Swire Properties Management Limited
Standard Terms and Conditions of Engagement

1.0 General

1.1 In this Contract the following words and expressions as hereinafter defined shall have the meaning hereby assigned to them except where the context otherwise requires:- Definitions

"Authorised Person" means a person whose name is on the authorised persons' register kept under Section 3(1) of the Buildings Ordinance (Chapter 123).

"Conditions" means these Standard Terms and Conditions of Engagement.

"Construction Contract" means the contracts entered into by the Employer and a Contractor to perform Works in connection with the Project.

"Construction Value" means the relevant value of all relevant Works designed and supervised by the Consultant that have been properly certified under the Construction Contract for payment by the Employer to the Contractor but excluding any adjustment for direct loss and/or expense, bonus, incentive or ex-gratia payments to or liquidated and ascertained damages recoverable from the Contractor by the Employer.

"Contract" means these Conditions and such other documents as are specified in the Tender Documents including the completed Form of Tender and Schedules, together with the Employer's Representative's written acceptance thereof on behalf of the Employer.

"Contractor" means those contractors named in the Schedules hereto, or if there is no contractor so named, any contractor appointed by the Employer to carry out or manage the Works and perform duties in connection with the Project and shall include, where the context so requires, the Contractor's employees, agents, subcontractors and suppliers.

"Consultant" means the person who renders the Consultancy Services as detailed in this Contract.

"Employer" means Swire Properties Management Limited.

"Employer's Representative" means that person and/or Company appointed by the Employer to act on behalf of the Employer in the administration of this Contract and of all matters connected therewith.

"Fee" means the fee to be paid to the Consultant for performing and completing the Services and responsibilities hereunder comprising the sum calculated as set out in clause 5.1 and as may be varied by clause 3.4.

"Parties" means the Consultant and the Employer.

"Professional Team" means the persons identified in the Schedules hereto and other consultants or specialist advisers whose services are from time to time engaged by the Employer in connection with the execution of the Project.

"Project" means the Works to be executed and completed as specified in the Schedules hereto.

"Project Data" means all plans, drawings, details, specifications, schedules, reports, calculations, computer print outs, data files, estimates and other relevant documents to the Project and the work executed from them.

"Registered Structural Engineer" means a person whose name is for the time being on the structural engineers' register kept under Section 3(3) of the Buildings Ordinance (Chapter 123).

"Schedules" means the Schedules as included in Section 3 or other parts of the Tender Documents.

"Services" means the services to be provided by the Consultant as described in the Schedules hereto and all such other functions, duties and services as are incidental to the functions, duties and services so described therein or inherent in the role of the Consultant on similar projects.

"Site" means the location of the Project referred to in the Schedules hereto.

"Timetable" means the timetable agreed with the Employer for the discharge of the Consultant's duties under this Contract.

"Works" means the construction works and/or supply of goods and services in connection with the Project to be undertaken by a Contractor.

"Work Stage" means a relevant stage of the Services as specified in the Schedules hereto.

1.2 The headings and notes to these Conditions are for convenience only and do not affect the interpretation of the Conditions. Interpretation

1.3 In the Conditions, unless the context otherwise requires:-

(a) the singular includes the plural and vice versa;

(b) a gender includes any other gender;

(c) a reference to a 'person' includes any individual, firm, partnership and company or any other body corporate; and

(d) a reference to a statute, statutory instrument or other subordinate legislation is to such legislation as amended, and in force from time to time, including any legislation which re-enacts or consolidates it, with or without modification, including corresponding legislation in any other relevant part of the Hong Kong Special Administrative Region.

1.4 All communications and documents in connection with this Contract shall be in English and in writing. Communications

2.0 Obligations and Authority of the Consultant

2.1 The Consultant shall perform the Services and discharge all of the obligations under this Contract in accordance with the timetable with reasonable skill, care and diligence in conformity with the normal professional standards of the Consultant's profession. — Duty of Care

2.2 The Consultant shall comply with all reasonable instructions of the Employer and/or the Employer's Representative. — Instructions

2.3 The Consultant shall manage the Project on the matters set out or as necessarily implied in this Contract. — Manage the project

2.4 The Consultant shall obtain the authority of the Employer's Representative in writing before proceeding with the Services and/or initiating any Work Stage. — Progress of Work stage

2.5 The Consultant at all times shall commit adequate resources to the Project to ensure that the Timetable is achieved. The Consultant shall assign the key personnel with responsibilities generally as described in the Schedules hereto to the Project, and ensure any replacement shall have similar qualifications, expertise and experience. Prior approval shall be obtained in writing from the Employer's Representative for any replacement of key personnel. — Resources

