

特許庁委託事業

**THE INVESTIGATION OF IP TRADING IN
HONG KONG (TECHNOLOGY TRADING
AND COLLABORATIVE RESEARCH)
REPORT**

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(IP Department)

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CHAPTER 1: PRE-CONTRACT PHASE - HK AS AN ENTICING BUSINESS ENVIRONMENT FOR TECHNOLOGY TRADING

Section 1: HK's strength in technology trading

1. Support from the PRC to develop into an international innovation and technology hub

Hong Kong, as a Special Administrative Region of the People's Republic of China (“**PRC**”) enjoys favorable policies enacted by both the PRC and locally.

In 2021, the Central Government of the PRC unveiled its National 14th Five-Year Plan for National Economic and Social Development, which for the first time raised its support for Hong Kong's development into an international innovation and technology hub.

Moreover, at the Third Session of PRC's 14th National People's Congress which opened in March 2025, Chief Executive John Lee announced that ‘the Hong Kong Government will adopt an innovative mindset to take forward the development of the Northern Metropolis and the Hetao Shenzhen-Hong Kong Science and Technology Innovation Co-operation Zone, accelerating the development of an international innovation and technology centre.’

Hong Kong's ability to develop into an international innovation and technology hub lies in its unique position as the only city in the world where the advantages of both the PRC and globally are able to converge.

Under the principle of "one country, two systems", Hong Kong maintains a high degree of autonomy over its economic, trade, financial and monetary matters, which form the cornerstones of Hong Kong's position as an international financial centre. The Basic Law in Hong Kong provides and guarantees many advantages for doing business in Hong Kong, such as free port, separate customs territory, judicial independence, free movement of goods and capital, as well as the maintenance of a low-tax regime. The Basic Law also provides that Hong Kong may participate in international organizations and international trade agreements independently, using the name "Hong Kong, China".

In addition to its unique status under ‘one country, two systems’ where Hong Kong enjoys the advantages of being part of the PRC, while at the same time having its own

independent economic, social and legal systems, Hong Kong also benefits from the 'Belt and Road Initiative' ("**B&R**"), acting as the key link and major platform to connect businesses in the PRC and other regions under the B&R initiative.

2. Economic Freedom and Free Trade

Hong Kong's economic freedom and competitiveness have constantly and consistently been recognized by international institutions. The Fraser Institute has ranked Hong Kong as the world's freest economy in the Economic Freedom of the World 2021 Annual Report, a ranking that Hong Kong has gained and maintained since the inception of the report. In the World Competitiveness Yearbook 2025, Hong Kong was ranked the 3rd most competitive economy, 2nd for Government efficiency and business efficiency, 6th for economic performance and 7th for infrastructure¹. The overall scores are evidence of Hong Kong's competitiveness and attractiveness to private sector investment.

In terms of trade, Hong Kong has signed free trade agreements with 20 economies, including the Member States of the European Free Trade Association, the Association of Southeast Asian Nations, and Georgia. Hong Kong has also signed 22 Investment Promotion and Protection Agreements with foreign economies, to enhance and protect two-way investment flows and to ensure investors would enjoy similar protection in respect of their investments, whether overseas or in Hong Kong.

3. Infrastructure and geographical advantages

In terms of infrastructure, the Hong Kong International Airport is one of the world's busiest, with more than 100 airlines connecting to more than 220 destinations worldwide. Hong Kong enjoys a convenient geographical location where most major Asian cities can be reached within a 4-hour flight, and is only a 5-hour flight away from half the world's population. The Hong Kong-Zhuhai-Macao Bridge, Guangzhou-Shenzhen-Hong Kong Express Rail Link also serves to strengthen the connectivity and proximity to the PRC.

4. Financial Integration

Hong Kong has the world's largest offshore pool of renminbi (RMB) funds, and RMB

¹ <http://imd.org/entity-profile/hong-kong-sar-wcr/>

foreign exchange and interest rate derivatives market. Traders in the B&R regions are able to settle their PRC trade in RMB through Hong Kong's payment system. Traders can also take advantage of and invest their RMB liquidity in 'dim sum bonds', i.e. bonds denominated in RMB and issued in Hong Kong.

In relation to financial integration, Hong Kong remains a popular destination for new listings, and was ranked 4th in terms of global Initial Public Offering (IPO) proceeds raised in 2024. Since 2009, Hong Kong has ranked 1st for IPO proceeds raised seven times, and consistently ranks in the top five global IPO rankings. In particular, technology IPOs have emerged as one of the most prevalent in 2024, which is believed to be driven by an increased inclination among technology firms to pursue listings in Hong Kong², and also supported by policies from both PRC and the Hong Kong Stock Exchange.

5. Robust legal and dispute resolution services

The Basic Law preserves the common law system, making Hong Kong the only common law jurisdiction within the PRC. Hong Kong's common law system allows it to follow the same legal traditions as the world's major economies, such as the United Kingdom, United States and Australia, and also aligns with international business rules. The Basic Law also guarantees the rule of law and judicial independence. Given Hong Kong's unique position in the global market, Hong Kong further has a wealth of legal and dispute resolution professionals who are proficient in multiple languages.

In addition, Hong Kong is also home to the Hong Kong International Arbitration Centre, and is consistently ranked in the top five most preferred seat for arbitration worldwide as well as top five most preferred arbitral institution worldwide. Hong Kong's arbitration-friendly legislative frameworks and pro-arbitration courts, as well as global recognition and enforceability of arbitral awards in over 170 countries makes it an enticing place for businesses to do business or commence operations.

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https://www.ey.com/en_cn/newsroom/2024/12/a-share-ipo-activity-underwent-a-slowdown-pace-of-expected-to-improve-in-2025

In addition, Hong Kong is also the official headquarters for the International Organisation of Mediation (IOMed), an intergovernmental mediation council for international disputes. The signing ceremony of the convention on the establishment of the IOMed was successfully held in Hong Kong on 30 May 2025, with 400 high-level representatives from 85 countries across Asia, Africa, Latin America and Europe attending the event. The establishment of the IOMed headquarters in Hong Kong demonstrates the city's unique advantages and opportunities in international mediation, as well as further establishing Hong Kong as an important centre for international legal and dispute resolution services.

In relation to intellectual property protection, Hong Kong was ranked 8th globally in the criterion of "Intellectual Property (IP) Rights" in the 2024 World Competitiveness Yearbook. Hong Kong has robust and up-to-date legislation concerning all aspects of intellectual property protection, including trade marks, registered designs, patents, and copyright. The Intellectual Property Department in Hong Kong takes active steps to ensure the local IP remains robust and up-to-date. For example, a two-month public consultation was launched to gather public opinion on the enhancement of the Copyright Ordinance (Cap. 528) in relation to the protection of AI technology development, and copyright infringement liability for AI-generated works.

This topic shall be further discussed in Section 2 of the manual.

6. Strength in research and development (R&D)

In terms of Hong Kong's strength in innovation and technological research, Hong Kong is home to two world class medical schools, the Chinese University of Hong Kong and University of Hong Kong, both ranked in the top 50 globally, with professional and reputable clinical trial centres. Hong Kong is also home to a number of world renowned academicians and scholars of the Chinese Academy of Sciences or the Chinese Academy of Engineering, with brilliant achievements and their research and publications being recognized globally.

In addition, InnoHK³, a major initiative of the Hong Kong Government to develop Hong

³ <https://www.innohk.gov.hk/en/>

Kong as a hub for global research collaboration has established various world-class research clusters in the areas of health-related technologies, AI and robotics technologies and sustainable development and energy. To date, InnoHK has brought together a vast pool of globalized talents, including more than 20 top universities and scientific research institutions from 11 economies, to co-operate with local universities to establish laboratories at the Hong Kong Science Park (“HKSP”) and co-operating with local universities to conduct R&D.

In 2024, the Chairman of the University Grants Committee further welcomed a new initiative under the Global STEM Professorship Scheme in Hong Kong, to further support the UGC-funded universities to recruit and attract outstanding research talent to Hong Kong.

Further, a number of universities promote innovation and technological research by providing funding and support to their members, to incorporate start-up companies focusing on innovation and research⁴. The vast number of start-up companies range from providing AI related research services to biotechnology, medical and healthcare applications etc., which had successful led to a number of active patent registrations and a large volume of research output.⁵

All in all, Hong Kong’s strengths in technology trading, including its close ties with the PRC and a high spending market, showcases to companies around the world the huge potential of IP trading in Hong Kong.

⁴ <https://itpr.hkbu.edu.hk/en/innovation-and-entrepreneurship/HKBU-start-ups.html>

⁵ <https://www.polyu.edu.hk/abct/research/knowledge-transfer/>

Section 2: HK's legal environment related to technology trading

1. Introduction

Hong Kong's legal system is premised upon the rule of law and judicial independence, which is the foundation for its stability, prosperity as well as leading position as one of the world's leading international financial centres.

Hong Kong's unique position lies in the fact that it enjoys a high degree of autonomy under the principle of 'one country, two systems'. Hong Kong continues to practice the common law system, which is based on the English common law system inherited from being a former British colony, and making it the only common law jurisdiction within the PRC which practices a civil law system. As such, in addition to statutes enacted in Hong Kong, the courts of Hong Kong will also make decisions based on case law.

Hong Kong is an economically and technologically developed city where businesses increasingly invest in creative works and intangible assets. It is a creative hub, producing films, television shows, publications, fashion and other designs that are internationally well-known with a broad-based market. In addition, as an international trading centre, protection of intellectual property rights ("IPR") is necessary, and plays an important role to reassure potential investors that Hong Kong has a free and fair market place, therefore attracting them to conduct business here.

2. International agreements protecting IPR

Intellectual property is a subject with complex and varied history in different countries. Whilst the laws protecting IPR are territorial in nature, intellectual property has become very globalized. Many countries recognize and apply various international agreements concerning IPR in their domestic laws.

To shed light on the intellectual property system in Hong Kong, attention is drawn to the following important IPR treaties to which Hong Kong is a party:-

A. Paris Convention 1883

The Paris Convention applies to industrial property including patents, trade marks, industrial designs, utility models, service marks, trade names, geographical indications and the repression of unfair competition. There are three substantive provisions that the

Convention provides for:-

1. *National treatment*: each contracting state must grant the same protection to nationals of other contracting states that it grants to its own nationals.
2. *Right of priority*: on the basis of a regular first application filed in one of the contracting states, the applicant may, within a certain period of time, apply for protection in any of the other contracting states with those subsequent applications enjoying priority over applications filed by others during the said period of time.
3. *Common rules*: the Convention lays down a few common rules that all contracting states must follow. Some of the most important include the fact that patents granted in different contracting states for the same invention are independent of each other, and that the registration of a mark obtained in one contracting state is independent of its possible registration in any other country, including the country of origin; consequently, the lapse or annulment of the registration of a mark in one contracting state will not affect the validity of the registration in other contracting states.

B. Berne Convention 1886

The Berne Convention deals with copyright protection. It is based on three basic principles and contains a series of provisions determining the minimum protection to be granted. The three fundamental principles are:-

1. *National treatment*: each contracting state must grant the same protection to nationals of other contracting states that it grants to its own nationals.
2. *Automatic protection*: Protection must not be conditional upon compliance with any formality.
3. *Independence of protection*: Protection is independent of the existence of protection in the country of origin of the work.

