suffered by the Purchaser or any other person whether arising out of or incidental to the fulfilment of the Purchaser's obligations under sub-clauses (a), (b), (c) and (d) of this Special Condition or the exercise of the rights by the Government, the Director, his officers, contractors, his or their workmen and any other persons duly authorized by him under sub-clause (f) of this Special Condition or otherwise, and no claim whatsoever shall be made against the Government or the Director or his officers, contractors, his or their workmen and any other persons duly authorised by him in respect of any such loss, damage, nuisance or disturbance.

Road Installations and
Utility Services

(h) The Purchaser acknowledges that there are structures and installations including but not limited to street lights, traffic signs, street furniture and road markings (hereinafter collectively referred to as "the Road Installations") on the Pink Hatched Red Area and Government or other drain, waterway or watercourse, water main, sewer, nullah, pipe, cable, wire, utility service or any other works or installations (hereinafter collectively referred to as "the Utility Services") being or running upon, over or under the Pink Hatched Red Area. For the purpose of this Special Condition, the decision of the Director as to what constitutes the Utility Services shall be final and binding on the Purchaser. The Purchaser shall not remove or interfere with the Utility Services without the prior written approval of the Director. The Government will accept no responsibility or liability for any damage, nuisance or disturbance caused to or suffered by the Purchaser by reason of the presence of the Road Installations and the Utility Services. The Purchaser shall take or

cause to be taken all proper and adequate care, skill and precautions at all times, and particularly when carrying out construction, maintenance, renewal or repair work to avoid causing any damage, disturbance, or obstruction to the Utility Services. The Purchaser hereby indemnifies and shall keep indemnified the Government from and against all liabilities, claims, costs, demands, actions or other proceedings whatsoever arising whether directly or indirectly out of or in connection with the presence and subsequent removal or interferences, if any, of the Road Installations and the Utility Services.

No structures erected
except with prior approval

- (i) Except with the prior written approval of the Director, no building or structure or support for any building or structure (other than structures forming parts of the Utility Services) shall be erected or constructed on, over, above, under, below or within the Pink Hatched Red Area.

Access to the Pink
Hatched Red Area for
inspection etc.

- (j) The Government shall have the full right and power, upon giving to the Purchaser, not less than fourteen days' written notice (save in case of emergency) to lay, install, relay, divert, remove, reprovise, replace, inspect, operate, repair, maintain and renew the Utility Services which are now or may hereafter be upon, over or under the Pink Hatched Red Area as the Director may in his absolute discretion deem fit, making good any and all damages caused thereby, and the Director, his officers, contractors and any other persons authorized by him, his or their workmen with or without tools, equipment, plant, machinery or motor vehicles shall have the right of free ingress, egress and regress at all times to or from the Pink Hatched Red Area for the purposes aforesaid. The Purchaser shall not disturb or allow anybody to disturb the Utility Services without the prior written approval from the Director. Save in respect of making good any and all damage caused by any exercise of the aforesaid rights and powers, the Government and the Director, their officers, contractors, servants, and any other persons authorized by him or them his or their workmen shall have no liability in respect of any loss, damage, nuisance or disturbance whatsoever caused to or suffered by the Purchaser arising out of or incidental to the exercise of the rights conferred under this sub-clause, and no claim nor objection shall be made against him or them by the Purchaser.

No dedication

- (k) It is hereby expressly agreed, declared and provided that by imposing the obligation on the part of the Purchaser contained in sub-clauses (a) and (d) of this Special Condition neither the Purchaser intends to dedicate nor the Government consents to any dedication of the Pink Hatched Red Area or any part or parts thereof to the public for the right of passage.

Concession under
Building (Planning)
Regulations etc.

- (l) It is expressly agreed and declared that the obligation on the part of the Purchaser contained in sub-clauses (a) and (d) of this Special Condition will give rise to no expectation of, or claim for or in respect of, any concession or right in respect of additional site coverage or plot ratio whether under Regulation 22(1) of the Building (Planning) Regulations, any amendment thereto, substitution therefor, or otherwise and for the avoidance of doubt the Purchaser expressly waives any and all claims in respect of or for any concession in respect of, or right to, additional site coverage or plot ratio under regulation 22(1) of the Building (Planning) Regulations, any amendment thereto or substitution therefor.

- Vehicular access (16) The Purchaser shall have no right of ingress or egress to or from the Lot for the passage of motor vehicles except between the points X and Y through Z shown and marked on the plan annexed hereto or at such other points as may be approved in writing by the Director. Upon development or redevelopment of the Lot, a temporary access for construction vehicles into the Lot may be permitted in such position and subject to such conditions as may be imposed by the Director. Upon completion of the development or redevelopment, the Purchaser shall at his own expense within the time limit specified by the Director and in all respects to the satisfaction of the Director, reinstate the area or areas upon which the temporary access was constructed.
- Deposit of car park layout plan (17) The Purchaser shall on or before the date as set out in column 2 of item (I) in Part B to the Schedule annexed hereto deposit with the Director a plan approved by the Director indicating the layout of all the parking spaces, spaces for picking up and setting down of passengers and spaces for loading and unloading of goods to be provided within the Lot in accordance with Special Condition No. (18) hereof or a copy of such plan certified by an Authorized Person (as defined in the Buildings Ordinance, any regulations made thereunder and any amending legislation). The said parking spaces, spaces for picking up and setting down of passengers and spaces for loading and unloading of goods indicated on the said approved plan shall not be used for any purpose other than for the purposes set out respectively in Special Condition No. (18) hereof. The Purchaser shall maintain the parking spaces, spaces for picking up and setting down of passengers and spaces for loading and unloading of goods and other areas, including but not restricted to the lifts, landings, and manoeuvring and circulation areas, in accordance with the said approved plan and shall not alter the layout except with the prior written consent of the Director. Except for the parking spaces indicated on the said approved plan, no part of the Lot or any building or structure thereon shall be used for parking purposes.
- Parking requirements (18) (a) The Purchaser shall provide within the Lot and to the satisfaction of the Director spaces for the parking of motor vehicles at the rate of one space for every three hospital beds or part thereof, one space for every ten rooms or part thereof of the Accommodation Facilities if provided on the Lot and one space for every unit of the Staff Quarters if provided on the Lot unless the Director consents to another rate, and the spaces so provided shall not be used for any purpose other than for the parking of motor vehicles licensed under the Road Traffic Ordinance, any regulations made thereunder and any amending legislation, and belonging to the Purchaser, the staff employed at the hospital referred to in Special Condition No. (2)(a)(i) hereof, the patients attending the said hospital for treatment, Carers, family members of staff or visitors to the Hospital. Each of the spaces provided under this sub-clause shall measure 2.5 metres in width and 5.0 metres in length with a minimum headroom of 2.4 metres.
- (b) (i) Out of the spaces provided under sub-clause (a) of this Special Condition, the Purchaser shall reserve and designate not less than five spaces for the parking of motor vehicles by disabled persons as defined in the Road Traffic Ordinance, any regulations made thereunder and any amending legislation.
- (ii) The spaces so reserved and designated under sub-clause (b)(i) of this Special Condition shall be located at such position and level as shall be approved in writing by the Director and each of the spaces shall measure 3.5 metres in width and 5.0 metres in length with a minimum headroom of 2.4 metres. Such spaces shall not be used for any purpose other than for the parking of motor vehicles by disabled persons as defined in the Road Traffic Ordinance, any regulations made thereunder and any amending legislation, and belonging to the Purchaser, the staff employed at the hospital referred to in Special Condition No. (2)(a)(i) hereof, the patients attending the said hospital for

