

# THE CHINESE UNIVERSITY OF HONG KONG

## CUHK Procurement System (CUPro)

*<http://CUPro-cuhk.com>*

### Terms of Use

This document contains the terms and conditions that apply to your use of the CUHK Procurement System ("CUPro") of The Chinese University of Hong Kong ("CUHK"). Please read these terms before using CUPro. Your browsing, accessing and using CUPro signifies your agreement to be bound by these terms.

#### **1. Definition and interpretation**

1.1 Words used herein in the singular, where the context so permits, shall be deemed to include the plural and vice versa.

1.2 The definitions of words in the singular herein shall apply to such words when used in the plural where the context so permits and vice versa. The following terms in this document, unless otherwise stipulated in the context, have the following meanings:

**"Addendum"** or **"Addenda"** means any document issued by CUHK for adding, changing or removing any part of the Invitation to Tender or Request for Quotation.

**"Amendment Date"** has the meaning given in Clause 11.1 below.

**"Applicant"** means a company / business entity who has submitted an Account Registration.

**"Clarification"** means a document issued by CUHK, whereby CUHK requires Tenderers or Applicants to provide supplementary information to clarify their previous Submissions.

**"Closing Date"** means the closing date and time specified by CUHK for Tenderers or Applicants to submit their Submissions to CUHK in respect of a relevant Request for Quotation, Invitation to Tender, Request for Proposal, Invitation to Expression of Interest, Clarification, and etc.

**"Content"** means any material, correspondence or information, in any format, including but not limited to any documents, computer files, text, software, images, graphics, photos, videos, audio or any other materials used, displayed on, or transmitted or made available through CUPro.

**"CUHK", "we", "us" or "our"** means The Chinese University of Hong Kong and/or its subsidiaries and related entities including but not limited to all innovative centres and RAISE+ companies established under The Chinese University of Hong Kong Ordinance.

**"e-Certificate"** means a digital certificate issued and downloaded via CUPro.

**"Intellectual Property Rights"** means all trade names, trademarks, service marks, logos, internet domain names, patents, designs, copyrights, database rights, hyperlinks, software, photos, videos, audio, inventions, semiconductor topography rights, know-how, trade secrets or any similar right recognised or protected as intellectual property under the laws of any part of the world, whether registered or not, and including any applications for the registration of any such rights.

**"Intended Purposes"** has the meaning given in Clause 2 below.

**“Invitation to Tender”** means an invitation to tender, including any information/data provided, issued by CUHK, inviting a Supplier to submit a Tender Submission according to the invitation to tender and, if applicable, its Addenda, for any goods, works and/or services required by CUHK.

**“Loss”** means losses, liabilities, judgments, awards, damages, fines, penalties, sanctions, settlements, claims, costs, charges, expenses and any other direct or indirect financial suffering of whatsoever nature (including attorney/legal fees for both internal and external counsel, and costs related to investigation, arbitration, litigation or settlement).

**“Non-Disclosure Agreement”** means the confidentiality agreement to be signed between CUHK and a party confirming that the signing party will keep all the documents, information and data related to CUHK confidential as specified in the confidentiality agreement.

**“Privacy Policy”** means CUHK's Policy in Protection of Personal Data (Privacy) that can be accessed on the CUHK Website at <https://www.cuhk.edu.hk/english/privacy.html>

**“Procurement Documents”** means all or any documents issued by CUHK in relation to an intended procurement including but not limited to any Invitation to Tender, Request for Quotation, Non-Disclosure Agreement, Response to Query, Clarification, etc. and, if applicable, any information attached and Addenda.

**“Query”** means a query raised by a Registered Supplier/Registering Supplier in relation to a Request for Quotation or Invitation to Tender.

**“Quotation”** means a quotation (including but not limited to any amendments or supplemental quotations thereto) and all other information submitted by a Tenderer in response to the Request for Quotation and the related Procurement Documents.

**“Registered Account”** means an account established by CUHK to enable a user to use CUPro for the Intended Purposes.

**“Request for Quotation”** means an invitation to quote, with any attached information and Addenda, issued by CUHK, inviting a Supplier to submit Quotations, for any goods, works and/or services required by CUHK.

**“Response to Clarification”** means any reply of a Registered Supplier/Registering Supplier to a Clarification.

**“Response to Query”** means any reply from CUHK to a Query.

**“Registered Supplier/Registering Supplier”** means a company, organisation, partnership, person or entity who carries out the business of providing goods, services, or works, which may be required by CUHK from time to time. **“Registered Supplier”** means a Supplier who holds a Registered Account and has completed the registration process in CUPro. **“Registering Supplier”** means a Supplier who holds a Registered Account but has not fully completed the registration process in CUPro.

**“Submissions”** means all or any of the Tender Submissions, Quotations and Account Registration Submissions.

**“Supplemental Tender”** means any document issued by a Tenderer that changes, modifies or supplements any Tender already submitted by it to CUHK before the Closing Date.