C. Universal Copyright Convention 1952

Its main features are the following:-

1. No signatory nation should accord its domestic authors more favourable copyright treatment than the authors of other signatory nations, though no

- minimum protection for either domestic or foreign authors is stipulated;
2. A formal copyright notice must appear in all copies of a work and consist of the symbol ©, the name of the copyright owner, and the year of first publication; a signatory nation, however, might require further formalities, provided such formalities do not favour domestic over foreign works;
 3. The minimum term of copyright in member nations must be the life of the author plus 25 years (except for photographic works and works of applied art, which have a 10-year term); and
 4. All adhering nations are required to grant an exclusive right of translation for a seven-year period, subject to a compulsory license under certain circumstances for the balance of the term of copyright.

D. Agreement on Trade-Related Aspects of IPR (“TRIPS”) 1994

TRIPS is to date the most comprehensive multilateral agreement concerning various IPR. The three key features of the agreement are:-

1. *Standards*: TRIPS sets out the minimum standards of protection to be provided by each member, for example, by requiring the substantive conventions of the Paris Convention and the Berne Convention to be complied with.
2. *Enforcement*: TRIPS lays down certain general principles applicable to all IPR enforcement procedures and contains provisions on civil and administrative procedures and remedies, provisional measures, special requirements related to border measures and criminal procedures
3. *Dispute settlement*: Disputes between World Trade Organisation (“WTO”) Members in respect of their TRIPS obligations are subject to the WTO’s dispute settlement procedures.

3. Local Legislation

In addition to international agreements, Hong Kong has also enacted various local legislation and ordinances to protect IPR, including the following:-

A. Trade Marks Ordinance (Cap. 559)

Any sign which is capable of distinguishing the goods or services from one provider to another, and is capable of represented graphically is registrable as trade marks in Hong

Kong. The most common trade marks consist of words, names, logos, letters, numerals, characters (for example Chinese, Japanese, Korean characters) and colors. Some uncommon types of trade marks are sounds, smells and the shape of goods (3-dimensional marks) or their packaging, which require specific requirements to be fulfilled for registration.

The Trade Marks Ordinance provides the framework for the registration of trade marks, such as the basis and criteria for registration, and the rights afforded to a trade mark upon successful registration. A trade mark owner has the exclusive right to use the registered trade mark in the course of trade or business. He has the right to take legal action under the Trade Marks Ordinance against any infringing or unauthorized use of his trade mark.

The initial period of registration is 10 years from the filing date of the application for registration, and is renewable indefinitely for further periods of 10 years each.

B. Patents Ordinance (Cap. 514)

The Patents Ordinance concerns protection of inventions which are patentable, i.e. if it is (i) new, (ii) involves an inventive step and (iii) capable of industrial use.

To be new and to involve an inventive step, the invention must not be part of the state of art anywhere in the world before the filing of the patent application. If a prior publication, be it in writing or orally or by other means, embodies a clear direction pointing to the crux of the invention applying for a patent, or that invention is in fact obvious to the skilled person, the alleged invention may not be patentable. Therefore, inventors should be aware that no disclosure of the invention should be made before the filing of patent application to avoid it becoming part of the state of art.

The Patents Ordinance nevertheless grants a grace period of six months prior to the filing of application during which the inventor can exhibit the invention in prescribed exhibitions, or disclose it in order to stop an evident abuse of the invention, and still preserve the invention's patentability.

To be capable of industrial use means that an invention can be put to practical

application. An invention cannot be patentable if it is, for example, just scientifically informative but of no practical application. Pursuant to this concept, the Patents Ordinance rules out certain categories as being patentable: such as any discovery, scientific theories and methods of conducting medical surgery.

There are two types of patents that are granted in Hong Kong, (i) standard patents and (ii) short-term patents. Standard patents have a term of protection of up to 20 years, whereas short-term patents have a term of protection of up to 8 years.

C. Registered Designs Ordinance (Cap. 522)

Inventive designs of textile, housewares, toys, accessories and other consumer products that appeal to the eyes can bring lucrative profits to businesses. As a result, these designs are almost always copied in an amazingly speedy pace once they are released to the market. Very often, upon the release of a novel product in a trade show, one may purchase those copycat equivalents (of inferior quality though) from a street hawker in the next week or so. This is where the need to register a new design comes into place.

Under the Registered Designs Ordinance, a design is registrable if the following are satisfied:-

1. New design: the design must have worldwide novelty, which means that the design is not published anywhere in the world before filing of the registration (save under confidential disclosure or certain recognized exhibitions). A design would not be considered new if it only differs from other designs in immaterial details or in features which are variants commonly used in the trade;
2. Design that appeals to the eyes (i.e. of aesthetic consideration, appearance not dictated by the function of the article);
3. Design that is not contrary to public order / not immoral (e.g. pornographic designs); and
4. Design that is not a computer program or protected layout design (typography).

It should be noted that the first requirement of novelty is a rather stringent one. You may destroy your own right to register a design if you put it on a trade show without first applying for registration. The definition of “design” under section 2 of the Registered

Designs Ordinance excludes “a method or principle of construction; or features of shape or configuration of an article which are dictated solely by the function which the article has to perform; or dependent upon the appearance of another article of which the article is intended by the designer to form an integral part”. For example, body panels, doors, bonnet lids and windscreens of a car were held not to be separately registrable designs. However, spare parts of an article can be registered separately if they are sold and to be used separately. For example, wing mirrors, seats, wheels and steering wheels of a car, which could be sold separately, are separately registrable.

The initial period of registration is 5 years from the filing date of the application for registration. This may be extended for an additional 5 years each subject to a total period of registration of not more than 25 years from the filing date of the application.

D. Copyright Ordinance (Cap. 528)

Copyright protects creativity, essentially the skills, labor, investment, time and effort which are involved in compiling a work. Sufficient copyright protection builds an encouraging environment where creativity can flourish and hard work of writers, artists, designers, and other creators will be rewarded. At the same time, the public are able to benefit from the fruits of creations with an abundance of creative work. Copyright law attempts to maintain a balance between the rights of copyright owners and rights of society as a whole.

Copyright is a property right given to the owner of an original work. Such right may subsist in traditional classes works including literary works, such as novels, poetry and computer programs; dramatic works such as dancing and acting; artistic works such as drawings, paintings and sculptures, as well as musical performances. With the rise of modern technology, other forms of work such as films, sound recordings, cable programs and different published editions of literary, dramatic or musical works are also capable of copyright subsistence.

Copyright subsistence is automatic upon the creation of the work, and it is not necessary to register a copyright in Hong Kong to receive protection. It is worth noting that there is no official registry in Hong Kong for the registration of copyright works. However, voluntary registration is possible in some jurisdictions such as the United

States and the People's Republic of China.

It should also be noted that the Copyright Ordinance adopts an “open copyright system”, meaning that there are no requirements of the nationality or of the work's place of first publication for a work to be eligible for copyright protection in Hong Kong, unless the Chief Executive expressly denies or limits protection for works originating from jurisdictions with non-reciprocating copyright protection.

Generally copyright expires 50 years after the creator of the work dies, though the protection period may vary slightly depending on the type of work. For example, copyright in sound recordings last for 50 years from the year the recording is made; if the recording is not issued to the public immediately, the duration runs from the year of the subsequent time of release.

It should be noted that the interplay between copyright protection and registered design protection is governed by a set of rather complicated rules. In short, copyright protection of a design work would be 25 years from the end of the calendar year in which articles incorporating the corresponding design are first marketed if the design is registered. Such protection will be reduced to 15 years if the design is not registered. Hence, by not registering a design which is registrable, the designer / owner will shorten his own duration of monopoly.

E. Trade Descriptions Ordinance (Cap. 362)

The Trade Descriptions Ordinance seeks to protect consumers by prohibiting unfair trade practices such as providing false trade descriptions, false, misleading or incomplete information, false marks and misstatements etc. during or in the course of trade. The Trade Descriptions Ordinance also contains offences against misleading omissions i.e. (1) omitting or hiding material information, (2) producing material information that is unclear, unintelligible, ambiguous or untimely, or (3) failing to identify the commercial intent; aggressive commercial practices, bait advertising, bait and switch, and wrongly accepted payments.

The definition of “trader” under the Trade Descriptions Ordinance is wide, and includes any and all persons who carry on a commercial practice in Hong Kong, notwithstanding

the practice is directed to overseas consumers. Directors and other officers of a body corporate may also be liable if the body corporate commits an offence under the Trade Descriptions Ordinance. The maximum penalty is HK\$500,000, and imprisonment for 5 years. In addition, an aggrieved consumer may also commence private action against the trader for damages if they have suffered loss or damage in relation to the conduct of the trader, which amounts to an unfair trade offence under the Trade Descriptions Ordinance. The Court may order the convicted party to compensate the aggrieved consumer for any financial loss that is caused by such offence.

4. Hong Kong Customs & Excise Department

The primary enforcement agency of the Trade Descriptions Ordinance is the Hong Kong Customs & Excise Department (“**HKCED**”). In addition to monitoring unfair trade practices, the HKCED also has power to commence criminal proceedings, where the relevant parties may be liable to criminal sanctions against any infringement of IPR. The HKCED is responsible for investigating complaints and instigating criminal action against infringement of IPR and/or false trade descriptions, and has extensive powers of search and seizure. The HKCED also cooperates with overseas enforcement authorities and owners of trade mark and copyright in a combined effort to combat infringement of IPR.

5. Strengths and Advantages of Hong Kong’s Legal System

In relation to Hong Kong’s legal system, the rule of law and common law legal system provides a strong foundation for businesses to operate and thrive in Hong Kong. Hong Kong is highly regarded as a legal hub for a variety of modes of dispute resolution. In particular, Hong Kong is recognized as an international hub due to its strong pool of arbitrators, independent judiciary system as well as its unique status as a bilingual common law jurisdiction. Hong Kong courts are widely recognized as adopting a pro-arbitration and pro-enforcement approach, which are key attributes that underpin Hong Kong’s position as an attractive venue for commercial dispute resolution.

Hong Kong has entered into the Arrangement concerning Mutual Assistance in Court-ordered interim measures in aid of arbitral proceedings by the Courts of the Mainland and of the Hong Kong Special Administrative Region which took effect in October 2019. Under this Arrangement, parties to arbitral proceedings that are seated in

Hong Kong may, before an arbitral award is issued, apply to the PRC courts for preservation measures that are related to the proceedings. The Arrangement has proved to be significant development, and represents the first time where parties to arbitrations that are seated offshore, may be able to seek preservative measures within the PRC. The Arrangement has proven to be a popular tool for parties. According to relevant statistics released by the Hong Kong International Arbitration Centre (HKIAC), in 2024 alone, the HKIAC processed 40 applications to 21 different PRC Courts, for concerning assets worth a total of RMB9.1 billion. Since the Arrangement came into force to date, the HKIAC had processed a total of 145 applications under the Arrangement, concerning assets amounting to RMB35.3 billion.⁶ Hong Kong's position as a leading international hub remains strong and well maintained, and it remains the only jurisdiction outside the PRC that can provide such mutual assistance service.