treatment, Carers, family members of staff or visitors to the Hospital.

Ambulance parking spaces

(c) The Purchaser shall provide within the Lot and to the satisfaction of the Director eight spaces for the parking of ambulances in the event the hospital referred to in Special Condition No. (2)(a)(i) hereof comprises an Accident and Emergency departments or three spaces for the parking of ambulances in the event the said hospital does not comprise an Accident and Emergency department and the spaces so provided shall not be used for any purpose other than for the parking of ambulances. Each of the spaces provided under this sub-clause shall measure 3.0 metres in width and 9.0 metres in length with a minimum headroom of 3.6 metres.

Single-deck bus parking spaces

(d) The Purchaser shall provide within the Lot and to the satisfaction of the Director one space for every 200 rooms or part thereof of the Accommodation Facilities if provided on the Lot for the parking of single-deck buses and the space so provided shall not be used for any purpose other than for the parking of single-deck buses. Each of the spaces provided under this sub-clause shall measure 3.5 metres in width and 12.0 metres in length with a minimum headroom of 3.8 metres.

Provision of spaces

(e) The Purchaser shall provide within the Lot and to the satisfaction of the Director:

- (i) spaces for the picking up and setting down of passengers from motor vehicles and taxis, each measuring 2.5 metres in width and 5.0 metres in length with a minimum headroom of 2.4 metres, at the rate of one space for every 80 hospital beds or part thereof in the event the hospital referred to in Special Condition No. (2)(a)(i) hereof comprises an Accident and Emergency departments or for every 160 hospital beds or part thereof in the event the said hospital does not comprise an Accident and Emergency department unless the Director consents to another rate and the spaces so provided shall not be used for any purpose other than for the picking up and setting down of passengers from motor vehicles and taxis licensed under the Road Traffic Ordinance, any regulations made thereunder and any amending legislation;
- (ii) spaces for the picking up and setting down of passengers from public light buses, each measuring 3.0 metres in width and 8.0 metres in length with a minimum headroom of 3.3 metres, at the rate of one space for every 200 hospital beds or part thereof in the event the hospital referred to in Special Condition No. (2)(a)(i) hereof comprises an Accident and Emergency departments or for every 400 hospital beds or part thereof in the event the said hospital does not comprise an Accident and Emergency department unless the Director consents to another rate and the spaces so provided shall not be used for any purpose other than for the picking up and setting down of passengers from public light buses licensed under the Road Traffic Ordinance, any regulations made thereunder and any amending legislation;
- (iii) two spaces for the picking up and setting down to and from ambulances, each measuring 3.0 metres in width and 9.0 metres in length with a minimum headroom of 3.6 metres and the spaces so provided shall not be used for any purpose other than for the picking up and setting down to and from ambulances;

- (iv) (I) one space for the picking up and setting down of passengers from single-deck buses for the Accommodation Facilities if provided on the Lot with 300 rooms or less, measuring 3.5 metres in width and 12.0 metres in length with a minimum headroom of 3.8 metres and the space so provided shall not be used for any purpose other than for the picking up and setting down of passengers from single-deck buses; and
- (II) two spaces for the picking up and setting down of passengers from single-deck buses for the Accommodation Facilities if provided on the Lot with more than 300 rooms, each measuring 3.5 metres in width and 12.0 metres in length with a minimum headroom of 3.8 metres and the spaces so provided shall not be used for any purpose other than for the picking up and setting down of passengers from single-deck buses; and
- (v) three spaces for the loading and unloading of goods to and from medium goods vehicles and heavy goods vehicles, each measuring 3.5 metres in width and 11.0 metres in length with a minimum headroom of 4.7 metres; such spaces shall not be used for any purpose other than for the loading and unloading of goods to and from medium goods vehicles and heavy goods vehicles licensed under the Road Traffic Ordinance, any regulations made thereunder and any amending legislation.

The spaces so provided shall not be used for any purpose other than the purposes respectively stipulated in sub-clauses (e)(i), (e)(ii), (e)(iii), (e)(iv) and (e)(v) of this Special Condition.

(f) The spaces provided under sub-clauses (e)(i) and (e)(iii) of this Special Condition shall be covered spaces as to which the decision of the Director shall be final and binding on the Purchaser.

(g) The spaces provided under this Special Condition shall not be used for any purposes other than those respectively stipulated in this Special Condition and, in particular, the said spaces shall not be used for the storage, display or exhibition of motor vehicles for sale or otherwise or for provision of car cleaning and beauty services.

(h) The Purchaser shall on or before the date as set out in column 2 of item (I) in Part B of the Schedule annexed hereto, provide and continue to maintain on the Lot:

- (i) all the spaces for the parking of motor vehicles by disabled persons, ambulances and single-deck buses in accordance with the provisions in sub-clauses (b)(i), (c) and (d) of this Special Condition respectively;
- (ii) all the spaces for the picking up and setting down of passengers from ambulances and single-deck buses in accordance with the provisions in sub-clauses (e)(iii), (e)(iv)(I) and (e)(iv)(II) of this Special Condition respectively;
- (iii) all the spaces for the loading and unloading of medium goods vehicles and heavy goods vehicles in accordance with sub-clause (e)(v) of this Special Condition;

- (iv) spaces for the parking of motor vehicles in accordance with the provisions in sub-clause (a) of this Special Condition in number not less than on a pro-rata basis calculated pursuant to the number of the hospital beds, number of the rooms of the Accommodation Facilities and number of the units of the Staff Quarters provided respectively on or before the date as set out in column 2 of item (I) in Part B of the Schedule annexed hereto; and
- (v) spaces for the picking up and setting down of passengers from motor vehicles and taxis; and public light buses in accordance with the provisions in sub-clauses (e)(i) and (e)(ii) of this Special Condition respectively in number not less than on a pro-rata basis calculated pursuant to the number of the hospital beds provided on or before the date as set out in column 2 of item (I) in Part B of the Schedule annexed hereto.

