## Schedule D – Bank Guarantee

THIS GUARANTEE is made on the ............................ day of .............................…………..... By..................................................................……...........................................................................

of ................................................................, a bank within the meaning of the Banking Ordinance (Chapter 155 of the Laws of Hong Kong) (hereinafter called the "Guarantor")

In favour of

The Government of the Hong Kong Special Administrative Region (hereinafter called the "Government") of the other part.

**WHEREAS**

(A) By a contract (hereinafter called the "Contract") to be entered into between [ ] of [ ] (hereinafter called the "Operator") of the one part and the Government of the other part (designated as Labour Department Contract No.[ ] of [20 ], the Operator agreed and undertook to provide \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ upon the terms and conditions of the Contract.

(B) The Guarantor has agreed to guarantee in the manner and on the terms and conditions hereinafter appearing, the due and faithful performance of the Contract by the Operator.

Now this Guarantee executed as a deed witnesses as follows:

(1) Where applicable, words and expressions used in this Guarantee shall have the meaning assigned to them under the Contract.

(2) In consideration of the Government’s acceptance of the bank named herein as the Guarantor under this Guarantee:

(a) The Guarantor hereby irrevocably and unconditionally guarantees, as a continuing obligation, the due and punctual performance and discharge by the Operator of all of his, her and their obligations and liabilities under the Contract and the Guarantor shall pay to the Government on demand and without cavil or argument all monies and discharge all liabilities which are now or at any time hereafter shall become due or owing by the Operator to or in favour of the Government under or in connection with the Contract together with all costs, charges and expenses on a full indemnity basis which may be incurred by the Government by reason or in consequence of any default on the part of the Operator in performing or observing any of the obligations terms conditions stipulations or provisions of the Contract, notwithstanding any dispute between the Operator and the Government or any other person.

(b) The Guarantor, as a primary obligor and as a separate, continuing and independent obligation and liability from its obligations and liabilities under sub-clause (a) above, irrevocably and unconditionally agrees to indemnify and keep indemnified the Government against and shall pay to the Government on demand and without cavil or argument all losses, damages, costs, charges and expenses on a full indemnity basis suffered or incurred by the Government arising from or in connection with the failure of the Operator to perform fully or promptly any of his, her or their obligations terms conditions stipulations or provisions of the Contract.

(c) The Government may place and keep any monies received by virtue of this Guarantee (whether before or after the insolvency or liquidation of the Guarantor or the Operator) to the credit of a suspense account for so long as the Government may think fit in order to preserve the rights of the Government to sue or prove for the whole amount of its claims against the Guarantor, the Operator or any other person.

(3) This Guarantee shall not be affected by any change of name or status in the company, firm or individual described as "the Operator" or where "the Operator" is a partnership, any change in the partners or in its constitution or where "the Operator" is a company, any change of its member or shareholder or its officers or its constitution.

(4) The Guarantor shall not be discharged or released from this Guarantee by any arrangement made between the Government and the Operator or by any alteration in the obligations imposed upon the Operator by the Contract or by any waiver or forbearance granted by the Government to the Operator as to payment, time, performance or otherwise whether or not such arrangement, alteration, waiver or forbearance may have been or is made or granted with or without knowledge or assent of the Guarantor.

(5) Without prejudice to Clause 4 above, the obligations of the Guarantor under this Guarantee shall remain in full force and effect and shall not be amended or affected or discharged in any way by, and the Guarantor hereby waives notice of or assents to:

(a) any suspension, termination, amendment, variation, novation or supplement of or to the Contract from time to time (including without limitation extension of time for performance);

(b) any provision of the Contract being or becoming illegal, invalid, void, voidable or unenforceable;

(c) the termination of the Contract or of the engagement of the Operator under the Contract for any reason;

(d) any forbearance, variation, extension, discharge, compromise, dealing with exchange, waiver or renewal in respect of any right of action or remedy that the Government may have, now or after the day of this Guarantee, against the Operator and/or the negligence, failure, omission, indulgence or delay by the Government in enforcing any right, power, privilege to or remedy available to the Government in relation to the obligations of the Operator set out in the Contract;

(e) the voluntary or involuntary liquidation, bankruptcy, dissolution, sale of assets, receivership, general assignment for benefit of creditors, insolvency, reorganisation arrangement, composition, or other proceedings of or affecting the Operator or its assets, or any change in the constitution of the Operator;

(f) any assignment, novation or sub-contracting by the Operator of any or all of its obligations set out in the Contract;

(g) without prejudice to the generality of the foregoing, any fact or event (whether similar to any of the foregoing or not) which in the absence of this provision would or might constitute or afford a legal or equitable discharge or release of or defence to the Guarantor, other than the express release of its obligations.