“**System**” means the online platform and all hardware, software, networks, technology, interfaces and any other information technology systems in relation to CUPro. All references to CUPro shall be deemed to include references to the "System".

“**Tender**” means the offer, including but not limited to any Supplemental Tender, submitted by a Tenderer in reply to and according to the relevant Invitation to Tender and any applicable Procurement Documents.

“**Tender Notice**” means a notice issued by CUHK to Registered Suppliers/Registering Suppliers informing them that an Invitation to Tender has been issued and they should get the relevant Procurement Documents through CUPro.

“**Tender Submissions**” means all documents submitted by a Tenderer in reply to and according to the relevant Invitation to Tender and any applicable Procurement Documents. Such documents include but not limited to any Supplemental Tender, Non-Disclosure Agreement, Response to Clarification and any other information submitted by the Tenderer.

“**Tenderer**” means a Supplier that has submitted a Tender Submission or Quotation.

“**Terms**” means these terms and conditions for use of CUPro.

“**user**”, “**you**” or “**your**” means the user of CUPro which includes any company, organisation, partnership, person or entity whose employee, officer, director, representative or agent access or use CUPro on its/his/her behalf.

“**Virus**” means any computer virus, or any other software, malicious code, disabling code or computer program that, when activated, will:

- (a) permit unauthorized access to or use of our computer systems or the computer systems of any third party (including other users); or
- (b) disable, damage, corrupt, erase, interfere, monitor, intercept, copy, or disrupt, or impair the normal operation of, our computer systems, the computer systems of any third party (including other users), CUPro, the System or any associated data or information.

## **2. Introduction**

- 2.1 CUPro is built for CUHK to post or transmit any notice, information or document in relation to any intended procurement and account registration which includes but not limited to, any Tender Notices, Procurement Documents, etc. in an electronic format for downloading and viewing by users, as well as for Registered Suppliers/Registering Suppliers to submit and upload any Submissions in an electronic format (“**Intended Purposes**”).

## **3. Acceptance of these Terms**

- 3.1 By accessing CUPro, you accept and agree to be bound by these Terms and the Privacy Policy. Your access and use of CUPro is contingent upon your first agreeing to be bound by these Terms and the Privacy Policy. You shall ensure that all of your employees, officers, directors, representatives or agents comply with these Terms and the Privacy Policy. You should not use CUPro if you do not accept all of these Terms and the Privacy Policy.

## **4. Change of these Terms**

- 4.1 CUHK may, at its sole discretion and at any time without notice or liability to you, amend the Terms and the Privacy Policy. The latest version of the Terms and the Privacy Policy are made available on CUPro. It is your responsibility to review the Terms and the Privacy Policy every time before you access CUPro. By continuing to access and use CUPro, you accept to be bound by the latest version of the Terms and the Privacy Policy.

## **5. Change of the CUPro Content**

- 5.1 CUHK may, at its sole discretion and at any time, without notice or liability to you, add, change or delete any Content of CUPro, or rebuild, suspend or terminate CUPro (or any part thereof).

## **6. Applying for a Registered Account**

- 6.1 To apply for a Registered Account, you must:
- (a) complete the account registration process as specified in CUPro;
  - (b) be a duly registered and/or established business, institution or legal entity under the applicable law and provide relevant documentary proof;
  - (c) register with your full legal name as shown on your most up-to-date certificate of incorporation or business registration certificate, or any equivalent document legally recognised in your place of incorporation;
  - (d) provide us with your full office address and contact details, including an email address; and
  - (e) provide us with any other information or documents that may be required by us.
- 6.2 CUHK may, at its sole discretion and at any time without notice or liability to you, change, suspend or terminate the application and registration process for a Registered Account in CUPro.
- 6.3 CUHK has the right, at its sole discretion, to accept or decline any application to open a Registered Account.
- 6.4 We may require you, at any time (whether before or after the creation of your Registered Account), to provide any other information as required by us, or by the applicable law or a competent government body, and you must comply with our request promptly and fully.

## **7. Use of Registered Account**

- 7.1 You agree that:
- (a) you can only download or view any CUPro Content or submit any Submissions through CUPro when you are a Registered Supplier/Registering Supplier and when you have logged into your Registered Account;
  - (b) you shall only use your Registered Account for submission purposes such as making any Submissions; submitting any Query; downloading or viewing any CUPro Content; providing or updating any information, documents or details required by CUHK; for any purpose directly related to the foregoing but not further or otherwise;
  - (c) you shall only use your Registered Account in accordance with these Terms and the Privacy Policy and any other terms and conditions issued by CUHK in relation to the Registered Account;

- (d) you undertake that any information you provide or submit to CUHK in relation to or via your Registered Account (including any application for a Registered Account) shall be up to date, true, accurate, complete and correct;
- (e) you shall notify CUHK promptly upon any changes to your details and/or any other information provided by you to CUHK in relation to the Registered Account;
- (f) you will not allow other person, company, or organisation to have access to or to use your Registered Account;
- (g) you shall at all times keep your password and login details of your Registered Account secure and confidential to prevent any unauthorised access, use or submissions; and
- (h) without prejudice to Clause 7.2 below, you shall notify us immediately in writing upon becoming aware of any unauthorised use of your password or access to your Registered Account.