(i) For the purpose of this Special Condition, the definition of a room or rooms of the Accommodation Facilities and a unit or units of the Staff Quarters shall be determined by the Director at his sole discretion whose determination shall be final and binding upon the Grantee.

Parking spaces etc.
excluded from gross floor
area calculation

(19) (a) For the purpose of calculating the total gross floor area stipulated in Special Condition No. (9)(c) hereof,

- (i) there shall not be taken into account :
 - (I) the spaces provided in accordance with Special Conditions Nos. (18)(a), (18)(b), (18)(c) and (18)(d) hereof if they are provided below ground level; and
 - (II) the spaces provided in accordance with Special Conditions Nos. (18)(e)(i), (18)(e)(ii), (18)(e)(iii), (18)(e)(iv)(I), (18)(e)(iv)(II) and (18)(e)(v) hereof if they are provided at or below ground level; and
- (ii) if the spaces provided in accordance with Special Conditions Nos. (18)(a), (18)(b), (18)(c) and (18)(d) hereof are provided at or above ground level or the spaces provided in accordance with Special Conditions Nos. (18)(e)(i), (18)(e)(ii), (18)(e)(iii), (18)(e)(iv)(I), (18)(e)(iv)(II) and (18)(e)(v) hereof are provided above ground level, 50% of such spaces together with 50% of the other areas including but not limited to lift lobbies, landings, pedestrian access routes, manoeuvring and circulation areas, and plant rooms serving such spaces shall be taken into account for the calculation of the total gross floor area stipulated in Special Condition No. (9)(c)(iii) hereof for the Non-Clinical Supporting Facilities (excluding the total gross floor area stipulated in Special Condition No. (9)(c)(iv) hereof for the Accommodation Facilities) as to which the decision of the Director shall be final and binding on the Purchaser.

(b) Notwithstanding sub-clause (a)(ii) of this Special Condition, the Director at his sole discretion may subject to the payment by the Purchaser of any premium and administrative fee as shall be determined by the Director exclude any spaces and other areas referred to in sub-clause (a)(ii) of this Special Condition from the calculation of total gross floor area stipulated in Special Condition No. (9)(c) hereof as to which the decision of the Director shall be final and binding on the Purchaser.

(c) For the purpose of this Special Condition, the decision of the Director as to what constitutes ground level or whether any space is at, above or below ground level shall be final and binding on the Purchaser.

Set back

(20) The Purchaser shall not cut away, remove or set back any Government land adjacent to or adjoining the Lot or carry out any building-up, filling-in or any slope treatment works of any kind whatsoever on any Government land except with the prior written consent of the Director who may, at his sole discretion, give his consent subject to such terms and conditions as he sees fit, including the grant of additional Government land as an extension to the Lot at such premium as he may determine.

Cutting away

(21) (a) Where there is or has been any cutting away, removal or setting back of any land, or any building-up or filling-in or any slope treatment works of any kind whatsoever, whether with or without the prior written consent of the Director, either within the Lot or on any Government land, which is or was done for the purpose of or in connection with the formation, levelling or development of the Lot or any part thereof or any other works required to be done by the Purchaser under these Conditions, or for any other purpose, the Purchaser shall at his own expense carry out and construct such slope treatment works, retaining walls or other support, protection, drainage or ancillary or other works as shall or may then or at any time thereafter be necessary to protect and support such land within the Lot and also any adjacent or adjoining Government or leased land and to obviate and prevent any falling away, landslide or subsidence occurring thereafter. The Purchaser shall at all times during the term hereby agreed to be granted maintain at his own expense the said land, slope treatment works, retaining walls or other support, protection, drainage or ancillary or other works in good and substantial repair and condition to the satisfaction of the Director.

(b) Nothing in sub-clause (a) of this Special Condition shall prejudice the Government's rights under these Conditions, in particular Special Condition No. (20) hereof.

(c) In the event that as a result of or arising out of any formation, levelling, development or other works done by the Purchaser or owing to any other reason, any falling away, landslide or subsidence occurs at any time, whether in or from any land within the Lot or from any adjacent or adjoining Government or leased land, the Purchaser shall at his own expense reinstate and make good the same to the satisfaction of the Director and shall indemnify the Government, its agents and contractors from and against all costs, charges, damages, demands and claims whatsoever which shall or may be made, suffered or incurred through or by reason of such falling away, landslide or subsidence.

(d) In addition to any other rights or remedies herein provided for breach of any of these Conditions, the Director shall be entitled by notice in writing to call upon the Purchaser to carry out, construct and maintain the said land, slope treatment works, retaining walls, or other support, protection, and drainage or ancillary or other works or to reinstate and make good any falling away, landslide or subsidence, and if the Purchaser shall neglect or fail to comply with the notice to the satisfaction of the Director within the period specified therein, the Director may forthwith execute and carry out any necessary works and the Purchaser shall on demand repay to the Government the cost thereof, together with any administrative and professional fees and charges.

No rock crushing

(22) No rock crushing plant shall be permitted on the Lot without the prior written approval of the Director.

Anchor maintenance

(23) Where prestressed ground anchors have been installed, upon development or redevelopment of the Lot or any part thereof, the Purchaser shall at his own expense carry out regular maintenance and regular monitoring of the prestressed ground anchors throughout their service life to the satisfaction of the Director and shall supply to the Director such reports and information on all such monitoring works as the Director may from time to time in his absolute discretion require. If the Purchaser

shall neglect or fail to carry out the required monitoring works, the Director may forthwith execute and carry out the monitoring works and the Purchaser shall on demand repay to the Government the cost thereof.

Spoil or debris

(24) (a) In the event of earth, spoil, debris, construction waste or building materials (hereinafter referred to as "the waste") from the Lot, or from other areas affected by any development of the Lot being eroded, washed down or dumped onto public lanes or roads or into or onto road-culverts, foreshore or seabed, sewers, storm-water drains or nullahs or other Government properties (hereinafter referred to as "the Government properties"), the Purchaser shall at his own expense remove the waste from and make good any damage done to the Government properties. The Purchaser shall indemnify the Government against all actions, claims and demands arising out of any damage or nuisance to private property caused by such erosion, washing down or dumping.