(6) This Guarantee shall extend to any variation, novation of or amendment to the Contract and to any agreement supplemental thereto agreed between the Government and the Operator and for the avoidance of doubt, the Guarantor hereby authorises the Government and the Operator to make any such amendment, variation, novation or supplemental agreement without its notice or assent.

(7) This Guarantee shall have immediate effect on the same date as the Contract and is a continuing security. This Guarantee shall cover all of the obligations and liabilities of the Operator under the Contract and shall remain in full force and effect and irrevocable until:

(a) the end of three (3) months from the date of early termination or expiry of the Contract Period; or

(b) if at the time of expiry or early termination of the Contract Period, there is any outstanding right or claim of the Government, or any outstanding obligation or liability of the Operator, whether under or arising from or in relation to the Contract, the date on which all such rights and obligations, and claims and liabilities have actually been carried out, completed and discharged (as confirmed by the Government in writing),

whichever is the applicable.

(8) This Guarantee is in addition to and shall not merge with or otherwise prejudice or affect any contractual or other right or remedy or any guarantee, indemnity, lien, pledge, bill, note, charge or any other security which the Government may at any time hold (collectively "Other Security") and this Guarantee may be enforced by the Government without first having recourse to any of the Other Security or taking any steps or proceedings against the Operator, and notwithstanding any release, waiver or invalidity of the Other Security.

(9) Any demand, notification or certificate given by the Government specifying amounts due and payable under or in connection with any of the provisions of this Guarantee shall be conclusive and binding on the Guarantor.

(10) The obligations expressed to be undertaken by the Guarantor under this Guarantee are those of primary obligor and not as a surety.

(11) This Guarantee shall be governed by and construed according to the laws for the time being in force in the Hong Kong Special Administrative Region of the People's Republic of China ("Hong Kong") and the Guarantor agrees to submit to the exclusive jurisdiction of the courts of Hong Kong.

(12) All documents arising out of or in connection with this Guarantee shall be served:

(a) upon the Government, at the Labour Department (Youth Employment Division), 12/F Harbour Building, Central, Hong Kong, marked for the attention of “the Commissioner for Labour”, facsimile number 2119 9820;

(b) upon the Guarantor, at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Hong Kong, marked for the attention of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, facsimile number \_\_\_\_\_\_\_\_\_\_\_\_\_\_.

(13) Documents to be served under this Guarantee shall be deemed to have been duly served by one party if sent by letter or fax addressed to the other party at the address stated above or to the facsimile number set out above. The documents so served shall be effective (a) on the date of delivery if hand-delivered; (b) on the date of transmission if sent by facsimile; and (c) if despatched by mail (whether registered or not), on the day on which they are tendered for delivery by the postal authority in Hong Kong.

1. The aggregate amount of the Guarantor's liability under this Guarantee shall not exceed\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

IN WITNESS whereof this Guarantee was executed as a deed and the said Guarantor ................................................................................................. has caused [its Common Seal/Seal to be hereunto affixed] [its lawful attorney to execute this Guarantee as a deed] the day and year first above written.

|  |  |  |  |
| --- | --- | --- | --- |
| ~~\*~~ | The [Common Seal/Seal\*] of the said | ) | |
| Guarantor was hereunto affixed and | ) | |
| signed by ...........................................  ........................................................... | )  ) | |
| [Name & Title]  duly authorised by its board of directors in the presence of  Name of witness:  Title of witness:  Signature of witness: | )  )  ) | |
|  |  |  | |
| @ | Signed Sealed and Delivered | ) |
| for and on behalf of and as | ) |
| lawful attorney of the Guarantor | ) |
| under power of attorney dated | ) |
| .................... and deed of delegation | ) |
| dated ............................................... | ) |
| by .................................................... | ) |
| [Name & Title] | ) |
| and in the presence of | ) |
|  | Name of witness:  Title of witness:  Signature of witness: |  |

\* Please delete as appropriate

@ See Powers of Attorney Ordinance (Chapter 31 of the Laws of Hong Kong)

Note : When bank guarantees are executed under power of attorney, a photocopy of the power of attorney, certified on each page by a Hong Kong solicitor that it is a true and complete copy of the original must be submitted.