7.2 You shall be solely and fully responsible for all activities that occur under your Registered Account, and CUHK shall not be responsible or liable to you or any third party for any Loss as a result of any unauthorised access to your Registered Account whether or not caused by your actions, omissions or negligence, including any actions of any person who uses your password and/or who submits any documents or Submissions through the use of your password or Registered Account, regardless of whether or not such persons are in fact authorised to do so.

## **8. Termination or Suspension of Your Registered Account**

8.1 CUHK may, at its sole discretion and at any time, with immediate effect, without notice or liability to you, terminate, suspend or impose any limitations on your Registered Account for any reason whatsoever, including but not limited to:

- (a) inability to complete the Account Registration process within reasonable time; or
- (b) inability to upload to CUPro an up-to-date and valid certificate of incorporation or business registration certificate, or any equivalent document legally recognised in your place of incorporation when previously uploaded certificate expires.

8.2 Upon termination or suspension of the Registered Account in accordance with Clause 8.1 above, you shall immediately cease using or accessing your Registered Account or any related services (as required by CUHK). Any termination, suspension or limitation to your right to use or access (in whole or in part) your Registered Account or any related services, shall be without prejudice to any other rights or remedies available to CUHK against you.

## **9. Use of CUPro**

9.1 You shall be solely and fully responsible for ensuring that you have the appropriate hardware, equipment and software that enables you to use CUPro and/or to view, download any or all of the CUPro Content and/or to make Submissions through CUPro.

9.2 You acknowledge and accept that CUPro may fail, be interrupted, break down, contain Virus, malfunction, be slow to process, contain errors or any other defects or defaults from time to time, with or without cause. CUHK provides no guarantee, representation, undertaking or warranty to avoid, prevent or rectify such circumstances. In the event of any failure, interruption, breakdown, malfunction, slow processing, error or any other defect or default in CUPro, you

shall contact CUHK who may agree, at its sole discretion, to provide you with an alternative method to receive or view the CUPro Content of the relevant intended procurement and/or make your Submissions to CUHK before the specified Closing Date. CUHK shall have the final decision in case of a dispute.

- 9.3 CUHK shall in no way be responsible or liable to you for any Loss incurred or suffered by you as a result of any delay, failure, interruption, breakdown, Virus, malfunction, errors, defects or defaults in the use of CUPro and/or to view, download any or all of the CUPro Content and/or to make Submissions through CUPro.

## **10. Submissions**

- 10.1 You acknowledge and agree that:

- (a) you must be a Registered Supplier/Registering Supplier and must login your own Registered Account to submit or upload any Submissions;
- (b) you must hold a valid e-Certificate downloaded from CUPro or use your relevant password, as applicable and in accordance with Clause 15 below, in order to make Submissions through CUPro; and
- (c) unless CUHK otherwise agrees in writing, Submissions other than through CUPro are not acceptable.

- 10.2 You represent and warrant that:

- (a) you hold the full rights and title to all Submissions that you submit, transmit or upload through CUPro, free of all encumbrances, liens and charges;
- (b) your Submissions are accurate and complete and shall not infringe upon the rights or Intellectual Property Rights of any third party; and
- (c) your Submissions have been internally approved and are valid and enforceable against you.

- 10.3 If you are in breach of the Terms, including Clause 10.2 above, CUHK shall not be obligated to consider any Submissions from you. Without prejudice to the generality of the foregoing, CUHK shall not consider your Submissions and not be liable for any failure to consider your Submissions if any Submissions submitted through the use of CUPro:

- (a) does not comply with any of the formatting requirements specified by CUHK;
- (b) is not in accordance with the Terms;
- (c) contains Virus, or is otherwise corrupted, or not readable or printable into readable text; or
- (d) has not fully and successfully completed its transmission and received by CUHK by the specified Closing Date.

- 10.4 You shall ensure that your Submissions are fully compliant with our terms and conditions contained in the relevant Procurement Documents or Account Registration Document and have been completely and successfully transmitted through CUPro as well as received by CUHK by the specified Closing Date. Otherwise, your Submissions will be deemed invalid and not be

considered by CUHK.