(b) Notwithstanding sub-clause (a) of this Special Condition, the Director may, (but is not obliged to), at the request of the Purchaser remove the waste from and make good any damage done to the Government properties and the Purchaser shall pay to the Government on demand the cost thereof.

Green Hatched Black
Areas

(25) (a) The Purchaser shall at his own expense carry out and complete to the satisfaction of the Director such geotechnical investigations and such slope treatment, landslide preventive, mitigation and remedial works on the areas shown coloured green hatched black on the plan annexed hereto (hereinafter collectively referred to as "the Green Hatched Black Areas") as the Director in his absolute discretion may require and shall, at all times during the term hereby agreed to be granted, at his own expense, maintain in good and substantial repair and condition to the satisfaction of the Director the Green Hatched Black Areas including all land, slope treatment works, earth-retaining structures, drainage and any other works therein and thereon. In the event that any landslide, subsidence or falling away occurs within the Green Hatched Black Areas at any time during the term hereby agreed to be granted, the Purchaser shall at his own expense reinstate and make good the same to the satisfaction of the Director together with any adjacent or adjoining areas which, in the opinion of the Director (whose decision shall be final and binding on the Purchaser), have also been affected. The Purchaser shall indemnify the Government, its agents and contractors against all claims, proceedings, costs, damages and expenses whatsoever incurred by reason of such landslide, subsidence or falling away. The Purchaser shall ensure at all times that there shall be no illegal excavation or dumping on the Green Hatched Black Areas and, subject to the prior written approval of the Director, the Purchaser may erect fences or other barriers for the prevention of such illegal excavation or dumping. In addition to any other rights or remedies the Director may have in respect of any breach of these Conditions, the Director may at any time by notice in writing call upon the Purchaser to carry out such geotechnical investigations, slope treatment, landslide preventive, mitigation and remedial works and to maintain, reinstate and make good any land, structure or works affected by such landslide, subsidence or falling away, and if the Purchaser shall neglect or fail to comply with such notice to the satisfaction of the Director within the period specified therein, the Director may, after the expiry of such period, execute and carry out the required works and the Purchaser shall on demand repay to the Government the cost thereof.

- (b) Notwithstanding sub-clause (a) of this Special Condition, the obligations and rights of the Purchaser in respect of the Green Hatched Black Areas or any part thereof under this Special Condition shall absolutely determine upon the Government giving to the Purchaser notice to that effect, and no claim for compensation shall be made against the Government or the Director or his authorized officer by the Purchaser in respect of any loss, damage or disturbance suffered or any expense incurred as a result of such determination. However, such determination shall be without prejudice to any rights or remedies of the Government in respect of any antecedent breach, non-performance or non-observance of the said sub-clause (a).

Damage to Services

(26) The Purchaser shall take or cause to be taken all proper and adequate care, skill and precautions at all times, and particularly when carrying out construction, maintenance, renewal or repair work (hereinafter referred to as "the Works"), to avoid causing any damage, disturbance or obstruction to any Government or other existing drain, waterway or watercourse, water main, road, footpath, street furniture, sewer, nullah, pipe, cable, wire, utility service or any other works or installations being or running upon, over, under or adjacent to the Lot or any part thereof or the Green Hatched Black Areas or both the Lot or any part thereof and the Green Hatched Black Areas (hereinafter collectively referred to as "the Services"). The Purchaser shall prior to carrying out any of the Works make or cause to be made such proper search and enquiry as may be necessary to ascertain the present position and levels of the Services, and shall submit his proposals for dealing with any of the Services which may be affected by the Works in writing to the Director for his approval in all respects, and shall not carry out any work whatsoever until the Director shall have given his written approval to the Works and to such aforesaid proposals. The Purchaser shall comply with and at his own expense meet any requirements which may be imposed by the Director in respect of the Services in granting the aforesaid approval, including the cost of any necessary diversion, relaying or reinstatement. The Purchaser shall at his own expense in all respects repair, make good and reinstate to the satisfaction of the Director any damage, disturbance or obstruction caused to the Lot or any part thereof or the Green Hatched Black Areas or both the Lot or any part thereof and the Green Hatched Black Areas or any of the Services in any manner arising out of the Works (except for nullah, sewer, storm-water drain or water main, the making good of which shall be carried out by the Director, unless the Director elects otherwise, and the Purchaser shall pay to the Government on demand the cost of such works). If the Purchaser fails to carry out any such necessary diversion, relaying, repairing, making good and reinstatement of the Lot or any part thereof or the Green Hatched Black Areas or both the Lot or any part thereof and the Green Hatched Black Areas or of any of the Services to the satisfaction of the Director, the Director may carry out any such diversion, relaying, repairing, making good or reinstatement as he considers necessary and the Purchaser shall pay to the Government on demand the cost of such works.

Construction of drains and channels

(27) (a) The Purchaser shall construct and maintain at his own expense and to the satisfaction of the Director such drains and channels, whether within the boundaries of the Lot or on Government land, as the Director may consider necessary to intercept and convey into the nearest stream-course, catchpit, channel or Government storm-water drain all storm-water or rain-water falling or flowing on to the Lot, and the Purchaser shall be solely liable for and shall indemnify the Government and its officers from and against all actions, claims and demands arising out of any damage or nuisance caused by such storm-water or rain-water.

Connecting drains and sewers

(b) The works of connecting any drains and sewers from the Lot to the Government storm-water drains and sewers, when laid and commissioned, may be carried out by the Director who shall not be liable to the Purchaser for any loss or damage thereby occasioned and the Purchaser shall pay to the Government on demand the cost of such connection works. Alternatively, the said connection works may be

carried out by the Purchaser at his own expense to the satisfaction of the Director and in such case any section of the said connection works which is constructed within Government land shall be maintained by the Purchaser at his own cost and upon demand be handed over by the Purchaser to the Government for future maintenance thereof at the expense of the Government and the Purchaser shall pay to the Government on demand the cost of the technical audit in respect of the said connection works. The Director may, upon failure of the Purchaser to maintain any section of the said connection works which is constructed within Government land, carry out such maintenance works as he considers necessary and the Purchaser shall pay to the Government on demand the cost of such works.

