

# Ethical Commitment Clauses for Inclusion in the Consultancy Agreements

## Ethical Commitment

### Confidentiality

- (A) Except as necessary for the performance of the Services the Consultants shall not (except with the prior written consent or as instructed by the Employer) disclose the terms and conditions of this Agreement or any report, document, specification, drawing, plan, software, data or other particulars furnished by or on behalf of the Employer in connection therewith, or any such or similar information generated or produced by the Consultants pursuant to this Agreement, to any person other than a person employed or engaged by the Consultants in carrying out this Assignment, an agent of the Consultants, any approved sub-consultant or the Consultants' accountants, insurers and legal advisers.
- (B) Any disclosure to any person, agent, sub-consultant, accountant, insurer, legal adviser permitted under sub-clause (A) of this clause shall be in strict confidence and shall be on a "need to know" basis and extend only so far as may be necessary for the purposes of this Agreement.
- (C) The Consultants shall take all necessary measures (including by way of a code of conduct or contractual provisions where appropriate) to ensure that their directors, employees, agents, sub-consultants, accountants, insurers and legal advisers as mentioned in sub-clause (A) are aware of and shall comply with the confidentiality and non-disclosure provisions contained in this Agreement. If required by the Employer, the Consultants undertake to procure for and on behalf of the Employer a confidentiality agreement in a form to be prescribed by the Employer from any director, employee, agent, sub-consultant, accountant, insurer and legal adviser to whom any confidential information is to be disclosed.
- (D) The Consultants shall not without the prior written consent of the Employer publish, either alone or in conjunction with any other person, in any newspaper, magazine, periodical or through any electronic medium, any article, photograph or illustration relating to this Agreement.
- (E) The Consultants shall indemnify and keep indemnified the Employer against all loss, liabilities, damages, costs, legal costs, professional and other expenses of any nature whatsoever the Employer may suffer, sustain or incur, whether direct or consequential arising out of or in connection with any breach by the Consultants or their directors, employees, agents, sub-consultants, accountants, insurers or legal advisers of this clause.
- (F) The provision of this clause shall survive the termination of this Agreement (however occasioned) and shall continue in full force and effect notwithstanding such termination.

### Prevention of Bribery

- (G) The Consultants shall prohibit their directors, employees, agents and sub-consultants who are involved in this Agreement from offering, soliciting or accepting any advantage as defined in the Prevention of Bribery Ordinance, (Cap 201). The Consultants shall also caution their directors, employees, agents and sub-consultants against soliciting or accepting any excessive hospitality, entertainment or inducements which would impair their impartiality in relation to the Assignment. The Consultants shall take all necessary measures (including by way of a code of conduct or contractual provisions where appropriate) to ensure that their directors, employees, agents and sub-consultants are aware of the aforesaid prohibition and will not solicit or accept any advantages, excessive hospitality etc when conducting business in connection with this Agreement.

**Declaration of Interest**

- (H) The Consultants shall require their employees, agents and sub-consultants who are involved in this Agreement to declare in writing to the Consultants any conflict or potential conflict between their personal/financial interests and their duties in connection with this Agreement. In the event that such conflict or potential conflict is disclosed in a declaration, the Consultants shall forthwith take such reasonable measures as are necessary to mitigate as far as possible or remove the conflict or potential conflict so disclosed.
- (I) The Consultants shall prohibit their employees who are involved in this Agreement from engaging in any work or employment other than in the performance of this Agreement, with or without remuneration, which could create or potentially give rise to a conflict between their personal/financial interests and their duties in connection with this Agreement. The Consultants shall require their agents and sub-consultants to impose similar restriction on their employees by way of a contractual provision.
- (J) The Consultants shall take all necessary measures (including by way of a code of conduct or contractual provisions where appropriate) to ensure that their employees, agents and sub-consultants who are involved in this Agreement are aware of the provisions under the aforesaid sub-clauses (H) and (I).

**Declaration of Ethical Commitment**

- (K) The Consultants shall submit a signed declaration in a form (see Appendix) prescribed or approved by the Employer to confirm compliance with the provisions in aforesaid sub-clauses (A), (B), (C), (D), (E), (F), (G), (H), (I) and (J) on confidentiality, prevention of bribery and declaration of interest. If the Consultants fail to submit the declaration as required, the Employer shall be entitled to withhold payment until such declaration is submitted and the Consultants shall not be entitled to interest in that period. To demonstrate compliance with the aforesaid sub-clauses (A), (B), (C), (D), (E), (F), (G), (H), (I) and (J) on confidentiality, prevention of bribery and declaration of interest, the consultant and their sub-consultants employed for the performance of duties under this Agreement are required to deposit with the Employer a code of conduct issued to their staff.

## Appendix

# Declaration Form by Consultants on their compliance with the Ethical Commitments Requirements

To: Owners' Corporation's Representative

Agreement Title: \_\_\_\_\_

In accordance with the Ethical Commitment clauses in the Consultancy Agreement :

- (1) We confirm that we have complied with the following provisions and have ensured that our directors, employees, agents and sub-consultants are aware of the following provisions:
- (a) Prohibiting our directors, employees, agents and sub-consultants who are involved in this Agreement from offering, soliciting or accepting any advantage as defined in section 2 of the Prevention of Bribery Ordinance, (Cap 201) when conducting business in connection with this Agreement;
  - (b) Requiring our employees, agents and sub-consultants who are involved in this Agreement to declare in writing to us any conflict or potential conflict between their personal/financial interests and their duties in connection with this Agreement. In the event that a conflict or potential conflict is disclosed, we will take such reasonable measures as are necessary to mitigate as far as possible or remove the conflict or potential conflict so disclosed;
  - (c) Prohibiting our employees who are involved in this Agreement from engaging in any work or employment other than in the performance of this Agreement, with or without remuneration, which could create or potentially give rise to a conflict between their personal/financial interests and their duties in connection with this Agreement and requiring our sub-consultants to do the same;
  - (d) Taking all measures as necessary to protect any confidential/privileged information or data entrusted to us by or on behalf of the Employer from being divulged to a third party other than those allowed in this Agreement.

(2) We further confirm that we have ensured that our accountants, insurers and legal advisers are aware of the provisions requiring us taking all measures as necessary to protect any confidential/ privileged information or data entrusted to us by or on behalf of the Employer from being divulged to a third party other than those allowed in this Agreement.

(Name of the Consultant) \_\_\_\_\_

(Name of the Signatory) \_\_\_\_\_

(Position of the Signatory) \_\_\_\_\_

(Date) \_\_\_\_\_