

## Terms of Use for e-Procurement (“EPRO”)

EPRO is the e-Tendering system provided by The Hong Kong Jockey Club (“the Club”) to manage and facilitate the Club’s request for quotation / tender issuance and submission process. PLEASE READ THE FOLLOWING TERMS OF USE. BY ACCESSING AND/OR USING EPRO, YOU AGREE TO COMPLY WITH THESE TERMS OF USE.

### 1. Definition

The following words have the following meanings in these Terms of Use:

**“Authorised User”** : means supplier’s representative whom you have identified to the Club that he/she is authorized to login to EPRO on your behalf

**“Content”**: means all information, data, documents, text, software, music, sound, photographs, graphics, video, messages or other materials displayed on or made available through the EPRO

**“EPRO”** means the e-Tendering system designed for the purposes as set out in Clause 2 Introduction to EPRO

**“EOI”** means any express of interest / pre-qualification issued by us

**“EOI Response”** means any submission in response to EOI

**“Pre-Registered Supplier”** means a supplier or contractor who has successfully pre-registered with us on EPRO and is qualified to tender for relevant goods and services with us

**“Registered Supplier”**: means a supplier or contractor who has successfully registered with us and is qualified to tender for relevant goods and services with us

**“RFQ”** means any request for quotation issued by us

**“System”**: means the totality of the hardware, software and all associated intellectual property owned, developed and maintained by us or licensed to us which makes use of the internet and related technology in order to make EPRO functional

**“Tenders”**: means any tender issued by us

**“Terms of Use”**: mean these terms of use as amended from time to time

**“RFQ Offer and Tender Offer”**: means any offer for supply of goods or provision of services in response to Tenders and RFQ

**“we”, “our” or “us”**: means The Hong Kong Jockey Club

**“you” or “your”**: means suppliers using EPRO, including Pre-Registered Supplier, and Registered Suppliers (as the case may be)

### 2. Introduction to EPRO

EPRO serves as a platform for the following purposes:

- a. for the application to pre-register as a supplier to us
- b. for a Pre-registered Supplier/Registered Supplier to manage the login account details;
- c. for the posting or communication of an intended procurement for the supply of goods and/or services by us, including but not limited to EOI / request for information for pre-qualification, invitations to tender and RFQ;

- d. for the submission of information for EOI/pre-qualification, Tenders, proposals, quotations, as well as related or similar documents and information by suppliers;
- e. other related purposes as determined by us.

### **3. Pre-Registration Obligations**

- 3.1. By submitting your pre-registration via EPRO, you agree to (1) provide true, accurate, current and complete information about your organization and yourself; and (2) promptly update any changes to the information submitted via the EPRO to ensure that it will continue to be true, complete and accurate.
- 3.2. We shall assume no responsibility or liability for any error, misstatement, inaccurate, incomplete or outdated data provided by the Pre-Registered Supplier.
- 3.3. If any information provided is found to be untrue, inaccurate, not current or incomplete, we have the right to suspend or terminate your pre-registration (in the case of new pre-registration) and/or refuse any and all current or future use of the service (or any portion of it) (in the case you are registered with EPRO).
- 3.4. If a user has submitted the pre-registration with us on behalf of a company or other entity, then such user represents and warrants that he/she is an Authorised User and has the authority to bind such company or other entity to these Terms of Use.
- 3.5. Forms for application as Pre-Registered Suppliers and the supporting documents submitted through EPRO will be processed by us. Successful applicants will be informed by us. We do not bear any responsibility in processing the said forms and documents and the relevant Pre-Registered Supplier shall not hold us liable for any acts, damages or losses as a result of the registration process.