Sewerage impact
assessment

- (28) (a) The Purchaser shall within 6 calendar months from the date of this Agreement (or such other extended period or periods as may be approved by the Director) at his own expense and in all respects to the satisfaction of the Director of Drainage Services submit or cause to be submitted to the Director of Drainage Services for his approval in writing a sewerage impact assessment (hereinafter referred to as "SIA") containing, among others, such information and particulars as the Director of Drainage Services may require including but not limited to any adverse sewerage impact as may arise from the development of the Lot, and recommendations for mitigation measures, improvement works and other measures and works.
- (b) The Purchaser shall at his own expense implement the recommendations in the approved SIA in all respects to the satisfaction of the Director of Drainage Services and within such time limit as may be stipulated by him.
- (c) The technical aspects of the SIA shall be undertaken by a member of the Hong Kong Institution of Engineers with civil engineering as the specialist discipline or a Chartered Civil Engineer.
- (d) No building works (other than ground investigation works and site formation works) shall be commenced on the Lot or any part thereof until the SIA shall have been approved in writing by the Director of Drainage Services.
- (e) For the avoidance of doubt and without prejudice to the generality of General Conditions Nos. (5)(a) and (5)(b) hereof, the Purchaser hereby expressly acknowledges and agrees that he shall have the sole responsibility at his own expense to implement the recommendations in the approved SIA in all respects to the satisfaction of the Director of Drainage Services. The Government and its officers shall be under no responsibility, obligation or liability whatsoever to the Purchaser for any cost, damage or loss caused to or suffered by the Purchaser - whether arising out of or incidental to the fulfillment of the Purchaser's obligations under this Special Condition or otherwise and no claim for compensation shall be made against the Government or its officers by the Purchaser in respect of such cost, damage or loss.

Existing Graves

- (29) (a) The Purchaser acknowledges that at the date of this Agreement, there are graves, "Kam Taps" and the like (hereinafter collectively referred to as "the Existing Graves") existing near or on the Lot or the Green Hatched Black Areas. The Government will accept no responsibility or liability for any damage, loss, nuisance or disturbance caused to or suffered by the Purchaser by reason of the presence of the Existing Graves.

- (b) The Existing Graves shall not be removed or interfered with without the prior written approval of the Director. The Purchaser shall allow members of the public free pedestrian access to and from the Existing Graves, over and through the Lot along such routes to the satisfaction of the Director for the purposes of worshipping at the Existing Graves at all reasonable times throughout the term hereby agreed to be granted.
- (c) The Government shall have no liability in respect of any loss, damage, nuisance or disturbance whatsoever caused to or suffered by the Purchaser arising out of or incidental to the exercise of the right of access conferred under sub-clause (b) of this Special Condition, and no claim shall be made against the Government in respect of any loss, damage, nuisance or disturbance.
- (d) In the event that approval for the removal of any of the Existing Graves is given, the Purchaser shall be responsible for the clearance and removal thereof at his own expense. The Purchaser shall indemnify and keep indemnified the Government from and against all liabilities, actions, suits, costs, claims (including "Tun Fu" ceremonies) and demands whatsoever arising out of whether directly or indirectly or in connection with the presence, the clearance or removal of the Existing Graves or any of them.

No grave or columbarium permitted (other than the Existing Graves)

- (30) (a) Other than the Existing Graves, no grave or columbarium shall be erected or made on the Lot, nor shall any human remains or animal remains whether in earthenware jars, cinerary urns or otherwise be interred therein or deposited thereon. For the avoidance of doubt, a mortuary as part of the Clinical and Clinical Supporting Facilities referred to in Special Condition No. (2)(d)(ii) hereof shall be permitted to be provided within the hospital referred in Special Condition No. (2)(a)(i) hereof.

- (b) No memorial tablets shall be placed on the Lot or in any building or buildings erected or to be erected on the Lot.

- (31) Wherever in these Conditions it is provided that :

Supervisory and overhead charges

- (a) the Government or its duly authorized officers shall or may carry out works of any description on the Lot or any part thereof or outside the Lot (whether on behalf of the Purchaser or on the failure of the Purchaser to carry out such works or otherwise) at the cost of the Purchaser or that the Purchaser shall pay or repay to the Government or to its duly authorized officers on demand the cost of such works, such cost shall include such supervisory and overhead charges as may be fixed by the Government or by its duly authorized officers; or

Prior approval or consent

- (b) the prior approval or consent of the Government or its duly authorized officers is required, they may give the approval or consent on such terms and conditions as they see fit or refuse it at their absolute discretion.

Payment for approval or consent

- (32) Without prejudice to the generality of Special Condition No. (31)(b) hereof, it is hereby acknowledged and declared that any premium paid under paragraph 16 of the Tender Notice and General Condition No. 2 hereof or any part thereof does not represent any premium or any other payments that may be payable by the Purchaser for any approval or consent of the Government or its authorized officers, including the Director and the Director of Health, which may be granted under, or is referred to in, these Conditions or the Service Deed.

Definition of gross floor area

(33) (a) For the purposes of these Conditions, the expression "gross floor area" means the area contained within the external faces of the external walls (or in the absence of such walls the external perimeters) of any building or buildings erected or to be erected on the Lot measured at each floor level (including any floor below the level of the ground), together with the area of each balcony in such building or buildings, which shall be calculated from the overall dimensions of the balcony (including the thickness of the sides thereof).

(b) Notwithstanding sub-clause (a) of this Special Condition, the Director at his sole discretion may:

(i) in calculating the gross floor area of any building or buildings erected or to be erected on the Lot (in addition to any floor space which may be excluded by Special Condition No. (19) hereof), subject to sub-clause (c) of this Special Condition, exclude:

(I) any sunshade, reflector, any floor space that he is satisfied is constructed or intended to be used solely for the parking or for the loading or unloading of motor vehicles or occupied solely by machinery or equipment for any lift, air-conditioning or heating system or any similar service and any space for refuse disposal;

(II) any structure or floor space, including, but not limited to, acoustic fin, noise barrier, wing wall, wind catcher or funnel, non-structural prefabricated external wall the thickness of which does not exceed 150 millimetres, or any part thereof (all hereinafter referred to as "environmentally friendly or innovative features") and any other structure or floor space which in the opinion of the Building Authority is an environmentally friendly or innovative feature (as to which the opinion of the Building Authority shall be conclusive) and which, for that reason, has been excluded by the Building Authority from calculation of gross floor area under the Buildings Ordinance, any regulations made thereunder and any amending legislation; and

(III) any structure or floor space other than as referred to in sub-clauses (b)(i)(I), (b)(i)(II) and (b)(ii) of this Special Condition, which has been excluded by the Building Authority from the calculation of gross floor area under the Buildings Ordinance, any regulations made thereunder and any amending legislation provided that the Director at his sole discretion may require the payment by the Purchaser of an additional premium and administrative fee as shall be determined by the Director for any structure or any floor space excluded under this sub-clause;

Calculation of gross floor area in buildings with curtain wall system forming external face of building

(ii) accept, for the purpose of calculating the gross floor area, the outer face of the structural elements of the building or buildings erected or to be erected on the Lot as the external wall where a curtain wall system forms the external face of any building or buildings erected or to be erected on the Lot provided that the outer face of the curtain wall system shall project no more than 300 millimetres from the outer face of the structural elements and provided also that the Director shall have the sole discretion

in deciding what comprises a structural element of any building or buildings erected or to be erected on the Lot.