- 10.5 All notices or messages that appear on CUPro that display any date, time, time zone, or time remaining for any Submissions to be filed, are for reference purposes only. Notwithstanding the foregoing, any upload end time generated automatically by CUHK's System, which specifies exactly when the transmission of your Submission through CUPro was completed, shall be final and binding and shall be relied on by CUHK to determine whether or not your Submission was submitted by the specified Closing Date. Such upload end time will be shown in an acknowledgement notice displayed on the screen. CUHK will issue an email and/or message confirmation to the Registered Account of the Tenderer who has successfully completed the uploading and transmission of its Submission through CUPro by the specified Closing Date.
- 10.6 All of your Content, including any information, material and data, in your Submissions shall be encrypted for security reasons when uploaded or submitted by you and transmitted through CUPro and the System. You agree that any of such Content that is so encrypted, shall be complete and accurate after decryption and, in any event, you accept any error, misstatement or omission that may occur upon decryption or encryption. Such Content shall be used and relied on by CUHK as received by CUHK and you agree to be bound by such Content.
- 10.7 Submissions that are successfully uploaded and transmitted through CUPro shall be encrypted and electronically stored in a secure device, which shall be accessed by CUHK for processing and consideration.
- 10.8 You shall ensure that your Content, including your Submissions, which are uploaded, transmitted or submitted through CUPro must be in a standardised electronic format that allows CUPro to capture, record, store, transmit and/or process it and any other formatting requirements specified by CUHK on CUPro or the Procurement Documents.
- 10.9 You hereby waive any and all rights you may have to challenge the validity of or accuracy of any information contained in an e-Certificate, or of any Submissions submitted by you through CUPro, or any contract that arises from such Submissions and/or our acceptance of such, on the basis that the document was not physically signed by you or that the e-Certificate or password, as applicable, was used without your authorisation.

## **11. Addenda and Amendments to the Procurement Documents**

- 11.1 CUHK may at any time issue one or more Addenda or amendments to the relevant Procurement Documents prior to the specified Closing Date. CUHK shall send an email and/or message to your Registered Account on CUPro once an Addendum has been issued or amendments to the relevant Procurement Documents have been made, and the date of sending such email and/or message will be deemed to be the effective date of such Addendum or amendments to the relevant Procurement Documents, as applicable ("Amendment Date"). CUHK shall in no way be liable if you fail to receive or are not aware of such email and/or message.
- 11.2 It is your sole responsibility to check CUPro regularly to ensure that you are kept up-to-date and aware of any Addenda or amendments to the relevant Procurement Documents and to ensure that your Submissions fully comply with and take into account the Addenda or amendments to the relevant Procurement Documents. CUHK shall in no way be liable for any failure by you to take into account any Addenda or amendments to the relevant Procurement Documents in your Submissions.
- 11.3 In the event that CUHK issues any relevant Addendum or amendments to the relevant Procurement Documents in accordance with Clause 11.1 above, you acknowledge and agree

that:

- (a) all of your relevant Submissions submitted to CUHK before and/or after the relevant Amendment Date shall represent your full and entire Submissions in response to the relevant Procurement Documents, as applicable; or
- (b) if no amendments to Submissions are submitted by you to CUHK following the Amendment Date, then the relevant Submissions which were submitted by you prior to the relevant Amendment Date shall represent your full and entire Submissions in response to the relevant Procurement Documents, as applicable.

## **12. Query and Response to Query**

- 12.1 You acknowledge and agree that you must be a Registered Supplier/Registering Supplier and must login your own Registered Account to submit any Query through CUPro.
- 12.2 You represent and warrant that your Queries have been internally approved and are valid and enforceable against you.
- 12.3 If you are in breach of the Terms, including Clause 12.2 above, CUHK shall not be obligated to consider any Query from you. Without prejudice to the generality of the foregoing, CUHK shall not consider and shall not be liable for any failure to consider your Query submitted through the use of CUPro if it:
  - (a) does not comply with any of the formatting requirements specified by CUHK;
  - (b) is not in accordance with the Terms;
  - (c) contains Virus, or is otherwise corrupted, or not readable or printable into readable text; or
  - (d) has not fully and successfully completed its transmission and received by CUHK by the relevant deadline imposed by CUHK.
- 12.4 You shall ensure that your Queries are fully compliant with our terms and conditions contained in the relevant Procurement Documents and have been completely and successfully transmitted through CUPro as well as received by CUHK by the relevant deadline. Otherwise, your Queries will be deemed invalid and not be considered by CUHK.
- 12.5 If applicable, CUHK will issue a Response to Query relevant to the Procurement Documents before the specified Closing Date. CUHK shall send an email and/or message to your Registered Account on CUPro once a Response to Query has been issued, and the time and date of sending such email and/or message will be final and conclusive evidence of CUHK's issuance of the relevant Response to Query. CUHK shall in no way be liable if you fail to receive or are not aware of such email and/or message.
- 12.6 It is your sole responsibility to check CUPro regularly to ensure that you are kept up-to-date and aware of any Response to Query, and to ensure that your Submissions fully comply with and take into account the Response to Query. CUHK shall in no way be liable for any failure by you to take into account any Response to Query in your Submissions.
- 12.7 In the event that CUHK issues any Response to Query in accordance with Clause 12.5 above, you acknowledge and agree that:



- (a) all of your relevant Submissions submitted to CUHK before and/or after the date of the Response to Query shall represent your full and entire Submissions in response to the relevant Procurement Documents, as applicable; or
- (b) if no amendments to Submissions are submitted by you to CUHK on or after the date of the Response to Query, then the relevant Submissions which were submitted by you on or before the date of the Response to Query shall represent your full and entire Submission in response to the relevant Procurement Documents, as applicable.

