

Suggested Clauses in Sales and Purchase or Services Agreement between Funding Applicant and Solution Provider

- 1) **COMMENCEMENT AND TERM OF CONTRACT** This section may include the names (same as Business Registration Certificate) of the parties involved, the effective date of the agreement, and a brief description of the solution to be provided (“Solution Package”).

This Service Provision Agreement (“Agreement”) is made and entered into on the date of signing by and between

[name of Solution Provider] (“Solution Provider”), located at [address of Solution Provider],

and

[name of Funding Applicant] (“Funding Applicant”), located at [address of Funding Applicant].

Solution Provider agrees to provide the following services to Funding Applicant:

- Solution Name
- Features of the Solution Package
- Supported digital payment methods
- Actual transaction fee of each digital payment method
- Package amount (equal to price shown in Solution List)
- Schedule of payment

2) **OBLIGATION under Digital Transformation Support Pilot Programme**

It may include the following items to signify that the Funding Applicant and the Solution Provider understand and are willing to comply with and to incorporate their respective obligations under the Programme into the Sales and Purchase or Service Provision Agreement:

(i) General

- The Funding Applicant and the Solution Provider understand that they are bound by and agree that they will comply with the terms and conditions of the Programme, including the terms and conditions in the “Guide and Conditions for Solution Providers” and “Guide and Conditions for Funding Applicants”.

(ii) Payment Terms

- Funding support of up to HK\$50,000 for each eligible funding applicant will be provided on a 1:1 matching basis for the cost of the adopted solution listed in the Solution List. The applicant must contribute to at least half of the total cost of the adopted solution in cash. Any failure to comply with this requirement will constitute a material breach and will give Hong Kong Cyberport Management Company Limited (“HKCMCL”) the right to terminate the funding to the applicant and to require the applicant to refund all disbursed funding under the Programme.
- Contribution by the applicant in kind or any non-cash consideration will not be accepted.
- Items covered by an approved application (including, without limitation, those contributed by the applicant or the Programme) shall not receive funding support from other local public funding sources.

(iii) Solution Adoption

- Only one solution package can be selected under each application. Applicants are advised to explore and compare different solutions before selecting the solution to be included under applications.
- It is the responsibility of the funding applicant to promptly notify HKCMCL if the cost of the adopted solution has at any time or for any reason been reduced rendering the amount of the approved funding support becoming more than half of the total cost of the adopted solution. The approved funding support will be adjusted down to no more than half of the total cost in this case. If the cost of the adopted solution has at any time or for any reason been increased, the amount of the approved funding support shall remain unchanged.

(iv) Funding Disbursement

- The funding applicant is required to apply the funding disbursement and the funding will be disbursed under the following mechanism:
 - (a) An initial payment of 50% of the approved funding support (the **“First Disbursement”**) will be paid to the solution provider upon the funding applicant’s confirmation of the Solution Deployment and provision of evidence to the satisfaction of HKCMCL (e.g. receipt from the solution provider showing that it has paid its matching share of the cost for the adopted solution) through the Programme’s website within 6 months after approval of the application. Any other relevant supporting documents may be requested to the satisfaction of HKCMCL and
 - (b) After 6 months from the approval of the application, the remaining amount of approved funding support (the **“Second Disbursement”**) will be made to the solution provider upon approval by HKCMCL of the final report and any other relevant supporting documents which may be requested by HKCMCL.
- In case of any dispute between the applicant and solution provider, the Government and HKCMCL shall be entitled to withhold payment of any approved funding without any liability towards the applicant or solution provider.

3) Deliverables

- (i) The title and interest in the new equipment, hardware, software and any other assets purchased under this agreement shall vest with the Funding Applicant;
- (ii) All items purchased, procured or leased under this agreement shall be licensed products (to the extent that a license is required for the use of such item) and shall not infringe any third-party intellectual property rights;
- (iii) The risk in using the equipment, hardware, software and any other assets purchased under this agreement will be passed to the Funding Applicant upon delivery of such equipment, hardware, software or any other assets.