2.6 Where the Services require the Consultant to act as Authorised Person or Registered Structural Engineer, the Consultant shall nominate a suitably qualified staff member who shall be acceptable to the Employer's Representative to carry out the duties of Authorised Person or Registered Structural Engineer. Prior approval must be obtained in writing from the Employer's Representative for any change in the Authorised Person or Registered Structural Engineer. — Authorised Person or Registered Structural Engineer

2.7 The Consultant shall advise the Employer's Representative upon becoming aware of: — Services variation

(a) a need to vary the Services, the Timetable, the Fee or any other part of the Contract;

(b) any incompatibility in or between the Employer's brief, any Employer's or Employer's Representative's instruction, the Construction Value, the Timetable and/or the approved design; or any need to vary any part of them;

(c) any ambiguities or discrepancies in or between the documents forming this Contract;

(d) any issues affecting or likely to affect the progress, quality or cost of the Project;

(e) any information or decisions required from the Employer and/or the Employer's Representative or others in connection with performance of the Services;

and the Employer's Representative shall give instructions on how to deal

with the matter.

2.8 The Consultant in performing the Services shall when reasonably required by any of the Professional Team co-operate with them as reasonably necessary for carrying out their services. — Co-operation etc

2.9 The Consultant shall make no material alteration or addition to or omission from the Services or the approved design without the consent of the Employer's Representative in writing. — Change of services or design

2.10 The Consultant shall provide professional advice and assistance to the Employer upon the expiry of Defects Liability Period in resolving any outstanding defects or issues arising from the Project. Such advice and assistance given shall be at no cost to the Employer provided that the Consultant's involvement is not excessive. — Advice upon the expiry of Defects Liability Period

2.11 The parties to this Contract do not intend that any term of this Contract should be enforceable, by virtue of the Contracts (Rights of Third Parties) Ordinance (Cap. 623 of the Laws of Hong Kong), by any person who is not a party to this Contract. — Contracts (Rights of Third Parties) Ordinance

3.0 Obligations and Authority of the Employer and the Employer's Representative

3.1 The Employer's Representative shall supply, free of charge, necessary information as far as possible for the proper and timely performance of the Services. — Information, decisions, approvals, instructions and variations.

3.2 The Employer's Representative, when requested by the Consultant shall give decisions and approvals as necessary for the proper and timely performance of the Services.

3.3 The Employer's Representative shall advise the Consultant of the relative priorities of the Employer's brief, the Construction Value and the Timetable.

3.4 The Employer, through the Employer's Representative, shall have authority to issue instructions to the Consultant and/or instruct variations to the Services to be carried out under this Contract or instruct additional services not covered under this Contract. The cost of substantial variations or additional services shall be calculated on a time basis unless otherwise agreed within the capped amount stated in the Schedules hereto and the fee adjusted accordingly by the Employer's Representative.

3.5 The Employer, in respect of any work or services in connection with the Project performed or to be performed by any person other than the Consultant, shall procure that such person shall co-operate with the Consultant and provide to the Consultant drawings and information reasonably needed for the proper and timely performance of the Services. — Responsibilities of others

4.0 Assignment and Sub-letting

The Consultant shall not purport to assign, transfer or subcontract any right or obligation under this Contract to any person without the prior written consent of the Employer's Representative, provided such consent shall not be — Assignment and subletting

unreasonably withheld.

5.0 Payment

5.1 The Fees for performance of the Services shall be calculated and charged as set out in the Schedules hereto. — Fees for performance of the Services

5.2 Unless provided otherwise, the Fees stated in the Schedules hereto shall be inclusive of all personal, documents, equipment, materials, travel time and expenses thereto incurred in the performance of the Services.

5.3 If the Consultant, for reasons beyond its control is involved in extra work or incurs extra expense, for which he will not otherwise be remunerated, the Consultant shall be entitled to additional fees calculated on a time basis unless otherwise agreed but limited to the capped amount stated in the Schedules hereto. This clause shall not apply where the extra work or expense is as a result of negligence or breach of the Contract by the Consultant. — Additional fees

5.4 In the event that the Consultant, for any reason other than its own negligence or failure to comply with its obligations under the Contract, performs only part of the Services, he shall only be entitled to commensurate remuneration in respect of those Services actually performed in accordance with clause 5.8 — Services not completed