Specifically in relation to IPR, Hong Kong had established a new IP Specialist List in 2019, which shall deal with all interlocutory applications and trials in intellectual property cases before a designated intellectual property judge. The new IP Specialist List has brought Hong Kong up to speed and in line with other developed economies which have also established specialized IP lists, such as the UK, Japan, Singapore and PRC. The new IP list is expected to greatly improve delays in various matters proceeding to trial, and to ensure that cases are dealt with in an expeditious manner.

⁶ <https://www.hkiac.org/about-us/statistics>

Section 3: Potential partners for Japanese companies

Hong Kong's strengths and resources in R&D makes it a great location for businesses to explore further opportunities and find business partners to further develop, or further promote their technology businesses.

Below are some instances of successful collaborations in technology trading in Hong Kong in recent years, and is not meant to be exhaustive.

Collaborative research with a Hong Kong university

In 2022, Hong Kong Polytechnic University (PolyU) joined hands with NEC Hong Kong Limited (NECHK), a leading information and communications provider, to collaborate and introduce intelligent social robots for elderly care at home. A team from the PolyU School of Nursing and NECHK collaborated to develop utilize five "NEC social robots" for use in providing social companionship and support to elders. These robots, featuring artificial intelligence technologies like facial recognition, image recognition, and language recognition (with the ability to understand Cantonese), can accompany the elderly, support daily activities, and conduct research on "elderly and their caregivers' use of social robots".

During the collaboration, leveraging PolyU's expertise in geriatric care research and NECHK's technological prowess in robotics, the project explored diverse applications of social robots in elderly care scenarios, replying for social needs through cooperation.⁷

Licensing a technology to a Hong Kong big company

At the 24th China Hi-Tech Fair & Clean Energy Expo held in Shenzhen, PRC in November 2022, the latest Japanese RCCI-Pro technology (professional-grade low-temperature premixed reactive control compression ignition technology) and the HHFE-DG series hydrogen composite combustion engine system was introduced, and revealed to be exclusively licensed to Hong Kong Chenlong Technology Development Co., Ltd (Chenlong).

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https://www.polyu.edu.hk/en/media/media-releases/2022/1006_polyu-and-nechk-join-hands-to-provide-interactive-social-robots-for-older-adults-and-caregivers/

Chenlong revealed its plans to launch the commercialization process of the HHFE-DG hydrogen composite combustion engine technology in the PRC, and to cooperate with Chinese government agencies, well-known vehicle companies, and engine manufacturers to implement the “Made in China 2025” strategy, and promote the popularization and application of a new generation of “low-carbon combustion engine” hydrogen energy vehicles.⁸

In addition to licensing technology to a large Hong Kong enterprise for a win - win outcome, authorizing technologies to Chinese companies operating within Hong Kong can also yield remarkable success, capitalizing on the distinctive advantages inherent to the Hong Kong market.

It was reported in October 2024 that the Japanese KANEKA Group had granted exclusive patent license and technology use rights in the PRC, Hong Kong, and Macau regions to Beijing Sunny-Novo Pharmaceutical Research Co., Ltd. The two companies plan to cooperate and collaborate in the TDDS-patch (transdermal drug delivery system) field, to jointly explore the research and development of new-matrix transdermal patches, as well as to develop and procure market expansion opportunities of innovative and improved patches in the Chinese and international markets.⁹

Importing technology from a Hong Kong startup

Rice Robotics, a relatively new start-up company founded in 2019, obtained support from the Cyberport Incubation Programme to develop Rice, a robot designed for delivering goods but which could also be used in healthcare, retail, logistics and hospitality. During the COVID-19 Pandemic which created a new demand for service robots, a new role was created for the robots: a quarantine hotel butler. Rice Robotics thereafter further responded by developing a new robot with a tank of sanitizing solution that could be used for dispersing disinfectant in large areas.

To date, the robots of Rice Robotics are not only widely popular in Hong Kong and used by banks and large shopping malls in Hong Kong, but have also become widely popular

⁸ <https://m.bjx.com.cn/mnews/20221115/1268975.shtml>

⁹ <http://www.sun-novo.com/newsinfo/7693430.html>

in Japan, being used in hotel chains such as Mitsui Garden Hotel, and Tokyo Midtown, as well as in large corporations such as Softbank in Tokyo.¹⁰

Overseas University conducting collaborative research with a Hong Kong Company

It is often the case that particular institutions may have certain individuals who have conducted in depth analysis in particular fields, and have obtained worldwide recognition into the same. In one case, a Hong Kong research corporation A entered into a research collaboration with an overseas university B in Canada, who had a very strong department and scholars in pharmacology, to conduct research and development (R&D) collectively.

In this project, the R&D personnel from the company and the professors from the university co-led the R&D teams and conducted in-depth exchanges, integrating their rich experience in marketing, research and teaching. This promotes cross-border scientific and technological exchanges and reduces scientific and technological barriers, with a view to achieving a win-win situation in terms of research results and commercial value.

¹⁰ <https://www.riceroobotics.com/blog>

Section 4: IP Trading platforms

Hong Kong, as one of the world's leading exhibition venues, hosts a large number and variety of showcases, conventions, fairs and trade shows every year. With more than 50 exhibition and convention venues of different sizes, the main exhibition venues in Hong Kong are the Hong Kong Convention and Exhibition Centre (HKCEC) in Wanchai, the AsiaWorld-Expo (AWE) in Lantau Island, and the Kowloon Bay International Trade and Exhibition Centre. Some of the fairs and shows held at these venues are amongst the largest of their kind in the world.

In 2023, Hong Kong hosted more than 125 large scale exhibitions, attracting more than 1.3 million overseas visitors¹¹. Hong Kong has received worldwide recognition as one of the best exhibition destinations. In 2020, Hong Kong was crowned “Best City for Meetings in Asia” in the Smart Travel Asia Awards and “Most Anticipated Overseas Meeting & Incentive Destination (Short Haul)” in the China Travel Industry Awards.

According to the Chief Executive's 2021 Policy Address¹², the Government intends to provide a subsidy of over \$1 billion, to expand additional convention and exhibition facilities including redeveloping the sites of three government towers into related facilities, hotels and offices.

The fairs and shows held in Hong Kong therefore represent a great opportunity to witness the latest innovations and releases in the related fields. The available fairs and shows include but are not limited to the following, many of which are the largest of their kind in Asia and have obtained the seal of approval from UFI, the Global Association of the Exhibition Industry:-

- Hong Kong Electronics Fair – Asia's largest electronics fair where innovative products are launched
- Hong Kong Computer & Communications Festival – the largest exhibition for the I.T. industry in Hong Kong
- Consumer Electronics, Mobile Electronics, Gifts and Fashion Trade Exhibitions – the world's largest electronics sourcing event (open to trade visitors only)

¹¹ <https://research.hktdc.com/en/article/MzEzODk1MDk2>

¹² <https://www.policyaddress.gov.hk/2021/eng/p46.html>

- MobiCom – an annual conference dedicated to addressing the challenges in mobile computing, and wireless and mobile networking
- AI plus power – an innovative expo and conference relating to AI development in Hong Kong

In addition, Hong Kong also hosts a number of licensing and franchising shows, including the Hong Kong International Franchising Show, Hong Kong International Licensing Show, as well as the Asian Licensing Conference.

Hong Kong International Franchising Show (“HKIFS”)

The HKIFS serves as a platform for traders from different countries and regions to share trade insights, connect and form new business partnerships, as well as explore new opportunities in potential markets. As of 2019, the show had featured over 100 franchise brands from over 17 countries and regions, and attracted visitors from more than 50 countries worldwide¹³.

Hong Kong International Licensing Show (“HKILS”)

The HKILS is one of the most important licensing-focused exhibitions in the Asia. The main objectives are to assist licensors and licensing agents to search and form partnerships and to expand their network in Asia, and also to provide a convenient one-stop platform for related parties to feature, source, and promote new products and licensing-related services¹⁴. As of 2021, the show had featured over 250 exhibitors, 42% of which were from B&R countries, and attracting over 6,200 buyers and visitors worldwide¹⁵. Such achievement remains significant, despite the travel restrictions due to the COVID-19 pandemic. In 2023, the physical exhibition resumed for the first time after the COVID-19 pandemic, running concurrently with the Asian Licensing Conference, and successfully brought together over 320 exhibitors to showcase over 550 brands and intellectual property, with more than 30 speakers and over 15,000 participants.¹⁶

¹³ http://info.hktdc.com/dm/hkifs/2020/pdf/2019FairReport_Eng.pdf

¹⁴ <https://event.hktdc.com/fair/hklicensingshow-en/HKIDC-Hong-Kong-International-Licensing-Show/>

¹⁵ [http://info.hktdc.com/dm/hkils/2021/pdf/Post_Event_Report_HKILS_Online_2021_\(EN\).pdf](http://info.hktdc.com/dm/hkils/2021/pdf/Post_Event_Report_HKILS_Online_2021_(EN).pdf)

¹⁶

<https://www.hktdc.com/event/hklicensingshow/en/press-release/licensing-show-brings-together-over-320-exhibitors-authorities-explore-diverse-topics-at-concurrent-conference>

Asian Licensing Conference (“ALC”)

The ALC is a leading licensing event organized by the Hong Kong Trade Development Council (“HKTDC”). The ALC aims to promote and facilitate licensing and business opportunities in Asia. It provides the latest developments and news in global licensing, as well as the hot topics in relation to the business environment and market trends to assist investors to expand their business networks, and explore opportunities for collaboration. As of 2020, the conference had featured 31 speakers from 10 countries worldwide, and over 1,200 participants from 10 countries worldwide¹⁷. To cope with the challenges caused by the COVID-19 pandemic, the 2022 conference was held online, attracting more than 25,000 viewers from 42 countries worldwide and successfully generated more than 100 one-on-one business matching meetings online, cementing Hong Kong’s position as a leading international intellectual property and licensing hub¹⁸.

The licensing and franchising shows have assisted many brands in expanding their presence in Asian markets. For example, the Hong Kong company Gee Kingdom showcased its characters Mikoko & Nikolas and Adorable Dogs at the HKTDC Hong Kong International Licensing Show in January 2019, and was rewarded a contract from International Footwear, the largest footwear maker in Malaysia. Mr. Shiu, Director of Gee Kingdom had credited the workshops provided by the HKTDC on practical issues such as intellectual property, law and accounting, as essential in laying the foundation for his company’s success. In particular, the numerous business matching meetings arranged with both local and overseas buyers were particularly important for their business development.¹⁹

Another example is the recent collaboration between the Hong Kong studio Tadaland, and MyTOWN Shopping Centre of Kuala Lumpur. The partners first met at the Hong Kong International Licensing Show in 2023 when MyTOWN’s Deputy General Manager visited Tadaland’s booth, and since then, the partners have entered into a collaboration

¹⁷ <https://alc.hktdc.com/en/s/Previous-Conference-Information>

¹⁸

<https://www.hktdc.com/event/hklicensingshow/en/press-release/asian-licensing-conference-explores-latest-trends-and-forges-new-business-opportunities>

¹⁹

<https://www.hktdc.com/event/hklicensingshow/en/cute-characters-go-global-through-licensing-s-how>

where 16 characters from Tadaland's brand shall be featured in the MyTOWN Shopping Centre, for a year-long marketing push to drive foot traffic and showcase the mall as a place where everyone feels welcome.²⁰

In addition to the above shows and exhibitions, the HKTDC also hosts a large variety of fairs to further promote business and partnerships in Hong Kong. To cope with the advancement in technology, the HKTDC further launched the Asia IP Exchange (AsialPEX), a free online platform and database that aims to facilitate IP property trade, as well as connect global IP players with each other. To date, the AsialPEX has formed alliances with more than 35 strategic partners worldwide, as well as with local R&D centres and technology transfer units of local universities²¹. Over 28,000 tradable IP listings are available on the portal, including copyright, patents, designs and trade marks, in a variety of sectors including biotech, nanotech, medical, electronics, textile, film and publishing etc.²²

Whether you are an owner interested in selling your IP, a manufacturer looking to buy or obtain licensing for technologies to upgrade your operation, a company seeking collaborative research assistance to further improve a technology or invention, or an IP service provider offering quality IP intermediary services, you will find AsialPEX a useful resource.