### **13. Clarification and Response to Clarification**

- 13.1 CUHK may issue one or more Clarifications to your Registered Account through CUPro. CUHK shall not be liable in the event that you fail to receive any of such Clarifications sent by CUHK to you. CUHK shall in no way be liable for your failure to consider any Clarifications we sent to you.
- 13.2 It is your sole responsibility to submit your Response to Clarification through CUPro by the deadline specified by CUHK as stated in the Clarification. CUHK shall in no way be liable for your failure to submit a Response to Clarification.

### **14. Result of the Intended Procurement or Account Registration**

- 14.1 CUHK will inform you the result of the intended procurement or account registration, as the case may be, through CUPro.

### **15. Digital Certificates and Other Requirements**

- 15.1 You must download a valid e-Certificate from CUPro for each Invitation to Tender before you can submit any of the relevant Submissions through CUPro. The Submission to Request for Quotation should be submitted through the use of your relevant password.
- 15.2 e-Certificate downloaded from CUPro will only be accepted by CUHK. The e-Certificate that is issued to you shall only be used by you for the purpose for which the e-Certificate has been issued and in accordance with any policies, procedures, terms and conditions provided in relation to the e-Certificates but not further or otherwise. An e-Certificate is not a recognised digital certificate under the Hong Kong Electronic Transactions Ordinance (Cap. 553). Your use of an e-Certificate issued and assigned to you in relation to any Invitation to Tender shall indicate that:
  - (a) you intend to be legally bound by your relevant Submissions and all applicable terms and conditions thereto;
  - (b) the e-Certificate correctly identifies you, the Tenderer, as applicable; and
  - (c) all information contained in the e-Certificate is correct and has not been altered or tampered with.
- 15.3 Upon the submission of any Submissions via CUPro, you must use a valid e-Certificate for Tender or your relevant password for Quotation in order to encrypt and digitally sign the Submissions.
- 15.4 You agree and acknowledge that your Submissions to CUHK in relation to any Procurement Documents must be submitted with a valid e-Certificate or relevant password, as applicable,

through CUPro.

- 15.5 You are responsible to ensure that you download your e-Certificate in time to submit any Submissions (except for Quotations) through CUPro prior to the specified Closing Date, and CUHK shall not be liable or responsible for any failure of you to do so.

## **16. Hardcopy Submissions**

- 16.1 CUHK may, at its sole discretion, allow or request you to submit your Submissions (in whole or in part) in hard copy as well as through CUPro, either by stating such in the Procurement Documents or otherwise issuing a notice to you or through CUPro. In the event that any of your Submissions (in whole or in part) are submitted by you to CUHK in hard copy, as well as electronically through CUPro:
- (a) you represent, warrant and undertake that the hard copy version of your Submissions shall be fully identical to the electronic version submitted by you through CUPro;
  - (b) you acknowledge and agree that the electronic version submitted by you through CUPro shall prevail in the event of any discrepancies between the electronic version or hard copy version of your Submissions; and
  - (c) you shall indemnify CUHK for any Loss as a result of any discrepancies between the hard copy version and electronic version of your Submissions.

## **17. General Undertakings of Users**

- 17.1 You undertake to use CUPro, your Registered Account or any CUPro Content and/or to download and copy the CUPro Content, solely and exclusively as needed for the Intended Purposes that are permitted by:
- (a) these Terms;
  - (b) the Privacy Policy; and
  - (c) any applicable laws, regulations, codes or generally accepted practices or guidelines in the relevant jurisdiction.
- 17.2 You undertake that your use of CUPro or CUPro Content will not contravene or infringe upon any of our rights or any third parties' rights (including Intellectual Property Rights).
- 17.3 You undertake that:
- (a) except in accordance with Clause 17.1 above, you will not copy, reproduce, download, re-publish, sell, exploit or distribute any part of CUPro or CUPro Content;
  - (b) you will not engage in any activity that interferes with or disrupts CUPro;
  - (c) you, and your employees, sub-contractors, agents, representatives or affiliates, will not install, import or transmit (and shall take reasonable measures to prevent against the installation, importation or transmission of) any Virus, techniques or devices capable of disrupting, disabling, damaging or shutting down CUPro (or any part thereof) or any other telecommunications or computer systems, networks or devices, or otherwise attempts to gain unauthorised access to CUPro or any other telecommunications, computer systems, networks or devices connected to CUPro;