Cap on concession

- (c) (i) The floor spaces of the features listed below which may in accordance with these Conditions be excluded from the calculation of the total gross floor area stipulated in Special Condition No. (9)(c) hereof shall not in the aggregate exceed 10% of the total gross floor area of the building or buildings erected or to be erected on the Lot:
- (I) plant room which has been decided by the Building Authority as non-mandatory or non-essential plant room including but not limited to boiler room, room occupied by machinery or equipment for air-conditioning or heating system, SMATV room (as to which the decision of the Building Authority shall be final and binding on the Purchaser), and pipe duct and air duct connected to such plant room;
 - (II) chimney shaft;
 - (III) portion of lift shaft which has been decided by the Building Authority as larger lift shaft (as to which the decision of the Building Authority shall be final and binding on the Purchaser);
 - (IV) non-structural prefabricated external wall the thickness of which does not exceed 150 millimetres;
 - (V) walkways, horizontal screens and trellis not landscaped to the satisfaction of the Building Authority (as to which the decision of the Building Authority shall be final and binding on the Purchaser);
 - (VI) void over main or common entrance of the building or buildings erected or to be erected on the Lot; and
 - (VII) projection which projects more than 750 millimetres from the external wall of the building or buildings erected or to be erected on the Lot.
- (ii) In calculating the total gross floor area of the building or buildings erected or to be erected on the Lot referred to in sub-clause (c)(i) of this Special Condition, there shall not be taken into account the floor spaces which are excluded from the calculation of the gross floor area of the building or buildings erected or to be erected on the Lot in accordance with these Conditions as to which the decision of the Director shall be final and binding on the Purchaser.

Purchaser's covenants

- (34) All covenants made by the Purchaser in these Conditions are made by him on behalf of himself, his successors in title and persons deriving title under or through him or them and the Purchaser shall be liable for any acts done by any persons deriving title under or through him or them. All such covenants are intended to run with the Lot and burden the same. Further all such covenants are made with the Government and are intended to benefit the reversionary interest in the Lot.

SCHEDULE

PART A

<u>Column 1</u>	<u>Column 2</u>
	The proportion (expressed in percentage (%)) which the total gross floor area of the building or buildings designed and constructed for the corresponding facilities in column 1 bears to the total gross floor area of the building or buildings erected or to be erected on the Lot
(I) Clinical and Clinical Supporting Facilities	%
(II) Accommodation Facilities (if any)	%
(III) Non-Clinical Supporting Facilities (other than the Accommodation Facilities (if any))	%
(IV) <u>Sub-total</u> of the Non-Clinical Supporting Facilities (including the Accommodation Facilities (if any)) (i.e. (II) + (III))	%
(V) <u>Total (i.e. (I) + (II) + (III))</u>	100%

PART B

<u>Column 1</u>	<u>Column 2</u>
(I) The date of commencement of operation of the Hospital ("the Date")	<i>[To insert date i.e. a date within 60 [calendar] months from the date of this Agreement]</i>
(II) Total number of hospital beds to be provided at the Hospital	hospital beds
(III) Provision of hospital beds at the Hospital on and after the Date	<i>[To insert the accumulated number of hospital beds below]</i>
(i) The Date	hospital beds
(ii) <i>[To insert date i.e. a date within 24 months from the Date]</i>	hospital beds
(iii) <i>[To insert date i.e. a date within 48 months from the Date]</i>	hospital beds
(iv) <i>[To insert date i.e. a date within 72 months from the Date]</i>	hospital beds

MEMORANDUM OF AGREEMENT

BETWEEN

of

(herein referred to as "the Purchaser") of the one part and the Chief Executive on behalf of the Government of the Hong Kong Special Administrative Region of the other part *whereby it is Agreed* that the Purchaser's tender for the Lot described in the foregoing Tender Notice having been accepted at the premium hereunder specified and the Purchaser having paid the sum specified in his tender as a deposit and in part payment of the premium (the receipt of which is hereby acknowledged) hereby agrees to pay the balance of the said premium and to become the lessee of the Lot upon and subject to the foregoing Conditions of Sale and on his part to perform and abide by the said Conditions.

Registry No.	Rent	Amount of premium at which purchased
Tai Po Town Lot No. 207	As specified in General Condition No. 4	\$

Dated this day of 20 .

Witness to the [signature of the Purchaser/Seal
of the Purchaser and authorized signature(s)]:

[Signature of the Purchaser/Seal of the
Purchaser and authorized signature(s)]:

Address

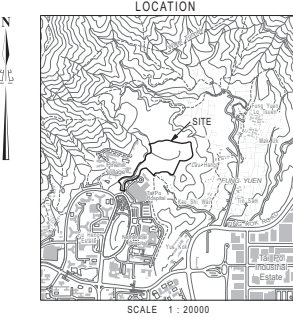
Witness to the signature of
District Lands Officer, Tai Po :

For and on behalf of the Chief Executive
of the Hong Kong Special
Administrative Region