²⁰

<https://www.hktdc.com/event/hklicensingshow/en/kl-mall-licenses-myers-briggs-inspired-cartoon-characters>

²¹ https://www.asiaipex.com/AboutUs/AsialPEX_EN

²² <https://www.ip.gov.hk/en/trading-ip.html>

Section 5: IP-related points to consider before entering HK market

1. Patent and design protection – when should you file for protection?

Patents protect inventions, such as products, substances, or processes, which are new and inventive. A design, on the other hand, protects the features of shape, configuration, pattern, or ornament that is applied to an article by any industrial process. A patent for an invention or a registered design gives the owner the right to exclude or prevent others from using the invention or design within a particular jurisdiction for a limited period.

Businesses should keep in mind that the invention or design must be kept confidential until the patent or design application is filed. Any prior disclosure before filing the respective application may render the patent or design no longer patentable or registrable, because the invention or design is no longer considered new.

Although the Patent Ordinance (section 11A) provides an exception for non-prejudicial disclosure, namely the invention was displayed at a prescribed exhibit or meeting no earlier than 6 months before the deemed filing date of the patent application, such exception should be exercised with caution. Businesses are always encouraged to err on the safe side and to file the patent application as early as possible, in any event before any type of disclosure to the public, to avoid any possibility of the invention being refused due to lack of novelty.

The same applies for registered designs. While the Registered Designs Ordinance (section 9) provides for confidential disclosure, in confidence, the scope is narrow, and businesses should always try to file the design application as early as possible. If it is not possible to file the design application, businesses should exercise caution and seek professional advice to ensure the design can be disclosed in confidence, before considering making any such disclosure.

2. Copyright protection – how should you prepare in advance?

Copyright is automatic, and protects an original work made by its owner. Such could be literary works such as books or novels, and computer software, musical works, dramatic works etc.

Copyright is an automatic right, and there is no mechanism for registration in Hong

Kong. That said, if businesses have not obtained other forms of protection over the copyright works, such as filing for registered design or patent, there are nevertheless steps businesses may take to prepare their documentation, in the event they need to prove their copyright ownership against infringement.

In gist, businesses should ensure that all of the following are at their disposal when they need to prove copyright ownership:-

- Evidence of the date and place that the work was made or first published;
- (where the author is an individual) Name of the author of the work, and whether their place of domicile/residence/right of abode;
- (where the author is a body corporate) Place of incorporation or principal place of business;
- Name of the copyright owner;
- Where the business is not the copyright owner, an assignment obtained from the copyright owner for the rights over the copyright works; and
- Copies of the copyright works.

For the purpose of proving subsistence of copyright and ownership of copyright, section 121 of the Copyright Ordinance provides that an affidavit which purports to have been made by or on behalf of the copyright owner of a copyright work and which states all of the above information., shall be admitted without further proof in any proceedings under the Copyright Ordinance. This may be of particular importance for copyright owners who are participating in pitching events and showcases, so that they can establish a claim or complaint as soon as practicable once any instance of infringement is found.

3. Non-Disclosure Agreements

Non-disclosure agreements (NDAs) are agreements that create a confidential relationship between a person with confidential information, and a person who will gain access to such information. It is a crucial tool that businesses use in order to protect their valuable assets and commercial secrets during business interactions.

NDAs help to protect valuable intellectual property, including trade secrets, inventions and business strategies, to ensure that they are not leaked by or to competitors. It also helps to promote trust between parties by preserving confidentiality of any shared information, and thereby enabling businesses to share such information with potential investors with lower risk of exposure of proprietary data.

Businesses should therefore make use of NDAs when participating in any pitching events and showcases, in order to protect confidentiality of their valuable assets and prevent or lower the risk of any technology leakage before the necessary applications can be filed.

4. Trade Marks – which classes are important for registration?

Trade marks are registered in different classes (for example clothing, toys, watches, insurance etc.) depending on the goods or services the marks are used for. Usually a brand name will cover not only products or services concerned but also related products and/or services which span over more than one class. Some goods are not so obvious as to which class(es) they belong to. Companies should therefore carefully select the relevant classes when filing application in order to obtain sufficient scope of protection.

The most obvious and important class for application would be the main business of the company. For example, the main class for a toy company would be class 28 concerning games, toys and playthings; the main class for a cosmetics company would be class 3 concerning non-medicated cosmetics and perfumery, and the main class for a fashion company would be class 25 concerning clothing, footwear and headwear.

That said, due to the significant developments of digital technologies and ecommerce, many companies would also consider offering their products over the internet, instead of only through physical stores. In such instances, many traders also create an e-shop on the internet or an online trading platform to facilitate the e-business.

In order to cope with the expansion of business and goods and services provided, there are a number of supplementary classes that may not be directly related to the main business of the company but may nevertheless be important in the daily business and operations.

As an example, if the company sells goods of its own, but also operates a shop or e-shop that may sell goods belonging to others, then class 35 concerning advertising; business management; business administration; office functions may also be relevant.

In another example, if a company offers clothing goods, but also produces placards, and signs, as well as paper bags with their logo printed on it, then in addition to class 25 (concerning clothing), they may also wish to obtain protection in class 16 (for paper

made goods).

As most companies may offer their businesses in a variety of different areas, it may be tricky to pick the correct trademark classes and obtain adequate protection. It is therefore advisable for companies to seek assistance from an experienced trademark lawyer to ensure that their trademarks are adequately protected.

5. Company incorporation and company name protection

A. Confusingly similar company names

In addition to trade mark protection, companies should also consider the advantages of setting up a local corporation for the purpose of conducting or facilitating their business activities in Hong Kong.

Hong Kong is considered one of the best cities to establish and run a business. This is due to a variety of factors, such as a strategic and convenient geographical location, attractive tax regime, an effective and reliable legal system, as well as an efficient and mature infrastructure in transportation and communications, and a favorable pro-business environment.

It is not unusual in Hong Kong to find companies registered in names which are confusingly similar to others. This is particularly true in the Chinese context as traditionally, the Chinese community has a tendency to use auspicious characters in the company names, such as “發”(fa) (wealthy), “龍” (long) (dragon) or “運” (yun)(luck) etc. As a natural result of this, there are a large number of companies with confusingly similar names. Where such companies do not have genuine businesses, they are also known as “shadow companies”.

Regardless of the size of the business, a company may be concerned that their goodwill may be damaged by the existence of confusingly similar company names as the general public may not be able to differentiate between companies with similar names, in particular, those incorporated by bad faith traders with an intention to ride on the goodwill and reputation of others.

B. Remedy: claim for trade mark infringement and passing-off

The problem of shadow companies has risen exponentially due to the ease in

incorporating companies in Hong Kong. The Registrar of Companies is empowered to direct a name change within 12 months of incorporation of the shadow company if the Registrar of Companies considers that the shadow company's name is "the same as" or "too like" a name appearing in the Registrar's index, or to strike off the shadow company for being defunct if it is not in operation or carrying on business. In that case, the aggrieved company can lodge a complaint with the Companies Registry of Hong Kong (the "**Registry**") against the shadow company.

If the shadow company has been incorporated for more than 12 months, a company can commence trade mark infringement and/or passing-off action against the companies with confusingly similar names for an injunction to restrain the latter from using the names. Upon being served with the injunction order, the Registry would direct the shadow companies to change their names. If the latter fail to change their names in accordance with the direction, the Registry is empowered to replace the names of the shadow companies with their company registration numbers.

C. Prevention: avoid incorporating companies with names that are "too like"

With reference to the "Guideline on Registration of Company Names for Hong Kong Companies" (the "**Guideline**") published by the Registry in January 2014, the Registry plays a passive role in the prevention of incorporation of shadow companies. The Guideline states that registration of a company name does not mean that the name is protected, neither does it mean that such a name is not liable to challenge by others, and also that "The registration of a company name with the Companies Registry does not confer any trade mark rights or any other intellectual property rights in respect of the company name or any part thereof. Applicants should, therefore, ensure that they do not adopt a name which resembles a registered trade mark or is "too like" the name of another company."

The Guideline also contains what criteria the Registry would take into account in forming an opinion that two names are too like. The following examples are supplied by us for illustration:

1. *Names which are the same* - for example, "KWUN TONG ENGINEERING LIMITED" would be considered "too like" "KWUN TONG ENGINEERING COMPANY LIMITED".

2. *Names which are phonetically identical* - for example, “HING LUNG” is aurally similar to “HING NUNG”.
3. *Names in which the slight variation in spelling does not make a significant difference* – for example, “KWUN TONG COLOUR LIMITED” and “KWUN TONG COLOR LIMITED”.
4. *Grammatical variations which do not have significant difference* – for example, “ADVANCE” and “ADVANCED”.
5. *Names which contain the same distinctive element:-*
 - a. Where the names are sufficiently qualified – for example, between “ABC CLOTHING LIMITED” and “ABC FOOD LIMITED”
 - b. Where the names are not sufficiently qualified – for example, “ABC CLOTHING LIMITED” and “ABC APPAREL LIMITED”.

Despite the power given to the Registrar of Companies, currently it has not taken a proactive approach in exercising the power conferred to him to direct shadow companies to change their names pursuant to s.108 of the Companies Ordinance (Cap. 622 of the Laws of Hong Kong). The task of clearing existing shadow companies is currently shared by the Registry and the Court. If the Registry is going to take up this task, it would not be an easy one, particularly in light of the large number of shadow companies already incorporated and existing on the register.

D. Conclusion

After all, whether two company names are “too like” is a question of judgement and very much has to be viewed case by case. While the Registrar of Companies might not take too active a role in clearing out existing shadow companies, those who seek to incorporate a new company are always advised to conduct a thorough search on the Registry for similar names, lest they should infringe others’ intellectual property rights. It is also **crucial** to obtain trade mark registration at the Hong Kong Trade Marks Registry to safeguard the companies’ intellectual property rights.

6. Points to note when participating in showcases and fairs

Trade shows offer a great platform for different brands to showcase their products and innovation, and to meet with consumers and/or other brands to explore businesses and

chances for future collaboration. Businesses can gather feedback on their products before officially releasing them to the public. At the same time, businesses can analyze their competition, and reflect on whether their own marketing strategies and technologies are up to date.