### **4. Login Details**

- 4.1. Authorised Users will be provided with a set of log-in details for accessing EPRO.
- 4.2. You agree that each log-in may only be used by the corresponding Authorised User and that the log-in ID may not be shared with or used by any other person, including other Authorized Users. You will manage the Authorised Users and will promptly notify us to deactivate an Authorised User's log-in ID if the Authorised User is no longer an eligible person to access EPRO on your behalf or you otherwise wish to terminate the Authorised User's access to EPRO. You are responsible for all use of EPRO accessed with log-in IDs issued to your Authorised Users, whether by Authorised Users or others. You will use reasonable commercial efforts to prevent unauthorised use of log-in IDs assigned to your Authorised Users and will promptly notify us, in writing, if you suspect that an log-in ID is lost, stolen, compromised, or misused.
- 4.3. We reserve the right to change or disable any log-in details at any time.

### **5. Data Privacy**

We may collect personal data of individuals via EPRO for the purposes of processing supplier pre-registration, handling enquiries, and for communications relating to the supply or potential supply of goods and/or services to us. Where you provide personal data via EPRO voluntarily or on request, your personal data will be handled for the abovementioned purposes and in accordance with the Privacy Policy Statement of the Club which can be found at: [https://www.hkjc.com/home/english/corporate/corp\\_privacy.aspx](https://www.hkjc.com/home/english/corporate/corp_privacy.aspx)

### **6. Complete Terms of Use**

These Terms of Use and our Privacy Policy Statement which is hereby incorporated as if set forth fully herein, represent the complete agreement between you and us concerning your use of EPRO.

## 7. Covenants

- 7.1 You agree to use EPRO solely for the purpose of correspondence in connection with our EOI, RFQ or Tenders and you are responsible for Content transmitted by you through EPRO
- 7.2 As a condition of your use of EPRO, you agree that you will not use EPRO for any purpose that is unlawful or prohibited by any applicable laws or the terms, conditions, and notices contained herein. Without limiting the generality of the foregoing, you further agree not to:
- 7.2.1 trespass, break into, access, use or attempt to trespass, break into, access or use any other parts of our servers, and/or any data areas for which you have not been authorised by us;
  - 7.2.2 post or transmit any unlawful, fraudulent, libellous, defamatory, obscene, pornographic, profane, threatening, abusive, hateful, offensive, or otherwise objectionable or unreasonable Content of any kind, including without limitation any transmissions constituting or encouraging conduct that would constitute a criminal offence, give rise to civil liability, or otherwise violate any local, state, national or foreign law, infringe any intellectual property rights, proprietary rights or confidentiality obligations of others;
  - 7.2.3 post or transmit any advertisements, solicitations, chain letters, pyramid schemes, investment opportunities or schemes or other unsolicited commercial communication, or engage in spamming or flooding;
  - 7.2.4 post, publish, transmit, reproduce, distribute or in any way exploit any Content obtained through EPRO for commercial purposes;
  - 7.2.5 upload, post, publish, transmit, reproduce, or distribute in any way, any component of EPRO itself or any Content obtained through EPRO which is protected by copyright, or other proprietary right, or create derivative works with respect thereto, without our prior written permission;
  - 7.2.6 transmit, post or upload any Content that contains viruses, Trojan horses, worms, time bombs, cancelbots, or any other harmful or deleterious programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunication equipment through EPRO;
  - 7.2.7 transmit, post or upload any Content protected by intellectual property laws, rights of privacy or publicity or any other applicable law unless you own or control the rights thereto or have received all necessary consents;
  - 7.2.8 interfere with or disrupt networks connected to EPRO or violate the regulations, policies or procedures of such networks;
  - 7.2.9 attempt to gain unauthorised access to EPRO or networks connected to EPRO, through password mining or any other means;
  - 7.2.10 interfere with another individual's or entity's use and enjoyment of EPRO or similar services;
  - 7.2.11 disrupt the normal flow of dialogue, or otherwise act in a manner that negatively affects other suppliers' ability to engage in real time exchanges;
  - 7.2.12 "stalk" or otherwise harass another; or
  - 7.2.13 collect or store personal data about other suppliers.

We reserve the rights from time to time, without notice, to observe and record your access to and use of EPRO to determine if you are complying with these Terms of Use.