- (d) you will not take any action or allow any third party to take any action that would enable you, or any third party, to gain unauthorised access to, or to tamper with or use CUPro or any of our computer systems or networks;
- (e) you will not use CUPro, your Registered Account or any CUPro Content to post, send, communicate, transmit, knowingly receive, upload or download any material that is (or engage in any behaviour that is or encourages any) harassing, disruptive, offensive, abusive, threatening, indecent, defamatory, obscene, unlawful, fraudulent, misleading, causes annoyance, or are intended to deceive, or are otherwise objectionable or unreasonable;
- (f) you will not use CUPro, your Registered Account or any CUPro Content to post, communicate or transmit any advertisements or other unsolicited commercial communications, or engage in spamming;
- (g) you will not interfere with another person's use and enjoyment of CUPro or CUPro Content;
- (h) you will not commit fraud or otherwise impersonate any person or falsely state or misrepresent yourself as being or being affiliated with another person;
- (i) you accept CUHK has the right at any time, and without notice, to monitor and record your access to and use of CUPro, your Registered Account and the CUPro Content; and
- (j) you will be solely responsible for, and CUHK has no responsibility to you or to any third party for any breach of your undertakings and/or obligations under these Terms, and for the consequences of any such breach;

## **18. Your Content**

- 18.1 You agree that you are solely and fully responsible and liable for all of your Content.
- 18.2 You represent and warrant that your Content is accurate, current and complete and shall not infringe the rights of any third party (including Intellectual Property Rights).

## **19. Intellectual Property Rights**

- 19.1 You acknowledge and agree that CUHK and/or its licensors own all legal rights, title and interest, including any Intellectual Property Rights, in and to the CUPro and CUPro Content.
- 19.2 You agree not to modify, copy, rent, lease, loan, sell or distribute the CUPro Content (either in whole or in part) unless expressly authorised by CUHK beforehand in writing.

## **20. Third Party Websites**

- 20.1 CUPro may include hyperlinks to other websites, content or resources, which are hosted, offered or provided by third parties. You understand and agree that:
  - (a) CUHK has no control over and does not monitor such third party websites, content, or resources;
  - (b) CUHK does not guarantee or warrant, and are not responsible for any such external sites, content or resources (or any products, goods or services promoted, referred to or offered on such external sites or resources); and

- (c) CUHK does not endorse any websites linked to CUPro, or any advertising, products, goods, services or other materials on or available through such websites or resources.
- 20.2 You understand and agree that your access to such external websites, content or resources at your own risk, and CUHK does not have any responsibility or liability for any Loss, in relation to third party websites, content or resources.

## **21. Disclaimers**

- 21.1 The Content of CUPro is provided for your general reference only, and should not be taken as advice that you should rely on. You should be fully responsible to ensure that your use of the Content of CUPro and/or CUPro complies with your requirements and all applicable laws.
- 21.2 You expressly acknowledge and agree that your use of CUPro, Content of CUPro and your Registered Account, and your participation in the application and registration process for a Registered Account, are at your own risk.
- 21.3 To the fullest extent permitted by applicable laws, CUHK expressly disclaims all warranties and conditions of any kind, whether express or implied, including, but not limited to the implied warranties and conditions of merchantability, satisfactory quality, fitness for a particular purpose, non-infringement, compatibility, security, completeness and accuracy.
- 21.4 CUHK does not represent or warrant:
  - (a) the accuracy, quality, completeness, currency, adequacy, reliability or validity of any information or material provided on or through CUPro, your Registered Account and/or during your registration and application process for a Registered Account, including but not limited to, the Content of CUPro;
  - (b) that CUPro, Content of CUPro or Registered Account will meet your requirements, or are free of defect, error, omission, Virus, or anything which may change, erase, add to or damage your software, data or equipment;
  - (c) that your use of CUPro, Content of CUPro, Registered Account, or the application and registration process for a Registered Account, will be uninterrupted, timely, secure or error-free; or
  - (d) that defects in the operation or functionality of CUPro, Content of CUPro, your Registered Account or the application and registration process for a Registered Account will be corrected.
- 21.5 Any materials, including Content of CUPro, downloaded or otherwise obtained through the use of CUPro or your Registered Account is done at your own discretion and risk and you shall be solely responsible for any damage to your computer system or other devices or loss of data that results from the downloading of any such material.

## **22. Limitation of Liability**

- 22.1 Nothing in this Clause 22 shall exclude or restrict any warranty or liability:
  - (a) for death or personal injury caused by CUHK's negligence;
  - (b) for fraud or fraudulent misrepresentation; or

- (c) that may not be lawfully excluded or limited by the applicable law.

Only the limitations and/or exclusions that are lawful under the applicable law will apply, and CUHK's liability will be limited to the maximum extent permitted by the applicable law.