To ensure success when participating in showcases and fairs, businesses should be minded to obtain protection over their IPR in advance. Businesses should ensure that their trademarks, designs and patents are all applied-for or registered before publishing them to the public.

When exploring new business opportunities with other traders, business owners should be minded confirming whether the other traders have obtained valid protection of their IPR as well. For local companies, it may also be beneficial to conduct a brief search to ensure that their company is validly incorporated and registered with the Companies Registry.

7. Hong Kong offers two types of standard patent application processes

Hong Kong offers two types of standard patent applications:

- Standard patent application (under original grant patent route); and
- Standard patent application (under re-registration route).

Standard patent provides longer protection than short term patents. Previously, patent registration was only possible under the re-registration route, which means the standard patent application must be timely filed in Hong Kong based on a corresponding patent application for the same invention in one of the three designated patent offices outside Hong Kong, namely (1) the State Intellectual Property Office of the People's Republic of China (the "SIPO"), (2) the European Patent Office or (3) the United Kingdom Patent Office (the "**Re-registration Route**"). Patent applications under the Re-registration Route are only subject to formality examination by the Patents Registry, meaning that they are not subject to substantive examination for determining the patentability of the underlying inventions. The Patents Registry was previously only responsible for re-registering foreign-approved patents.

A new patent system was introduced by the Hong Kong Intellectual Property Department on 19 December 2019, introducing a new and direct local original grant patent route ("**OGP**") for filing standard patent applications.

Under the new OGP route, applicants may file patent applications directly in Hong Kong with the Patents Registry, independent of the three aforementioned designated patent offices outside Hong Kong, thereby dispensing with any prior filing of corresponding applications as required under the existing Re-registration Route. An OGP application will be subject to, in addition to formality examination, substantive examination by the Patents Registry for determining the patentability of the underlying invention. The new OGP route will run in parallel with the existing Re-registration Route. Applicants may choose either the existing Re-registration Route or the new OGP route for registering their patents based on their own business strategies.

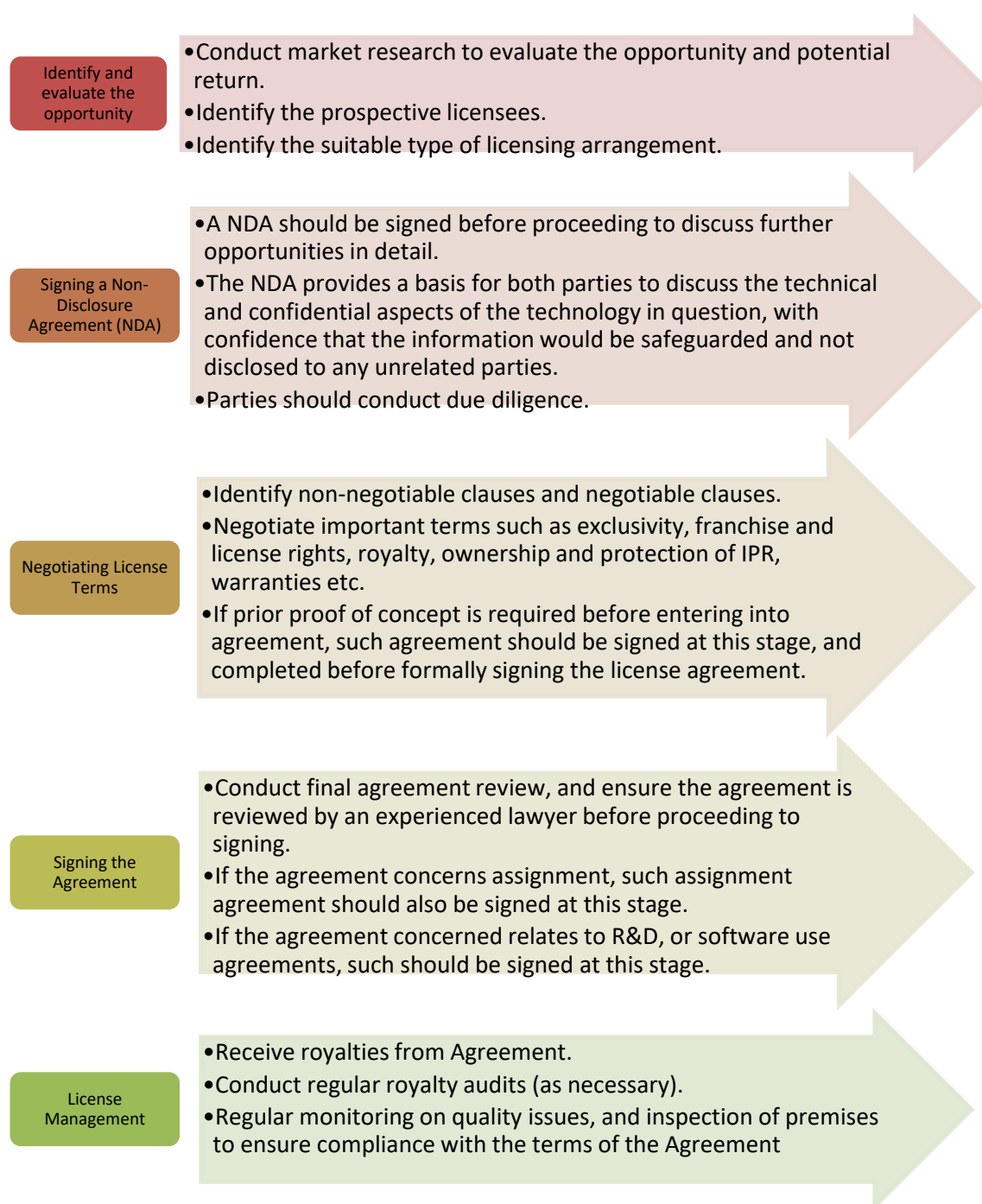
However, as Hong Kong currently lacks personnel with the required technical expertise and experience to conduct substantive examination on its own, as an interim measure, the Hong Kong Intellectual Property Department will outsource aspects of the substantive examination to the SIPO. The SIPO will provide technical opinions as to the novelty and inventive step of the claimed invention, while the Patents Registry will prepare the examination notice based on the Patents Ordinance and the opinions of the SIPO.

Businesses in Hong Kong, as well as businesses who wish to expand their business to Hong Kong are therefore provided with more flexible and convenient solutions when deciding on the geographical scope of their inventions. Overseas businesses may file their patent applications in their country of origin and thereafter extend to Hong Kong via the Re-Registration Route. On the other hand, local businesses may save time and money and file their patent applications in Hong Kong directly under the OGP route, and thereafter designate other countries of interest from their Hong Kong application. This is particularly important where businesses intend to cover various jurisdictions in any license agreements with other parties, so that they can take timely action and file all necessary applications within time.

CHAPTER 2: NEGOTIATION AND SIGNING OF CONTRACT

Section 1: Basic steps – from negotiation to conclusion

License agreements should be drafted on a case-by-case basis to meet the specific needs of each party. The below outline and guidelines simply serve to illustrate a general license agreement process and is not intended to be exhaustive.



Identify and evaluate the opportunity

- Businesses should conduct proper market research to evaluate the potential business opportunity and the potential return. Such would include market researches on similar products and the retail prices, the expected costs of manufacture, competition etc.
- Businesses should identify suitable prospective licensees who have the necessary technology, equipment and experience to carry out the intended works under the prospective license agreement.
- Businesses should identify the type of licensing arrangement that is suitable for the prospective venture. For example, if only sale of goods is required, a simple license agreement may suffice. However, if manufacturing rights will also be granted, then a more comprehensive license agreement stipulating manufacturing rights may be required. Further, if research and development is required, the license agreement should also contain additional terms stipulating ownership over any improvement or development.

Negotiating a Term Sheet

- A Confidentiality Agreement or a Non-Disclosure Agreement (“**NDA**”) should be signed between parties to protect the information that will be shared before further discussions on the potential business opportunity.
- NDAs are important where sensitive information will be shared, including research and development, potential patents, client lists and information, negotiations etc. It provides clarity to both parties on what information can and cannot be shared, as well as consequences for breach.
- If the NDA is breached by one party, the other party may commence court action to prevent future disclosure, as well as for monetary damages.
- Parties should first agree on a Term Sheet setting out the basic objectives, and basis for the intended license. Once the broad set of terms are agreed, parties can then start to negotiate the comprehensive terms for the license agreement.
- Parties should conduct due diligence to identify issues that may affect the value of the prospective product or process, or hinder the development or commercialization of the same.

Drafting and Negotiating a Draft License Agreement

- Parties should negotiate other important terms such as exclusivity, franchise and license rights, royalty, ownership and protection of IPR, warranties etc. Some useful questions to consider may be as follows: -
 - What are the benefits and drawbacks of the IP license?
 - What rights will be granted and what restrictions will be imposed?
 - How much will the Licensor be paid?
 - How can I ensure my IPR continues to be protected?
 - Who will own the IPR to any further development and improvement made by the Licensee?
- It may be useful for parties to first identify non-negotiable clauses and negotiable clauses.
- It is important to note that there is no perfect license agreement or perfect terms. Ultimately, it would vary and depend on what is acceptable to both parties. Parties should therefore be flexible in the negotiations, so that both parties can move forward expeditiously and achieve a win-win situation.

Signing the Agreement

- Once parties come to agreement on the terms of the license, it should be recorded in a written document that will be signed by both parties.
- It is important for businesses to engage an experienced lawyer to prepare, review and finalize the draft license agreement, to ensure that the terms are as agreed between parties and are not ambiguous, and do not leave the business in a disadvantageous position.

License Management

- Businesses should continue to monitor and ensure compliance of the terms of the license agreement.
- Businesses should ensure royalty audits are conducted to check and determine whether the Licensor is receiving the proper amount of payment due under the license.
- Businesses should also monitor the products that are manufactured under the license, to ensure that they comply with the quality standards. Where necessary, they should also conduct inspection of the Licensee's premises to ensure that the premises and all equipment are up to standard.

Section 2: Due diligence prior to the signing of contract

Introduction

Due diligence refers to the detailed investigations conducted against a person or business, prior to entering into a contract or commencing a new business venture. The aim of due diligence is to identify any potential issues or liabilities which may arise. The different areas of conducting due diligence include the following:-

1. Financial

This includes an investigation into the business health of the other party. The latest company annual return and company filing can be obtained via the Companies Registry of Hong Kong. The audited financial statements of the other party should also be obtained, to ascertain the assets and liabilities of the other party including loans, mortgages and indemnities as well as tax liabilities, and to assess whether they have sufficient cash flow and a stable financial performance.

2. Commercial

This includes an investigation on the other party's business reputation, any known controversy, and also an investigation on the major business market to assess competition, and the prices similar goods are sold at. Where the contemplated agreement concerns product research and development, manufacture and license, businesses may wish to obtain a list of the products developed and manufactured by the other company to check for quality standards and issues. A full and complete list of products and services offered may also be obtained to ascertain the production capacity of the other company.

3. Operational

This includes an investigation on the background of the other party, including its ownership structure, organization chart, list of shareholders and directors and key personnel etc. It is also important to verify that the other party has actual business operations at its registered address, and is doing business where it claims.