- 7.3 For matters concerning EOI Responses, RFQ Offers and Tender Offers :

- 7.3.1 It is your responsibility to and you must ensure that your EOI Responses, RFQ Offers and Tender Offers are fully compliant with our terms and conditions contained in a relevant EOI, RFQ and Tender and any amendments thereto.
- 7.3.2 Please take note that any late EOI Responses, RFQ Offers and Tenders Offer will be rejected by EPRO. All messages appearing in EPRO displaying the warning time zone (i.e. time remaining) or submission time of EOI Responses, RFQ Offers and Tender Offers are for reference only. You are responsible to ensure that your data and EOI Responses, RFQ Offers and Tender Offers submission are successfully uploaded and submitted to us in full within the EOI, RFQ and Tender closing time prescribed by us.
- 7.3.3 You agree and are aware that EPRO may, during transmission and submission of an EOI Response, RFQ Offer and Tender Offer and material, fail, breakdown, contain viruses, or be slow to process. Although we strive to avoid any of the above situations, no guarantee or warranty is given by us to avoid, prevent or rectify these situations. In the event of a malfunction, slow processing or error, you agree to find alternate methods to submit your EOI Responses, RFQ Offers and Tender Offers or other material and shall in no way hold or make us liable for any losses or damages as a result thereof.
- 7.3.4 You must provide and use your own appropriate equipment and software, which conform with EPRO in order to perform the functions and services of EPRO.
- 7.3.5 Any material and data in your EOI Responses, RFQ Offers or Tender Offers and other submissions shall be encrypted for security. You accept that any and all material, information and data so encrypted are still those of yours after decryption and any error or misstatement or omission of such encrypted data, material and information shall be accepted as those of yours in any event. The end results of the encrypted and decrypted materials, data and information as initially submitted by you shall be used by us on an "as is" basis and you agree to be bound by such contents of the decrypted materials, data and information.
- 7.3.6 You in response to a relevant EOI, RFQ or Tender and attempting to upload data, materials and information for submission to us through EPRO must ensure that the data, materials and information are in a standardized electronic form that allows EPRO to capture, record, store and process such data, materials and information. Other data information and materials must be submitted as an attachment of the form. Further, the form of text and drawings of EOI Responses, RFQ Offers or Tender Offers must be sent and received in a standard format as advised by us to you.
- 7.3.7 You may submit more than one EOI Response, RFQ Offer and Tender Offer for the same relevant EOI, RFQ or Tender. Each EOI Response, RFQ Offer and Tender Offer submitted will be processed and the times of submission will be logged. Only the last EOI Response, RFQ Offer and Tender Offer submission before relevant EOI, RFQ and Tender closing date will be considered. You should allow sufficient time for submission / transmission of your EOI Responses, RFQ Offers and Tender Offers. Any EOI Responses, RFQ Offers and Tender Offers that are not completely and successfully transmitted before the closing time specified in the EOI, RFQ or Tender will be rejected.
- 7.3.8 You are not permitted to upload any EOI Responses, RFQ Offers and Tender Offers through EPRO unless:
- 7.3.8.1 such EOI Response, RFQ Offers and Tender Offer belongs to the Pre-Registered/Registered Supplier; and
- 7.3.8.2 you have logged into EPRO using an authorized account
- 7.3.8.3 For matters concerning the download of EOI, RFQ and Tender documents:
- a. You are required to use sufficient hardware to minimize the risk of complications when using EPRO. You agree that we shall not be

responsible or held liable for any delayed, untimely, slow or non-transmission of any download or upload of any documents or materials concerning EPRO.