5.5 The Employer shall reimburse all reasonable out-of-pocket expenses stated in the Schedules hereto, except for those expenses included in clause 5.2. — Out-of-pocket expenses

5.6 The Consultant shall maintain records of time spent on Services performed on a time basis, and of out-of-pocket expenses and shall make these available to the Employer's Representative on reasonable request. — Maintain records

5.7 Upon completion of a Work Stage as set out in the Schedules hereto, the Consultant shall seek payment from the Employer in respect of the Services performed by the delivery of an invoice to the Employer's Representative. The invoice shall be in a form acceptable to the Employer's Representative and shall include any additional fees, out-of-pocket expenses and state the basis of calculation of the amounts due. — Payment

5.8 Subject to the faithful and proper observance of the Consultant's duties and obligations under this Contract, the Employer shall pay the Consultant a fee calculated on the basis of the Employer's Representative's estimate of the percentage of completion of the Work Stage or other Services or such other method in the Schedules hereto.

6.0 Copyright and Use of Materials by the Employer

6.1 Copyrights in Project Data shall become the property of the Employer on payment of the Fee and the Consultant shall not use them except for the proper performance of its obligations under this Contract. — Copyright

6.2 If, at any time, the Consultant's appointment is determined under this Contract, the Consultant shall immediately deliver all Project Data in its possession to the Employer's Representative. The Employer and his agents may make full use of the Project Data for the purpose of

completion, repair, renewal, letting or sale of the Project.

6.3 All drawings including all revisions thereto prepared by the Consultant in the performance of the Services and as required by this Contract shall be maintained and saved in AutoCAD format, the AutoCAD version to be agreed by the Employer's Representative.

7.0 Confidentiality

Confidentiality

7.1 None of the documents forming this Contract shall be used for any purpose other than this Contract without the written consent of the Employer.

7.2 No information given by the Employer and/or the Employer's Representative or collected by the Consultant in connection with this Contract shall be divulged by the Consultant to any third party other than for the purposes of this Contract except in the case of disclosures required by law or any government authority without the written approval of the Employer and/or the Employer's Representative.

8.0 Professional Indemnity Insurance and Indemnity to Employer

Professional indemnity insurance

8.1 The Consultant shall effect and maintain professional indemnity insurance, with a minimum period of six (6) years from the date of certificate of completion, for a limit of cover as stated in the Schedules for any one occurrence or series of occurrences arising out of any one event in respect of any negligent act or omission by the Consultant (including its agents) for the discharge of its obligations under this Contract

Evidence of insurance

8.2 The Consultant, when requested by the Employer's Representative shall produce for inspection documentary evidence that the professional indemnity insurance required under the Contract is being maintained.

Indemnity to Employer

8.3 The Consultant shall be liable for and shall indemnify the Employer against any liability, loss, claim or proceedings in respect of any personal injury or property damage arising from execution of services.

9.0 Employees' Compensation Insurance

Employees' Compensation Insurance

9.1 The Consultant shall take out and maintain and shall cause any sub-consultant to take out and maintain such insurance policies as are necessary to cover all liabilities of the Consultant or as the case may be of each sub-consultant and their respective employees and other persons who may be employed on the Project in respect of any damages or compensation payable under any ordinance, statute or at common law in respect of, or in consequence of, any death, or accident, illness or injury to any employee or other person in the employment of the Consultant or each sub-consultant arising out of or in the course of, or caused by the carrying out of any Services on the Project.

9.2 The Consultant shall produce, and shall cause any sub-consultant to produce, such evidence as the Employer or Employer's Representative may reasonably require not later than seven (7) days after the

appointment of the Consultant.

9.3 The limit of liability under the policies shall meet the statutory insurance requirements as laid down in the Employees' Compensation Ordinance. Such policies shall cover the period from the date of appointment of the Consultant until the date of discharge of the Consultant's obligations under this Contract or upon the determination of the Consultant pursuant to clause 10.0.

9.4 The Consultant shall effect his own liability insurance policy and/or Personal Accident insurance policy as deemed necessary to cover any claims alleged by sole proprietors or self-employed persons in respect of any personal injuries, death or illness arising out of, or in the course of, or caused by execution of the contract.

10.0 Suspension and Determination

Suspension

10.1 The Employer and/or the Employer's Representative may suspend the performance of any or all of the Services by giving at least fourteen (14) days' notice to the Consultant. The notice shall specify the Services affected.