4. Legal

This includes an investigation on any legal risks that may arise and affect the rights or

obligations of the other party, such as any existing or threatened claims or litigation. A thorough search should be conducted to determine the civil and criminal litigation history of the other party and confirm whether the company or its principals have been involved in any civil or criminal matters. In addition, and especially in the case of technology trading, a comprehensive IP audit should also be conducted to ascertain any IPR owned by the other party, and whether there are any existing or threatened claims over the same, in particular claims of infringement.

How long does due diligence take?

The length of time required for the due diligence exercise may vary depending on the size and complexity of the matter. For example, the due diligence required for a sale and purchase will be different from the due diligence required for a share sale. This is because in a share sale, the buyer would also inherit the liabilities and risks of the company, therefore the due diligence conducted should be much broader and much more detailed. Typically, the due diligence period for straight forward deals for small to mid-sized businesses may range from 30 to 60 days. The length may be shortened or extended due to the amount of information that is available, the turnaround time and communications with the other party.

There is no standard requirement on how extensive the due diligence investigations should be. Businesses should consider each particular transaction on a case-by-case basis in determining the same.

Due diligence service providers

There are a large number of due diligence service providers in Hong Kong, including law firms and accounting firms etc. Under usual circumstances, both parties to an agreement would disclose and provide each other with the required information and documents for conducting the due diligence investigations.

However, if there are any special circumstances where additional due diligence is required, such as where fraud is suspected, it may also be necessary to engage investigators to conduct undercover operations to obtain evidence. In such cases, investigation companies may need to be engaged.

Section 3: Key points concerning the contract (main points to negotiate)

1. Key terms and common disputes

While parties are free to negotiate their terms of license, it is understandable that the parties would have different expectations. Licensors would hope to gain maximum return with limited exposure, while Licensees would hope for flexible and wide scope of rights with limited intervention from the Licensor.

Court cases have shown that poorly drafted agreements can lead to differences and disputes. The below table sets out some key terms commonly found in IPR license agreements, which may be taken as reference when negotiating and finalizing a license agreement.

It should be noted that each case may differ depending on the circumstances, and the below examples are not intended to be exhaustive. Interested parties should seek independent legal advice to make sure that their positions are fully protected.

Clause	Comments	Common types of disputes with partners
<i>General clauses</i>		
Description of IP Rights and scope of license	The scope should be precisely and accurately described as this may affect the scope of use, and scope of warranties as to title (including non-infringement), which may in turn affect how each type of agreement can be enforced in the future.	Licensors would prefer a more precise description, while Licensees prefer a widely drafted description. Ambiguity may lead to disputes and affect the scope of warranties as to title, and effectiveness of the agreement.
Exclusivity and transferability	<p>Licenses may be exclusive or non-exclusive, or sole licenses, and may be transferrable or non-transferrable.</p> <p>Parties should carefully consider the impact of each type, in relation to rights to use and competition on the market etc. Non-exclusive licenses may mean potentially more income (as multiple licenses can be granted), and competition between different licensees may increase competition and quality of products.</p>	<p>Licensees would prefer exclusive licenses to avoid competition with other Licensees, which would affect their business and market demand.</p> <p>On the other hand, Licensors would prefer non-exclusive licenses to retain the option of granting licenses to other parties, or to distribute the goods by themselves. Both of these options may lead to increased sales and revenue for the Licensor.</p>
Territories and trade channels	<p>Restrictions to territories and trade channels should be specified, with proper non-solicitation clauses included to prohibit the licensee from conducting business to others outside of the licensed territory.</p> <p>Whether the license is granted only for a specific channel</p>	Licensors would prefer to reserve specific territories and channels for their own exploitation, whereas Licensees would prefer the freedom to exploit all territories and channels on their own, as well as full freedom to contract with any party within the licensed territories.

		or the whole market in all channels would directly affect the Licensor's potential returns, as well as their own use of their IPR in different markets.	
Term and renewal		A shorter term may mean less or potential lower returns for the Licensor. However, having a long term with automatic renewal may lead to inadequate monitoring of the quality standards of the products. Parties should seek to obtain a balance between the two, so that there is sufficient time to achieve performance targets which at the same time ensuring they are able to monitor compliance of the license requirements.	Licensors would prefer shorter terms with no automatic renewal so that they may check and ensure compliance before granting any renewals to the licensee, whereas Licensees would prefer automatic renewals with no changes to the existing terms and conditions.
Royalties and Payments		<p>There are many different ways to calculate royalties and other types of payments. The most common type of consideration may be a one off payment for a license to use, with annual maintenance fees payments for continued use of software or technology etc.</p> <p>This term should be negotiated carefully in detail as collecting payments is the main aim for the Licensor to grant a license in the first place. Deductible items from the calculation of net sales or use are up to agreement by both parties.</p>	Licensors would prefer regular payments at regular intervals with proper financial reports, but Licensees would prefer longer payment intervals with minimal reporting requirements.
Payment and		Parties should agree on an agreed format, procedure and	Licensees would prefer not to allow Licensors to

reporting terms	<p>regular durations for submitting reports and payments. Proper procedures for calculating fees (if necessary) and the arrangements for refunds should also be agreed in advance.</p> <p>Licensor should always retain the right to challenge reports even after acceptance to protect the interests of the Licensor. This is particularly important if the Licensor discovers any audit deficiencies.</p>	<p>challenge the royalty reports after they have been accepted. Such may cause additional administrative costs on their part.</p> <p>On the other hand, Licensors would prefer the unlimited right to review and challenge reports to protect their rights, as a mechanism to keep the Licensee in check and to ensure that the reports are correctly and accurately prepared.</p>
Audit Rights	This refers to the Licensor's right to inspect and audit the accounts of the Licensee. This clause is important as it allows the Licensor to check that the records are correct, and that they have received properly calculated royalty payments.	Licensors would prefer complete freedom to audit at their convenience, whereas licensees would like to restrict the exercise of this right by the Licensor to limited number of times, and upon reasonable notice.
Termination and effect of termination or expiration	This clause includes the rights of the Licensor and/or either party to terminate the agreement and the basis for doing so, as well as the effects of termination such as the Licensee immediately ceasing use of the IPR, payment of all outstanding sums and providing a final report etc.	Licensors would prefer a wide discretion to termination in the event of breach, whether actual, threatened or anticipatory, whereas Licensees would prefer if termination is only applicable to material breaches.
<i>Protection of IPR</i>		
Registration of License	The law surrounding the requirement to register licenses differs across jurisdictions. Some jurisdictions require prior registration of license, otherwise the Licensee may lose	N/A

	<p>their rights to compensation etc. against third parties.</p> <p>Parties should therefore clearly set out in the relevant agreements whether it is mandatory to register licenses and if so, which party shall be responsible for registering the same.</p>	
Registration and Maintenance of IPR	<p>This refers to the registration, protection and maintenance of IPR, and refers to the Licensor's continued prosecution of applications to protect the IPR.</p>	<p>Licensees may require the Licensors to demonstrate commitment to diligently prosecute all applications, and ensure the IPR are secured and maintained so that the exclusive rights are protected.</p> <p>On the other hand, the Licensor may prefer to retain the absolute discretion to maintain or abandon their IPR, from the perspective of their own company's interests only, without regard to the Licensee's rights.</p>
Enforcement of IPR	<p>It is important for parties to maintain rights over their IPR, including the full right to control enforcement action. Licensors should ensure that they are promptly notified of any such enforcement proceedings, and that they have full discretion to either defend or instigate the proceedings in their own name, or to direct the Licensee to do so in their stead.</p>	<p>Parties may disagree over the conduct of the proceedings, as well as which party shall bear costs in relation to the same. It is advisable to come to agreement on this term before executing the license agreement to avoid confusion and delay caused to the proceedings.</p>

Confidential Information	As all of the agreements discussed concern IPR, it is important to contain clauses to protect all such IPR and any discussions, whether oral or in writing, that may contain confidential information. Situations for mandatory or permitted disclosure need to be clearly determined for clarity purposes.	Parties may disagree over what is considered “permitted disclosure” if clear guidelines are not set, which may lead to unauthorized disclosure causing loss and damage to the disclosing party.
<i>Warranties and Remedies</i>		
Licensor's Warranties	This refers to the Licensor's promises about the technology being licensed.	Licensees may require express warranties in relation to invalidity or infringement of IPR of third parties.
Licensee's Warranties	This concerns the Licensee's promises about the transaction.	Licensors may require Licensees to assume all liabilities arising from any future liability, using the IPR outside the agreed scope etc.
Indemnification	This concerns each party's future obligations in the event the technology is found to infringe on a third party's rights.	<p>Licensors would generally require Licensees to indemnify the Licensors against all losses and damage suffered from the Licensee's breach.</p> <p>On the other hand, the Licensee would prefer as few indemnity obligations as possible, to lower or limit their exposure to liability.</p>
<i>Additional clauses relevant to NDAs</i>		
Non-competition	This concerns restrictions on using any confidential information for competitive purposes which may harm either party's interests.	Disagreement may arise if the receiving party uses any confidential information to their own advantage, such as soliciting business away from the disclosing

		party, which may damage the disclosing party's interests.
<i>Additional clauses relevant to Proof-of-Concept agreements</i>		
Mechanism for confirming whether the proof of concept is successful	A clear mechanism or criteria for determining whether the proof of concept is successful is important for the parties to have clarity. This may also affect whether the parties are obliged to enter into further agreements for further implementation of the said proof of concept.	Disagreement may arise in relation to whether the results of the proof of concept meet the criteria for further negotiations and entering into further contract.
<i>Additional clauses relevant to R&D agreements</i>		
IPR ownership for joint and solely developed new technology	A clear mechanism for determining whether any newly developed IPR shall be considered jointly owned, or solely owned. Where the new IPR is jointly created, parties should agree on a mechanism for determining how ownership should be apportioned depending on the degree of involvement of each party. Where the new IPR is independently created, parties should agree on a mechanism for proving independent creation (supported by evidence), to avoid dispute.	Disagreement may arise in relation to whether certain new IPR had utilized the background IPR of each party and therefore should be jointly owned, or whether it was independently created by one party only.
<i>Additional clauses relevant to Technology assignments</i>		
Method of transfer and delivery	A clear mechanism for how certain technology or IPR shall be transferred and delivered to the Assignee shall be put in place for clarity.	Disagreement may arise in relation to whether title and ownership of certain IPR was successfully transferred may arise if no clear mechanism is put in place e.g. for online platforms, whether access and

		passwords have been properly passed on, for physical products or machines, whether they are to be passed by hand etc.
<i>Additional clauses relevant to AI agreements</i>		
Right to deliverables	Clear determination of the ownership over any deliverables should be determined from the onset.	Customers (as the Licensee) may wish to retain ownership over any deliverables created from using the AI software, whereas the Provider (as the Licensor) may wish to retain all ownership.
Limit of liability for third party software	Consideration should be given to whether any open-source software or third party software will be incorporated into any deliverables, and any associated IPR or data security risks. This is also relevant to the section on “Warranties and Remedies” above.	Customers (as the Licensee) will wish to include representations and warranties that mitigate the risk associated with bias etc., whereas Providers (as the Licensor) will wish to include disclaimers with respect to limitations and risks.
Training Data	Clear determination on whether Customer Data can be used for training purposes should be recorded in the agreement.	Customers (as the Licensee) may wish to prevent its data from being used to train the AI (which could then potentially be provided to its competitors), whereas the Provider (as the Licensor) would wish to incorporate as much data to train the AI as possible.
<i>Boilerplate clauses</i>		
Language	It is not uncommon for parties to execute bilingual agreements. However, caution should be paid to specify which language shall prevail in cases of uncertainty.	The translation of difference languages in an agreement may lead disputes in relation to the interpretation.
Governing law	It is important to specify the laws that can govern the	Both parties would prefer to use their choice of

and jurisdiction	agreement. In the event of litigation, courts will respect this clause and use the specified law as agreed by parties. This <i>clause</i> is particularly important where the parties are from different jurisdictions.	governing law and jurisdiction, especially where parties are from different jurisdictions.
Dispute Resolution	This clause defines how parties will resolve disputes. There are different methods such as litigation, mediation and arbitration.	Having a dispute resolution mechanism would assist parties to manage the risks and costs arising from the dispute resolution.