- b. EOI, RFQ or Tender are only accessible by those Pre-Registered/Registered Suppliers whom we invite.
- c. EOI, RFQ or Tender document cannot be downloaded after the closing date and time of such EOI, RFQ or Tender.
- d. Your successfully uploaded data, EOI Response, RFQ Offers or Tender Offers, material, information and documents will be encrypted and sent to an electronic tender box. The electronic tender box will be automatically closed by EPRO and opened by a party whom we authorize for processing.
- e. We are responsible to decrypt all EOI Response, RFQ Offers and Tender Offers or other submissions which have been submitted through EPRO and subsequently encrypted. Decrypted data, information, materials of submitted and encrypted EOI Response, RFQ Offers and Tender Offers will be used by us to evaluate the EOI, RFQ and Tender.

7.3.9 All information submitted by you (including but not limited to the Capability Statement) will be used for tender-related purposes, such as prequalification assessment and shortlisting tenderers (if applicable). The Club reserves absolute right to reject any submission or shortlist any tenderers without deliberation. Failure to submit any information required may render disqualification. Submission of the Capability Statement shall in no way mean that you will be invited to submit a RFP/ Tender at a later date. Also, you undertake that the information submitted in the Capability Statement is true, accurate and complete as of the date it is submitted, and may be relied upon by the Club for tender-related purposes. You undertake to promptly inform the Club in writing of any material change to any information submitted in the Capability Statement, and of any material change in circumstances which may affect the accuracy or completeness of and information provided in or in connection with the Capability Statement. Please be advised that the Club may require you to confirm in writing that no such material change has occurred.

## **8. MONITORING**

We do not guarantee the accuracy, integrity or quality of the Content posted on EPRO. However, we will consider complaints concerning inappropriate Content on EPRO, but we do not guarantee that we will take any action in respect of the same. Furthermore, we reserve the right to remove or withhold, without warning, any Content from EPRO in our sole discretion. Under no circumstances will we be held liable in any way for any Content, including, but not limited to, any errors or omissions in any Content, or for any loss or damage of any kind incurred as a result of the use of any Content submitted, posted, e-mailed or otherwise transmitted via EPRO.

## **9. Disclaimer and Limitation of Liability**

9.1 We have used all reasonable commercial endeavors to ensure the accuracy of the Content provided in EPRO. However, unless otherwise specified, all Content is provided on "as-is" basis for reference purpose only. By using the EPRO, you agree and accept that:

- 9.1.1 none of The Hong Kong Jockey Club, its affiliates or any other person involved in or related to the compilation of the Content (collectively, "the HKJC Parties") makes any express or implied warranties or representations with respect to the accuracy, reliability, timeliness or completeness of the Content or as to the results that may be obtained by the use thereof;
- 9.1.2 the HKJC Parties expressly disclaim all implied warranties (including, without limitation, the implied warranties of merchantability and fitness for a particular purpose) with respect to the Content;

- 9.1.3 In no event shall the Club have any liability of any kind to any person or entity arising from or related to any use of EPRO, and the Content provided therein.
- 9.2 You agree that none of the HKJC Parties shall be liable for any direct, indirect, incidental, special, consequential or exemplary damages, resulting in any way from the use of EPRO, including but not limited to:
  - 9.2.1 any errors in or omissions from the EPRO or Content available or not included therein,
  - 9.2.2 the unavailability or interruption to the supply of EPRO or any features thereof or any Content,
  - 9.2.3 your use or misuse of the EPRO or Content (regardless of whether you received any assistance from a HKJC Party in using or misusing EPRO),
  - 9.2.4 your use of any equipment in connection with EPRO, or
  - 9.2.5 any delay or failure in performance of EPRO,
- 9.3 You waive and discharge any and all claims against HKJC Parties arising out of related access or lack thereof.

## **10. Intellectual Property Rights**

- 10.1. You acknowledge and agree that we own all legal rights, title and interest, including any Intellectual Property Rights, in and to EPRO, the System, and the Content on EPRO.
- 10.2. You shall not modify, copy, rent, lease, loan, sell, distribute or create derivative works based on the Content on EPRO unless expressly authorised under this Terms of Use or by the Club beforehand in writing.
- 10.3. Nothing in this Terms of Use shall give you a right to use any of our trade names, trade marks, service marks, logos or domain names for any purpose whatsoever.
- 10.4. You agree that you shall not remove, obscure, or alter any proprietary rights notices (including copyright and trade mark notices) which may be affixed to or contained within EPRO or Content on EPRO.
- 10.5. You shall not upload or transmit any material with contents that infringe intellectual property rights of any person.