- 22.2 CUHK shall not be liable to you in contract, tort (including negligence), breach of statutory duty or otherwise for any Loss whatsoever, including loss of profit; loss of revenue; loss of time; loss of anticipated savings; loss of opportunity; loss or corruption of data; loss of use; loss of business; wasted expenditure; loss of or damage to physical property; business interruption; loss of or damage to goodwill; or cost of procuring substitute services, which may arise in relation to these Terms, CUPro, Content of CUPro, your Content or your Registered Account whether or not you were informed in advance of the possibility of such Loss.
- 22.3 CUHK will not be liable to you for any Loss whatsoever, whether in contract, tort (including negligence), equity or otherwise, or any other losses resulting from or in relation to:
  - (a) your use, access or inability to use or access CUPro, Content of CUPro, your Content, your Registered Account or the application and registration process for a Registered Account;
  - (b) any changes made by CUHK to CUPro, Content of CUPro, your Registered Account or the application and registration process for a Registered Account, or for any permanent or temporary cessation (in whole or in part) in the provision of CUPro, Content of CUPro, your Registered Account or the application and registration process for a Registered Account;
  - (c) any deletion of, corruption of or failure to store any of your Content and other communications data maintained or transmitted by you through the use of CUPro or Registered Account or during the application and registration process for a Registered Account;
  - (d) your failure (or any of your employees, officers, members, owners, representatives or agents' failure) to keep any password or account details required to access your Registered Account or CUPro, confidentially or securely;
  - (e) any third party materials accessed, viewed, downloaded, used, relied on or otherwise obtained by you in relation to or through CUPro, Content of CUPro, your Registered Account or during the application and registration process for a Registered Account;
  - (f) any statements made by, or the conduct of, any third party on or through CUPro; or
  - (g) violation of your Intellectual Property Rights by any third party.
- 22.4 Clause 22 shall apply irrespective of whether or not CUHK has been informed or should have been aware of the possibility of any such Loss arising.

## **23. Indemnity**

- 23.1 You shall indemnify, defend and hold CUHK, its employees, contractors, directors, officers, agents, affiliates, licensors harmless from and against all Losses that may arise directly or indirectly out of or in connection with:
  - (a) your breach or non-compliance of any of these Terms or any applicable policies and terms and conditions;

- (b) your use of CUPro, Content of CUPro or your Registered Account;
  - (c) the use of your Content by CUHK or other third parties, and any claim that your Content violates any applicable laws or infringes the rights of any third party (including a third party's Intellectual Property Rights);
  - (d) any violation, contravention, breach or infringement of any Intellectual Property Rights of CUHK or any third party, or the unauthorized use or misappropriation of any trade secret or confidential information of CUHK or any third party, caused by you or your partners, employees, officers, members, owners, agents or affiliates; or
  - (e) your breach of the Hong Kong Personal Data (Privacy) Ordinance (Cap. 486) and/or any other applicable data protection laws.
- 23.2 You must cooperate fully with CUHK in the defence of any claim made by any third party. CUHK reserves its right to assume the exclusive defence and control of any matter or claim that is subject to indemnification by you in accordance with Clause 23.1 above. You hereby acknowledge that damages for improper use of CUPro, Content of CUPro or your Registered Account may be irreparable, and CUHK is entitled to seek equitable relief, including injunctions and preliminary injunctions, in addition to all other remedies.

## **24. Personal Data Privacy**

- 24.1 Any personal data collected by CUHK through CUPro shall be governed by the Privacy Policy and this Clause 24. In the event of any inconsistencies between this Clause 24 and the terms of the Privacy Policy, this Clause 24 shall take precedence over any conflicting provision in the Privacy Policy.
- 24.2 You shall fully comply with the Hong Kong Personal Data (Privacy) Ordinance (Cap. 486) and/or any other applicable data protection laws in respect of any personal data provided by you to us.
- 24.3 You shall ensure, acknowledge and warrant that CUHK has the right and the required consent to use any personal data provided by you to us for any purposes related to:
- (a) processing your application for a Registered Account;
  - (b) providing you with any services through CUPro;
  - (c) processing, assessing, evaluating or communicating with you regarding your Submissions or Registered Account;
  - (d) any site visits or briefings organised by CUHK which your employees, officer, owners, members, representatives or agents may attend; and
  - (e) the procurement process contemplated under the Intended Purposes.

## **25. Termination or Suspension**

- 25.1 CUHK may, at its sole discretion and at any time, with immediate effect, without notice or liability to you, terminate or suspend your use of and access to any part of or all of CUPro or any related services for any reason whatsoever, including but not limited to:
- (a) your breach of these Terms;

- (b) CUHK being unable to verify or authenticate any information provided by you; or
- (c) if CUHK believes that your actions or omissions may give rise to any liability, or are otherwise objectionable, inappropriate or illegal.