.....
*Civil Servant,
Lands Department*

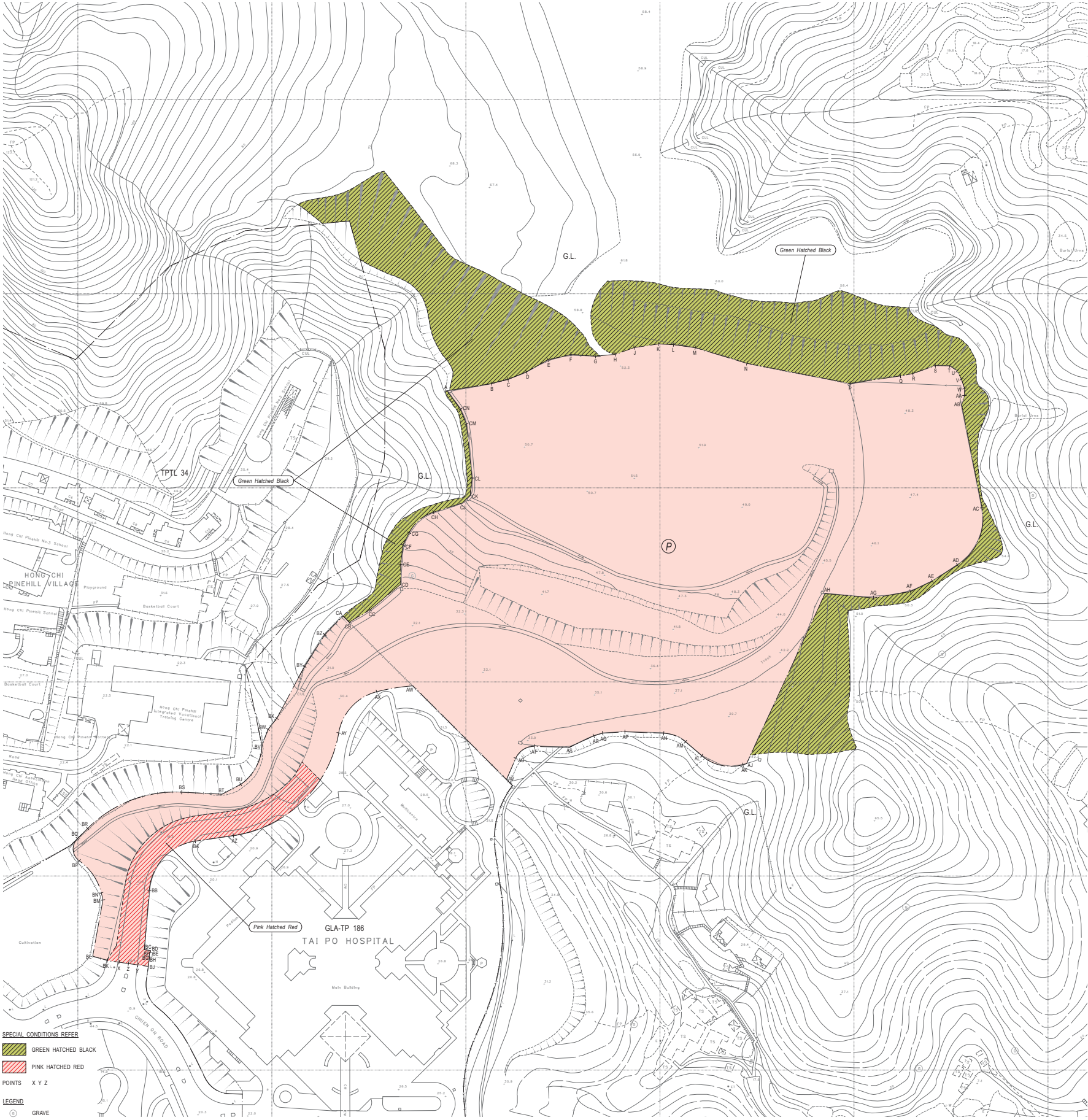
.....
District Lands Officer, Tai Po

Point	CO-ORDINATES DATA (ORIGIN - 1980 DATUM)	
	N	E
A	836049.999	836090.246
B	836053.718	836113.057
C	836055.852	836121.595
D	836059.745	836131.117
E	836065.952	836142.197
F	836068.713	836154.126
G	836067.835	836166.889
H	836068.770	836176.907
J	836072.265	836186.715
K	836074.106	836199.157
L	836073.788	836207.015
M	836072.194	836218.236
N	836064.128	836244.832
P	836053.815	836297.923
Q	836057.636	836323.904
R	836058.899	836330.248
S	836062.997	836341.932
T	836062.864	836349.410
U	836060.250	836353.187
V	836055.956	836355.393
W	836051.212	836356.982
AA	836047.581	836356.960
AB	836042.834	836355.539
AC	835989.767	836365.981
AD	835980.218	836353.334
AE	835951.984	836340.421
AF	835946.574	836329.036
AG	835943.282	836310.147
AH	835945.500	836285.070
AJ	835857.868	836244.650
AK	835857.332	836242.747
AL	835861.993	836221.527
AM	835868.160	836213.131
AN	835873.536	836201.927
AP	835874.296	836181.925
AQ	835873.589	836170.426
AR	835872.231	836165.859
AS	835866.315	836153.301
AT	835866.764	836135.276
AU	835860.620	836125.942
AV	835849.770	836120.920
AW	835897.986	836072.698
AX	835894.942	836053.990
AY	835873.738	836034.408
AZ	835820.871	835980.161
BA	835817.981	835960.472
BB	835792.708	835936.766
BC	835762.086	835934.256
BD	835761.642	835937.419
BE	835760.616	835937.275
BF	835760.653	835937.008
BG	835758.375	835936.688
BH	835758.336	835936.956
BJ	835753.418	835936.265
BK	835756.473	835915.222
BL	835758.715	835907.638
BM	835767.666	835912.914
BN	835791.329	835912.046
BP	835807.813	835900.720
BQ	835819.258	835899.753
BR	835824.541	835905.038
BS	835843.196	835953.517
BT	835842.150	835974.200
BU	835847.250	835983.950
BV	835867.250	835994.850
BW	835875.500	835998.000
BX	835881.285	836002.526
BY	835907.995	836016.793
BZ	835924.387	836027.237
CA	835923.996	836036.085
CB	835930.825	836039.857
CC	835937.260	836050.691
CD	835950.296	836066.308
CE	835960.606	836066.317
CF	835970.546	836087.530
CG	835976.843	836070.715
CH	835987.448	836083.160
CJ	835992.244	836098.185
CK	835996.239	836102.223
CL	836005.047	836103.147
CM	836032.859	836100.247
CN	836040.536	836097.147
CENTRES		
AO - AO	835984.261	836338.001
AK - AL	835879.536	836238.502
AM - AN	835855.220	836201.230
AT - AU	835856.538	836135.021
AW - AX	835792.516	836080.259
AY - AZ	835869.203	836060.591
BA - BB	835884.760	835970.783
BB - BB	835790.434	835964.515
BN - BN	835764.000	835905.000
BN - BP	835784.155	835883.947
BP - BQ	835813.943	835905.066
BR - BS	835779.277	835950.284
BU - BV	835868.196	835969.316
CO - CH	835967.293	836089.594