4) Termination of Funding Support

- (i) Each of the Government and HKCMCL may at any time terminate all or any part of the funding support by giving written notice to the applicant with immediate effect and shall have the right to claim for repayment of the disbursed funding in full or in part together with all administrative, legal and

other costs incurred and interest accrued up to the date of repayment from the applicant on the occurrence of any of the following events:

- the applicant fails to comply with any terms and conditions set out in this Guide or the Applicant Declaration;
- the Government or HKCMCL has any reasonable ground to believe that the applicant has provided to HKCMCL any materially false, misleading inaccurate or incomplete information during the application or the implementation of the project or any subsequent supporting document is found to be incorrect or incomplete to the extent that the Government or HKCMCL considers to be significant;
- the applicant has acted dishonestly or negligently at any time during or before the application or the implementation of the project, and such act(s) is in any way to the detriment of the Government or HKCMCL or their reputation;
- the implementation of the solution fails in a material way to progress in accordance with the approved application;
- the Government or HKCMCL forms the opinion that:
 - (a) it is unlikely that the implementation of the solution will be completed in accordance with the approved application; or
 - (b) the project shall be terminated in consideration of the public interest;
- the applicant terminates the procurement of the solution from the solution provider set out in the approved application;
- the applicant is subject to any bankruptcy or winding up petition or liquidation proceeding of whatever nature, or a receiver has been or will likely be appointed to manage the whole or part of the affairs of the applicant, or a provisional liquidator, liquidator or administrator has been or is likely to be appointed to receive and distribute the whole or any part of assets of the applicant, or a resolution is passed for the winding up of the applicant, or if the applicant makes an assignment for the benefit of or composition with its creditors generally or threatens to do any of these things, or any judgement is made against the applicant, or any similar occurrence under any jurisdiction that affects the applicant;
- the applicant has engaged or is engaging in acts or activities that are likely to constitute or cause the occurrence of offences endangering national security or which would otherwise be contrary to the interest of national security;
- the continued engagement of the applicant or the continued performance of the relevant funding arrangements is contrary to the interest of national security; or
- the Government or HKCMCL reasonably believes that any of the events mentioned above is about to occur.

(ii) Each of the Government and HKCMCL may at any time terminate all or any part of the funding support by giving written notice to the solution provider with immediate effect and shall have the right to claim for repayment of the disbursed funding in full or in part together with all administrative, legal and other costs incurred and interest accrued up to the date of repayment from the solution provider on the occurrence of any of the following events:

- the solution provider fails to comply with any terms and conditions set out in this Guide or the “Offer to be Bound”;
- the Government or HKCMCL has any reasonable ground to believe that the solution provider has provided to HKCMCL any materially false, misleading, inaccurate or incomplete information during the application for enrolment or the implementation of the project or any subsequent supporting document is found to be incorrect or incomplete to the extent that the Government or HKCMCL considers to be significant;
- the solution provider has acted dishonestly or negligently at any time during or before the application for enrolment in the Programme or the deployment of the solution and such act(s) is in any way to the detriment of the Government or HKCMCL or their reputation;
- the implementation of the solution fails in a material way to progress in accordance with the approved application;
- the Government or HKCMCL forms the opinion that:
 - (a) it is unlikely that the implementation of the solution will be completed in accordance with the approved application; or
 - (b) the project shall be terminated in consideration of the public interest;
- the solution provider is subject to any bankruptcy or winding up petition or liquidation proceeding of whatever nature, or a receiver has been or will likely be appointed to manage the whole or part of the affairs of the solution provider, or a provisional liquidator, liquidator or administrator has been or is likely to be appointed to receive and distribute the whole or any part of assets of the Solution Provider, or a resolution is passed for the winding up of the solution provider, or if the solution provider makes an assignment for the benefit of or composition with its creditors generally or threatens to do any of these things, or any judgment is made against the solution provider or any similar occurrence under any jurisdiction that affects the solution provider;
- the solution provider has engaged or is engaging in acts or activities that are likely to constitute or cause the occurrence of offences endangering national security or which would otherwise be contrary to the interest of national security;

- the continued engagement of the solution provider or the continued performance of the relevant funding arrangements is contrary to the interest of national security; or
- the Government or HKCMCL reasonably believes that any of the events mentioned above is about to occur.