25.2 Upon termination or suspension in accordance with Clause 25.1 above, you shall immediately cease using or accessing CUPro or any related services, and shall immediately destroy all material obtained from CUPro and any copies thereof. Termination or suspension of your right to use or access in whole or in part CUPro or any related services, shall be without prejudice to any other rights or remedies available to CUHK against you.

## **26. Disputes and Applicable Law**

26.1 If any dispute arises between CUHK and you in reference to these Terms, or any part thereof, CUHK or you may forthwith give to the other party written notice requiring the matter to be referred to a single arbitrator, in accordance with the procedures governed by the Arbitration Ordinance, whose decision shall be final, and binding on the parties. The costs of such reference shall be at the discretion of the arbitrator.

26.2 These Terms shall be governed by and construed in accordance with the laws of Hong Kong.

## **27. Prevention of Bribery**

27.1. The Chinese University of Hong Kong is a public body specified in the Schedule to the Prevention of Bribery Ordinance (Cap. 201). Supplier/Service Provider/Contractor/Tenderer of CUHK shall not, and shall procure that his employees, agents and sub-contractors shall not, offer, solicit or accept an advantage as defined in the Prevention of Bribery Ordinance (Cap. 201) in connection with the tendering/quotation and execution of the related contract and any other contracts with CUHK. Failure to so procure or any act of offering, soliciting or accepting such advantage committed by the Supplier/Service Provider/Contractor/Tenderer or by its employee, agent or sub-contractor shall result in the tender/quotation being invalidated. CUHK shall cancel all related orders/contracts/agreements and hold the Supplier/Service Provider/Contractor/Tenderer liable for any Loss or damage which CUHK may sustain. By accessing CUPro and/or submitting a tender/quotation to CUHK through CUPro or by any other means, you/your company agree to be legally bound by the terms as detailed in this clause and clause 27.2.

27.2. You shall not and shall procure that your employees, subcontractors or agents shall not:

- (a) in any way breach the Prevention of Bribery Ordinance (Cap. 201);
- (b) collude with any person during the procurement process; or
- (c) be in real, potential and perceived conflict of interests which may adversely affect your participation in the procurement process.

Failure to so procure or any act of violating this clause by you or by your employee, agent or sub-contractor shall result in the tender/quotation being invalidated. CUHK shall cancel all related orders/contracts/agreements and hold you liable for any Loss or damage which CUHK may sustain.

## **28. Notices**

All communications, legal notices or demands to or upon you shall be effective and deemed to be in writing if transmitted to you through the use of CUPro, or otherwise delivered personally,

sent by courier, certified mail, by facsimile, email and/or message to the last known correspondence address, fax number or email address provided by you to us, or by posting such notice or demand on an area of CUPro that is publicly accessible, without a charge. You shall be deemed to have received any such notice, if and when:

- (a) CUHK is able to demonstrate that the notice has been sent to you; or
- (b) immediately upon CUHK posting such notice on an area of CUPro that is publicly accessible without charge, whichever date is earlier.

**29. Force Majeure**

Under no circumstances shall CUHK be liable for any delay or failure or disruption in relation to CUPro, your Registered Account, Content of CUPro, Your Content or any related services resulting directly or indirectly from anything beyond our reasonable control, including but not limited to, internet failures, telecommunications or any equipment failures, electrical power failures, labour disputes, war, riots, civil disturbances, shortages of labour or materials, fires, flood, typhoons, earthquakes, explosions, acts of God, actions or orders issued by governmental or regulatory authorities or any courts or tribunal with applicable jurisdiction, or non-performance of third parties.

**30. Severability**

If any of these Terms are held invalid or unenforceable by any court or tribunal of competent jurisdiction, they will be severed and the remaining Terms will continue in full force and effect as if these Terms had been made without the invalid or unenforceable terms. Each clause and sub-clause herein shall be treated as a separate and independent provision, and the unenforceability of any one clause shall in no way impair the enforceability of any of the other clauses herein.

**31. Waiver**

Our failure or delay by CUHK to exercise any right or act upon a breach under these Terms will not be a waiver of that right or breach. Any waiver by us of any of our rights or of a breach of these Terms must be in writing, and such waiver is limited to the particular right or breach stated therein.

**32. Assignment**

You may not, without the written consent of CUHK, assign or otherwise transfer any of your rights or obligations under these Terms.

**33. No Partnership or Agency**

Nothing in these Terms is intended to, or shall be deemed to, establish any partnership or joint venture between you and CUHK, constitute you as the agent of CUHK, or authorise you to make or enter into any commitments for or on behalf of CUHK.

**34. Governing Law and Jurisdiction**

By accessing CUPro, you agree that any claim relating to CUPro shall be governed by the laws of Hong Kong without giving effect to any principles of conflicts of laws, provided that we



reserve the right to pursue civil or criminal proceedings in any jurisdiction having control over you or your assets. You also agree to submit to the non-exclusive jurisdiction of the Hong Kong courts.