10.2 If any period of suspension arising from a valid notice given under clause 10.1 exceeds six (6) months the Consultant shall request the Employer and/or the Employer's Representative to issue instructions. If written instructions have not been received within thirty (30) days of the date of such request, the Consultant shall have the right to treat performance of any Service or its obligations affected as determined.

Determination by Employer

10.3 Save for the provisions under clause 14.5, the Employer and/or the Employer's Representative may by giving one (1) months' notice in writing to the Consultant determine performance of the Services and the obligations under this Contract.

Determination by Consultant

10.4 The Consultant shall be entitled to terminate its appointment under this Contract at any time if the Employer and/or the Employer's Representative is in material and/or persistent breach of their obligations under this Contract and thereby fail to remedy the same after a notice from the Consultant specifying the breach and requiring a remedy therewith within one (1) month of the notice.

Loss of profit, etc.

10.5 Upon any suspension or termination of the Consultant's appointment, howsoever arising, the Employer shall not be liable to the Consultant for any loss of profit, loss of contract or other losses or expenses arising out of or in connection with such suspension or termination.

11.0 Dispute Resolution

Mediation and arbitration

11.1 Any dispute or difference arising out of or in connection with this Contract shall be firstly referred to and determined by mediation in accordance with the then current Mediation Rules of the Hong Kong International Arbitration Centre ("**HKIAC**"). If the mediation is abandoned

by the mediator or is otherwise concluded without the dispute or difference being resolved to the satisfaction of either party, then such dispute or difference shall be referred to and determined by arbitration as provided and in accordance with Arbitration Ordinance (Cap 609) or any statutory modification thereof for the time being in force. It is expressly agreed that all the provisions of Schedule 2 to the Arbitration Ordinance shall apply to any arbitration instituted in accordance with this clause 11.1. Such arbitration shall take place in Hong Kong and the Arbitrator shall have no power to decide otherwise.

12.0 Prevention of Bribery

Prevention of bribery

12.1 The Consultant shall prohibit their employees who are engaged either directly or indirectly on the formulation and implementation of the Project from soliciting or accepting of an advantage as defined in the Prevention of Bribery Ordinance (Cap 201). The Consultant shall also caution their employees against soliciting or accepting any excessive hospitality, entertainment or inducements which would impair their impartiality in relation to the Project.

13.0 Declaration of Interest

Declaration of interest

13.1 On appointment and during the currency of this Contract, the Consultant must declare any interest if it is considered to be in real or apparent conflict with the Services. The Consultant shall not undertake any services, which could give rise to conflict of interest, except with the prior approval of the Employer's Representative which approval shall not be unreasonably withheld.

13.2 In any case, the Consultant or any of their associated companies shall not undertake any services for a contractor in respect of a contract between that contractor and the Employer for which the Consultant is providing a service to the Employer.

14.0 Supplier Code of Conduct

Code of Conduct

14.1 The Consultant shall comply fully and properly with the Employer's Supplier Code of Conduct (**"Code of Conduct"**) as provided in the link in Clause 14.3.

14.2 At all times when performing the Services, the Consultant is to arrange for it and for each of its employees, agents and subcontractors to comply fully with the Code of Conduct.

14.3 The Code of Conduct is published on Swire Properties' website (currently at [www.swireproperties.com]) and may be amended from time to time. The Consultant agrees that he shall keep himself informed of any amendments to the Code of Conduct by regularly consulting the Employer or the Employer's website for the latest edition and shall comply with such latest edition accordingly.

14.4 By accepting this Contract, the Consultant represents to the Employer:

(a) that the Consultant has read the Code of Conduct; and

(b) that the Consultant, its employees, agents and sub-contractors are

complying, and will comply, with the Code of Conduct when performing the Services;

(c) that the Consultant shall allow the Employer upon reasonable request to check the performance of the Services so that the Employer can monitor the Consultant's compliance with the Code of Conduct.

Corrective action plan

14.5 If the Consultant becomes aware that the performance of the Services may breach the Code of Conduct, then it is to notify the Employer and/or the Employer's Representative as soon as reasonably practicable. Then, the Consultant is:

(a) promptly to provide the Employer with a corrective action plan to the satisfaction of the Employer; and

(b) to implement the plan within a period on which the Employer and the Consultant agree.

14.6 If the Consultant does not implement the agreed corrective action plan to the satisfaction of the Employer within the agreed time-frame, then the Employer and/or the Employer's Representative may give written notice immediately ending the order, contract, and any other agreements between the Employer and the Consultant, and without compensation. The Consultant has liability to protect the Employer from any damages / liabilities resulting from the Consultant's breach of the Code of Conduct.