## **11. Indemnity**

You agree to indemnify and hold us and our affiliates, officers, directors, agents, and employees, harmless from and against any losses, claims, liabilities, damages, demands, costs and expenses (including all legal fees), incurred or suffered by us in connection with or arising from your breach of these Terms of Use and/or your use of EPRO or the services. We may, if necessary, participate in the defence of any claim or action and any negotiations for settlement. No settlement that may adversely affect our rights or obligations shall be made without our prior written approval. We reserve the right to assume exclusive defence and control of any such claim or action.

## **12. Termination**

We may terminate your use of and access to any part or all of EPRO or any related service(s) at any time with immediate effect without any notice and in our sole discretion for any reason, including without limitation:

- a. if you breach these Terms of Use;
- b. if we are unable to verify or authenticate any information you provide to us;
- c. if we believe that your actions may give rise to liability of any nature; or
- d. if we believe or have reasons to believe that your action is unsuitable or inappropriate.

Upon termination, you must destroy all material obtained from EPRO and any copies thereof.

### **13. Modifications to Terms of Use**

We reserve the right to change these Terms of Use or any policies regarding the use of EPRO at any time and to notify you by posting an updated version thereof on EPRO. You are responsible for regularly reviewing the Terms of Use and the applicable policies. Continued use of EPRO after any such posting amounts to your conclusive acceptance of such revised Terms of Use or policies. If any such revision is unacceptable to you, you must stop use of EPRO immediately. We reserve the right to interpret these Terms of Use and decide on any questions or disputes arising under these Terms of Use. You agree that all such interpretations and decisions shall be final and conclusive, and binding on you as a supplier of EPRO.

### **14. Modifications to service**

We reserve the right at any time and from time to time to modify or discontinue, temporarily or permanently, EPRO (or any part thereof) with or without notice. You agree that we shall not be liable to you or to any third party for any modification, suspension or discontinuance of EPRO or any part thereof.

### **15. No Agency**

You and we are independent, and no agency, partnership, joint venture, trustee, beneficiary, employee-employer or franchiser-franchisee relationship is intended or created by your use of EPRO.

### **16. System Availability**

We do not guarantee uninterrupted, continuous or secure access to EPRO. Part or the entire EPRO may be unexpectedly unavailable for whatever duration and for various reasons that may include System malfunctions and disruptions, internet access downtime and other technical problems beyond our control for which we cannot and shall not be held responsible. You agree that your use of EPRO is at your own risk and that you will not hold us responsible for any damage or loss caused by your inability to use EPRO for any reason whatsoever. We reserve the right to take any part or all of EPRO offline for various reasons including urgent system maintenance or upgrading, in which case we will try to give you notice in advance if possible.

### **17. Partial Invalidity**

The illegality, invalidity or unenforceability of any provision of these Terms of Use under the law of any jurisdiction shall not affect its legality, validity or enforceability under the laws of any other jurisdiction nor the legality, validity or enforceability of any other provision.

### **18. Waiver**

No waiver of any breach under these Terms of Use will amount to a waiver of any other breach.

### **19. Force Majeure**

Without prejudice to the generality of Clause 9 above, under no circumstances shall we be liable for any delay or failure or disruption in relation to EPRO service or any related services, or the Content on EPRO or Content transmitted by you resulting directly or indirectly from anything beyond our reasonable control, including without limitation, Internet failures, computer, telecommunications or any other 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.

### **20. Governing Law and Jurisdiction**

These Terms of Use will be governed by laws of Hong Kong and any disputes arising out of these Terms of Use will be subject to the exclusive jurisdiction of the courts of Hong Kong.