2. Difference between Japanese and Hong Kong contract customs

Contracts are important agreements between individuals or legal entities, which define the rights and responsibilities of both parties. By entering into an agreement, the parties assume a duty to perform, and also a right to demand performance from the other party. Contracts are therefore a set of rules that governs the formation of the relationship, the obligations of parties and enforcement of such obligations.

While contracts are common in everyday life, there remain some customary differences between countries, and also striking differences between the attitudes and behaviors of western businessmen and Japanese businessmen who maintain traditional beliefs.

To western businessmen, contracts are legal agreements that legally bind each party, and may be the only or main basis for defining the obligation between parties. Negotiations may be more confrontational with each party trying to achieve the most advantageous position in the agreement.

On the other hand, the Japanese culture tends to seek harmony with counter parties, and to build and maintain an ongoing social relationship between parties that is based on trust, instead of simply a formal agreement. It is often the case that after such mutual trust has been built, Japanese companies may act based on verbal agreements as opposed to concluding and simply following a written binding agreement between parties.

Where written agreements are concluded, it may not contain all necessary terms in detail. Rather, Japanese may view such agreements as a mere communication of declarations of intent towards a common goal. As such, it may lead to a situation where the conduct of the contractual relationship is not regulated, in terms of liability, penalties, termination etc. Such important clauses may be left to the discipline and conduct of the parties based on good faith, and may cause disagreement between parties.

Hong Kong, being a formal British colony, employs a more western approach in contract negotiations that is more risk-tolerant, and seeks to include all terms governing the relationship to avoid confusion. Being an international business hub with foreign investors from all countries worldwide, contractual arrangements and agreements are therefore critical to the conduct of business. Contracts therefore tend to be longer and detailed comparatively.

During the negotiation stage, it is common for non-Japanese companies, including Hong Kong companies, to present draft contracts that are very advantageous to them as a starting point, with the expectation that parties would negotiate the terms and conditions, and settle at a mid-way point that is acceptable to both parties. On the other hand, Japanese companies may present draft contracts that are already neutral to both parties from the onset and expect little or no negotiations to take place in relation to the same.

Whilst companies from different countries may have different styles and preferences in negotiating contracts, it should be noted that such differences are due to different traditional customs. Parties should therefore bear in mind that the opposing parties may not be used to the same contractual practices, and understand that such differences are not necessarily due to a lack of trust. Rather, it shows that both parties have a common goal to negotiate and enter into an agreement with terms that are acceptable to both sides, and to avoid future dispute between parties.

3. Difference between Japanese law-governed and Hong Kong law-governed contracts

In addition to different customs, there are also slight differences between Japanese-law governed and Hong Kong law-governed contracts. Below are some key differences that parties may bear in mind during negotiation process.

A. Registration of license

Certain exclusive licenses, such as patent license and trademark licenses, must be registered in order to be enforceable. Non-exclusive licenses may also be registered to put potential parties on notice of such license, but it is not mandatory.

It is not mandatory to register licenses in Hong Kong per se, but in order for the license to be effective against third parties acquiring an interest in or to the IPR, the license must be duly registered.

In order to register a license in Hong Kong, an application must be made to the Intellectual Property Department of Hong Kong under the prescribed Form T11 for trade mark, Form P9 for patent, or Form D5 for registered design. The relevant form must at

minimum specify (1) the applications or registrations concerned, (2) the owner of the applications or registrations, (3) the name and address of the party acquiring license rights, and (4) the date upon which the license commences. If the form is submitted by the Licensor, then no documentary evidence is required to be submitted. However, if the form is submitted by the Licensee, then a copy of the license agreement must be submitted for the Intellectual Property Department's consideration, before the license shall be duly recorded.

B. Language

Japanese companies primarily use and contract in Japanese, whereas other countries commonly contract in English. This may pose as an obstacle for Hong Kong companies, as Japanese is not an international language, and Japanese legal terms are considered more abstract and could be difficult to grasp for non-Japanese persons. English is therefore the preferred language for Hong Kong companies, as well as other foreign persons.

It is possible to draft agreements bilingually to include both Japanese and English for clarity purposes. However, in such situation, it is recommended to specify which language shall prevail over the other in case of dispute.

C. Governing Law and jurisdiction

HK courts tend to uphold the spirit of the agreement based on what is agreed between parties.

In situations where a contract includes foreign parties who are not based in Hong Kong, it is recommended to include a governing law clause that expressly stipulates the chosen applicable law to avoid confusion and disagreement.

D. Indemnification

Indemnity clauses are undertakings given by one party to compensate the other party, in relation to the effects of certain acts, omissions, contractual default or negligence of that party. Parties are free to contract and agree on the scope of indemnity under Hong Kong law.

In contrast, it should be noted that the concept of indemnification does not exist under Japanese law. Instead, contracting parties may be entitled to certain remedies due to breach of contract, such as damage claims and specific performance.

4. Common types of disputes with partners of technology trading contracts and countermeasures

When a party enters into a license agreement for the trading of technology, these agreements serve as the fundamental foundation for collaboration between different parties. However, due to rapid advancement in technology, even the most detailed agreements may not be able to address unforeseen advancements, changes and regulatory landscapes. The two main types of disputes in technology trading contracts typically relate to (1) system integration and development disputes, and (2) IPR.

In the case of system integration disputes, a typical dispute may relate to one party asserting that the system integration was not completed, or that there are defects in the system that has been integrated, such that performance is incomplete and therefore the receiving party may refuse to pay the related fees. On the other hand, the providing party may assert that system integration is fully completed, and the improvements required exceed the scope of the original contract, therefore additional fees would be payable for the additional services.

As for IPR disputes, such may relate to a licensee using a system, software of technology outside the scope of the license agreement and the licensor may wish to seek injunctive relief or damages against the licensee due to the infringement. Third parties may also seek injunctive relief or compensation for damages caused by infringement against the licensee, in which case there should be agreement between the licensor and licensee on indemnification of damages by the licensor.

Businesses should therefore ensure that all important terms, such as those mentioned in the table above are included. Particular attention should also be paid to the following terms.

A. Clear rights and obligations

Businesses should ensure that the agreement contains all necessary and appropriate details on each party's contractual rights and obligations. Such includes having a well-defined scope of work, well particularized role and responsibilities for each party, as well as detailed project plan and key milestones for payments etc. In the case of system integration disputes, the agreements should contain clear indication on what scope of

work is included, and how parties shall deal with additional services, as well as the relevant additional payments required.

As for IPR disputes, the agreement should contain the necessary warranties and indemnification clauses as well as IPR protection and enforcement clauses, to determine (1) how the licensee shall deal with claims from third parties, and (2) how the licensor may make claims against the licensee for the licensee's breach of the agreement.

By having such details agreed between parties, it would also make the Court or arbitrator's job easier in determining which party is in breach in the case of dispute.

B. Clear agreement on ownership of IPR

Disputes may often arise over the ownership, use, and protection of IPR, such as patents, trademarks, copyrights, and trade secrets. This can involve issues of infringement, unauthorized use, or disputes over ownership of improvements or modifications to the transferred technology.

It is therefore important for parties to have in place a clear agreement on the ownership of (1) existing technology and IPR belonging to each party, (2) new technology created relying on either party's existing IPR and how the parties shall apportion the degree of involvement of each party, and (3) new technology created independently from any existing IPR of either party, and how that party shall prove that such new technology was created independently.

C. Governance process and resolution procedures

Technology litigation, in particular patent litigation is notoriously complicated, expensive and slow. This is due to a multitude of reasons, such as (1) patent rights being territorial in nature, (2) the scope can often be illusive and abstract, and (3) the scope of protection may be difficult to understand based on the understanding of a person of ordinary skill in the art. The same difficulties also apply to software litigation and copyright litigation. Such disputes can be difficult to settle due to the complexity of the matter, and difficulty in finding judges or juries who have the requisite skills to fully understand the disputes.

It is therefore highly advisable for the parties to implement different methods of resolving

issues without allowing the issue to escalate into a dispute.

Such may include implementing a joint governance process, such as having a joint working, strategic and technical committee, for the purpose of discussion and decision making to try and resolve issues before the matter escalates.

If the issue proceeds to become a dispute, it is also helpful if there is a structured mechanism for dispute resolution, such as (1) involving higher levels of management for discussion to try and resolve the dispute, before further escalating to litigation or arbitration.

CHAPTER 3: POST-CONTRACT PHASE

Section 1: Quality Control

Upon signing of the relevant IP and technology agreements, the parties should nevertheless continue to monitor and ensure compliance with the agreement. This is particularly important if the license agreement allows the Licensee to manufacture and sell goods bearing the trade marks of the Licensor, in order to protect the reputation and quality of goods of the Licensor, as well as maintaining the value of the Licensor's trade marks. As good practice, it is useful to impose quality control provisions in the license agreement and have firm guidelines for proper steps for manufacturing and use of trade marks. Below are several items that may be included in the quality control provisions: -

1. IP due diligence

Businesses may wish to conduct background and reputation checks in relation to the prospective licensees, to ensure that they have a good reputation in the business and were not previously involved in any court proceedings in relation to breach of IPR, or quality issues etc.

2. Provide clear guidelines, specifications and requirements for trade mark use and product manufacture

If trade marks are to be affixed onto the products, it may be useful to provide electronic copies to the Licensee to ensure that they are used as-is and the Licensees does not

create their own version of the trade marks, and to ensure that they are printed correctly and in good quality.

If a specific color must be used in relation to parts of the product, the Licensor should make it clear to the Licensees and ensure that they abide with all such requirements.

3. Sample requests and product inspections.

Businesses may wish to include mechanisms for prototype production, inspection and approval before a product is manufactured and released into the market under the license agreement utilizing the Licensor's technology or software. Such would give the Licensor an opportunity to first check the product for its safety, appearance, functionality etc. The Licensor may also request for the full set of packaging and instruction manuals (as the case may be) along with the prototype, all for approval before they are issued to the public.