SIDE	DISTANCE IN METRES	BEARING	PL	CORNER MARKED BY
A B	23.112	80 44 23		
B C	8.801	75 57 47		
C D	10.287	67 45 47		
D E	12.700	60 44 29		
E F	12.245	78 58 16		
F G	12.793	93 55 59		
G H	10.062	84 40 14		
H J	10.412	70 23 13		
J K	12.578	81 34 27		
K L	7.865	92 19 55		
L M	11.353	98 04 15		
M N	27.773	106 53 00		
N P	54.084	100 59 34		
P Q	26.260	81 38 02		
Q R	6.469	78 44 26		
R S	12.382	70 40 21		
S T	7.479	91 01 08		
T U	4.593	124 41 11		
U V	4.828	152 48 31		
V W	5.003	161 28 54		
W A A	3.631	180 20 50		
A A A R	4.955	196 40 16		
A B A C	54.085	188 52 04		
A C A L	32.141	203 10 14		
A D A E	15.316	237 28 24		
A E A F	12.604	244 35 10		
A F A G	19.174	260 06 48		
A G A H	25.174	275 03 14		
A H A J	96.505	204 45 41		
A J A K	1.977	254 17 24		
A K A L	21.726	282 23 17		
A L A M	11.039	310 29 02		
A M A N	12.028	291 19 54		
A N A P	20.016	272 16 38		
A P A Q	11.521	266 28 44		
A Q A R	4.765	253 26 43		
A R A S	13.882	244 46 27		
A S A T	18.031	271 25 36		
A T A U	11.426	237 28 21		
A U A V	11.833	203 31 05		
A V A W	68.192	314 59 49		
A W A X	18.955	260 45 24		
A X A Y	28.862	222 43 20		
A Y A Z	75.748	225 44 19		
A Z B A	19.901	261 38 58		
B A B B	34.651	223 10 03		
B B B C	30.725	184 41 06		
B C B D	3.195	97 59 16		
B D B E	1.037	187 59 16		
B E B F	0.270	277 59 16		
B F B G	2.300	187 59 16		
B G B H	0.270	97 59 16		
B H B J	4.968	187 59 16		
B J B K	21.264	278 15 40		
B K B L	7.908	286 28 01		
B L B M	29.428	10 19 47		
B M B N	3.764	348 40 08		
B N B P	20.000	325 30 27		
B P B Q	11.486	355 10 14		
B Q B R	7.473	45 00 40		
B R B S	51.944	68 57 11		
B S B T	20.709	62 53 40		
B T B U	11.003	62 23 10		
B U B V	22.777	39 35 25		
B V B W	8.831	30 53 50		
B W B X	7.345	38 02 09		
B X B Y	30.282	28 06 34		
B Y B Z	19.436	32 30 10		
B Z C A	13.476	44 30 57		
C A C B	4.485	134 59 49		
C B C C	12.602	59 17 36		
C C C D	20.342	50 08 43		
C D C E	10.310	0 03 09		
C E C F	10.014	6 57 25		
C F C G	7.056	26 49 48		
C G C H	16.351	49 33 45		
C H C I	15.772	72 17 42		
C I C J	5.690	45 18 44		
C J C K	8.857	5 59 14		
C K C L	27.863	354 02 55		
C L C M	8.279	338 00 27		
C M C N	11.712	323 53 59		
C N A				

CURVE DATA			
Arc AC AD	34.145 m	Radius = 28.516m	Δ = 88 38' 20"
Arc AK AL	22.622 m	Radius = 23.065m	Δ = 56 11' 48"
Arc AM AN	12.255 m	Radius = 18.328m	Δ = 38 18' 32"
Arc AT AU	12.123 m	Radius = 10.229m	Δ = 67 54' 31"
Arc AW AX	18.880 m	Radius = 105.741m	Δ = 10 17' 04"
Arc AX AY	30.511 m	Radius = 26.572m	Δ = 65 47' 17"
Arc AY AZ	89.844 m	Radius = 87.579m	Δ = 71 48' 19"
Arc BA BB	37.400 m	Radius = 37.843m	Δ = 76 57' 59"
Arc BM BN	3.765 m	Radius = 110.479m	Δ = 1 57' 59"
Arc BN BP	20.419 m	Radius = 39.000m	Δ = 40 20' 31"
Arc BP BQ	13.073 m	Radius = 7.515m	Δ = 99 40' 31"
Arc BR BS	53.487 m	Radius = 64.000m	Δ = 47 53' 03"
Arc BU BV	23.608 m	Radius = 25.552m	Δ = 52 56' 17"
Arc CO CH	16.788 m	Radius = 21.157m	Δ = 45 27' 54"



COLOURED PINK AND PINK HATCHED RED AREA 54 851 SQUARE METRES (ABOUT)	
SCALE 1:1 000	
METRES 20 0 20 40 60 80 100 METRES	

SPECIAL CONDITIONS REFER	
GREEN HATCHED BLACK	
PINK HATCHED RED	
POINTS X Y Z	
LEGEND	
GRAVE	

DISTRICT LANDS OFFICE
TAI PO
LANDS DEPARTMENT



Signature of the Purchaser/Seal of the
Purchaser and authorized signature(s)

Witness to the Signature of the
Purchaser/Seal of the Purchaser
and authorized signature(s)

For and on behalf of the
Chief Executive of the Hong Kong
Special Administrative Region

District Lands Officer, Tai Po

Witness to the Signature of
District Lands Officer, Tai Po

File No. DLO/TP 418/TPT/63
Survey Sheet Nos. 3-SW-25C, 7-NW-4B & 7-NW-5A
O.Z.P. No. -----
Reference Plan No. -----
PLAN No. TP6069-SP

Dated this ____ day of _____ 20__

Date: 13.3.2012

TAI PO TOWN LOT No.207

Survey approved by
Signed
S. L. CHAN
District Land Surveyor
19 / 03 / 2012
District Survey Office, Tai Po
Lands Department
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Field Book	D194261-A		
Comp Folder	TP6069		
Svy Officer	C.P. SHING		
Tech Officer	L.L. HUNG		
Date	13.3.2012		
Plan No.	TP6069-SP		

Dated20.....

AGREEMENT

AND

CONDITIONS OF SALE

of

Tai Po Town Lot No. 207

Purchaser :

Rent : As specified in General Condition 4

Term : Fifty years from the date of the
Memorandum of Agreement

Lands Department