4. Approval system for manufacturing products and obtaining product approval.

The license agreement should include a comprehensive system for the Licensee to submit samples to the Licensor for approval, before they are allowed to proceed and manufacture the products and related goods for sale. Under good practice, the license agreements should provide that the Licensor's failure to provide written approval shall not be deemed as automatic approval but should be viewed as disapproval of the submitted samples. The license agreement should also provide that disapproved samples should not be retained and should be destroyed.

However, the abovementioned situation may not always be workable to parties and may cause significant delays and disruption to the manufacture timeline. As such, it is common for parties to mutually agree on a set time frame for submitting and reviewing the samples and providing written approval or disapproval. In the event of disapproval, the Licensor should provide reasons for disapproval, so that the Licensee shall be able to make improvements accordingly.

5. Post-contract site visits

It is common for the Licensor to include clauses in the license agreement allowing the Licensor to inspect the premises and/or factories of the Licensee to ensure that the production methods are up to the quality standards set by the Licensor. This may include inspecting the factories and premises, manufacturing process and machinery, raw materials, finished products, financial, personnel and company records etc.

Whilst this right should be reserved by the Licensor, it is however recognized that such inspections may disrupt the normal business operations of the Licensee. As such, it is common practice to specifically state in the license agreements that advanced notice must be provided before conducting any such inspection, and that the inspection must take place during normal business hours.

It is also common that parties would set a maximum number of inspections per year, as well as reasons and circumstances for requesting additional inspections, to prevent disruption to the Licensee's operations and business.

Section 2: Dispute Resolution Methods

Similar with other disputes, businesses may commence civil action against other persons or companies, to defend its rights and resolve disputes concerning trade marks, copyright, patents, and even domain names in Hong Kong.

That said, often there are situations where litigation may not be the best and most efficient method to resolve disputes. Hong Kong, as a leading center for international legal and dispute resolutions services in the Asia-Pacific Region, offers other alternative dispute resolution mechanisms such as arbitration and mediation to enable parties to resolve disagreements without the need to result to litigation.

The Hong Kong International Arbitration Centre (“**HKIAC**”) in Hong Kong is one of the top three most preferred alternative dispute resolution institutions in the world. The HKIAC contains a large panel of international experts who are qualified arbitrators, mediators, or otherwise, seasoned practitioners, who are fluent in a wide range of languages, in order to assist different clients with their specific needs. The HKIAC is highly experienced in handling arbitration, mediation, as well as domain name disputes, whether complex or simple, and is able to facilitate hearings in Hong Kong, Shanghai, Seoul, as well as virtual hearings.

For further information, please refer to the HK ADR-related manual. ²³

²³ https://www.jetro.go.jp/ext_images/world/asia/cn/ip/pdf/ip_adr202303_en.pdf

APPENDIX

Sample Agreement #1: Non-Disclosure Agreement (NDA)

This AGREEMENT is made on the [•] day of [month] [year]

BETWEEN: -

1. [FULL COMPANY NAME] of [REGISTERED ADDRESS] ("**Party 1**"), incorporated and registered in [];

AND

2. [FULL COMPANY NAME] of [REGISTERED ADDRESS] ("**Party 2**"), incorporated and registered in []

(each a "**Party**", and collectively "**Parties**")

WHEREAS

- (A) The Parties intend to enter into [details of the project] relating to the Purpose which will involve the exchange of Confidential Information between them.
- (B) The Parties have agreed to comply with this agreement in connection with the disclosure and use of Confidential Information.

IT IS HEREBY AGREED as follows: -

1. Definitions and Interpretation

- 1.1 In this Agreement, unless the context otherwise requires, the following terms shall have the meanings respectively given to them below: -

"Agreement" shall mean this agreement, as amended from time to time in accordance with its terms.

"Business Day" a day other than a Saturday, Sunday or public holiday in Hong Kong.

“Confidential Information”	has the meaning given in Clause 2.
“Discloser”	a party to this agreement when it discloses its Confidential Information, directly or indirectly, to the other party.
“Group”	in relation to a company, that company, any subsidiary or any holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company. Each company in a Group is a member of the Group.
“Purpose”	[Purpose of the particular project in relation to the Confidential Information concerned, e.g. “Discloser may disclose Confidential Information to Recipient for the purpose of considering a potential business relationship with each other or fulfilling the objectives of such business relationship.”]
“Recipient”	a party to this agreement when it receives Confidential Information, directly or indirectly, from the other party.
“Representative(s)”	in relation to each party: <ul style="list-style-type: none"> a. its officers and employees that need to know the Confidential Information for the Purpose. b. its professional advisers or consultants who are engaged to advise that party [and/or any member of its Group] in connection with the Purpose. c. its contractors and sub-contractors engaged by that party [and/or any member of its Group] in connection with the Purpose; and d. any other person to whom the other party agrees in writing that Confidential Information may be disclosed in connection with the Purpose.

- 1.2** Reference to a Party or Parties shall include its/their respective parent(s), holding company(ies), subsidiary(ies), associated and/or affiliated company(ies) and its/their respective licensee(s), successor(s) and assign(s), and its current, former or future employer, employee or contractor if any.
- 1.3** The Recitals and Schedules (as may be inserted from time to time) are expressly incorporated into this Agreement. References to this Agreement include any Recitals and Schedules to it (as may be inserted from time to time) and this Agreement as from time to time amended in accordance with Clause 14.2 (b) below, and references to Clauses and Schedules are to Clauses of and Schedules to this Agreement.
- 1.4** Unless otherwise stated, words denoting the singular shall include the plural and vice versa and words denoting gender include all genders and words denoting persons shall include individuals, bodies corporate, unincorporated associations, sole proprietorships and partnerships.
- 1.5** The headings are included for convenience only and are not to affect the construction or interpretation of this Agreement.

2. Confidential Information

- 2.1** Confidential Information means all but not limited to confidential information and conversations regarding the designs as well as all data, materials, products, digital works and content, technology and technical information, computer programs and applications, know-how, algorithms, methodologies, source codes, specifications, manuals, business plans and processes, software, marketing plans and designs, financial information and other information, whether disclosed in writing, orally, visually, by samples, or by any other media, relating to the Purpose which the Discloser or its Representatives directly or indirectly discloses, or makes available, to the Recipient or its Representatives before, on or after the date of this Agreement. This includes:
- (a) the fact that discussions and negotiations are taking place between the Parties concerning the Purpose and the status of those discussions and

negotiations and the Parties' participation therein.

- (b) the existence and particulars of this Agreement.
- (c) all confidential or proprietary information relating to:
 - (i) the business, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of the Discloser or of any of the Discloser's representatives or related persons; and
 - (ii) the operations, processes, technology and technical information, know-how, digital works and content, algorithms, methodologies, source codes, designs, trade secrets, computer programs, software of the Discloser, or of any of the Discloser's representatives or related persons.
- (d) any information, findings, data or analysis derived from Confidential Information; and
- (e) any other information that is identified as being of a confidential or proprietary nature.

but excludes any information referred to in Clause 2.2.

2.2 Information is not Confidential Information if:

- (a) it is, or becomes, generally available to the public other than as a direct or indirect result of the information being disclosed by the Recipient or its Representatives or by any of the Recipient's representatives or related persons in breach of this Agreement.
- (b) it was available to the Recipient on a non-confidential basis prior to disclosure by the Discloser.
- (c) it was, is, or becomes available to the Recipient on a non-confidential basis from a person who, to the Recipient's knowledge, is not under any

confidentiality obligation in respect of and is in lawful possession of that information.

- (d) it was lawfully in the possession of the Recipient before the information was disclosed by the Discloser.
- (e) it is independently developed by either Party not in breach of this Agreement provided that any claim of independent development must be substantiated by corroborating evidence; or
- (f) the Parties agree in writing that the information is not confidential.

3. Confidentiality Obligations

3.1 In return for the Discloser making Confidential Information available to the Recipient, the Recipient undertakes to the Discloser that it shall:

- (a) keep the Confidential Information secret and confidential.
- (b) not use or exploit the Confidential Information in any way except for the Purpose.
- (c) not directly or indirectly divulge, disclose or communicate, or permit to be divulged, disclosed, communicated, or make available any Confidential Information in whole or in part to any person, except as strictly necessary for the Purpose and expressly permitted by the Discloser, and in accordance with this Agreement.
- (d) not copy, reduce to writing or otherwise record the Confidential Information except as strictly necessary for the Purpose. Any of such copies, reductions to writing and records shall be the property of the Discloser; and
- (e) any Confidential Information is reduced to writing or otherwise stored or recorded in any tangible form shall not be duplicated and/or reproduced by either Party except for the Purpose.

- 3.2** Both Parties shall establish and maintain adequate security measures and precautions, including any reasonable and agreed security measures as proposed by the Discloser, to safeguard the Confidential Information from unauthorized access or use.

4. Permitted Disclosure

4.1 Disclosure to Representatives

- (a) The Recipient may disclose the Confidential Information to its Representatives on the basis that it:
 - (i) informs those Representatives of the confidential nature of the Confidential Information before it is disclosed; and
 - (ii) procures that those Representatives comply with the confidentiality obligations in Clause 3.1 as if they were the Recipient.
- (b) The Recipient shall be liable for the actions or omissions of the Representatives in relation to the Confidential Information as if they were the actions or omissions of the Recipient.

- 4.2** Subject to this Clause 4, the Parties shall not disclose, publish or otherwise reveal or make available any Confidential Information to any third party unless specifically and expressly authorised and consented by the other Party.

5. Mandatory Disclosure

- 5.1** Subject to the provisions of this Clause 5, a party may disclose Confidential Information to the minimum extent required by:
- (a) an order of any court of competent jurisdiction or any regulatory, judicial, governmental or similar body or any taxation authority of competent jurisdiction.

- (b) the laws or regulations of any country to which its affairs [or those of any of its Group Companies] are subject.

5.2 Before a Party discloses any Confidential Information pursuant to Clause 5.1 it shall, to the extent permitted by law, use all reasonable endeavours to give the other Party as much notice of this disclosure as possible.

5.3 If a Party is unable to inform the other Party before Confidential Information is disclosed pursuant to Clause 5.1 it shall, to the extent permitted by law, inform the other Party of the full circumstances of the disclosure and the information that has been disclosed as soon as reasonably practicable after such disclosure has been made.

6. Return or Destruction of Confidential Information

6.1 If so requested by the Discloser at any time by notice in writing to the Recipient, the Recipient shall within ten (10) calendar days:

- (a) destroy or return to the Discloser all documents and materials and any copies containing, reflecting, incorporating or based on the Discloser's Confidential Information.
- (b) erase all the Discloser's Confidential Information from its computer and communications systems and devices used by it, or which is stored in electronic form.
- (c) to the extent technically and legally practicable, erase all the Discloser's Confidential Information which is stored in electronic form on systems and data storage services provided by third parties; and
- (d) provide written confirmation to the Discloser that it has complied with the requirements of this Clause 6.1.

6.2 Nothing in Clause 6.1 shall require the Recipient to return or destroy any documents and materials containing or based on the Discloser's Confidential

Information that the Recipient is required to retain by applicable law, or to satisfy the requirements of a regulatory authority or body of competent jurisdiction, to which it is subject. The provisions of this Agreement shall continue to apply to any documents and materials retained by the Recipient pursuant to this Clause 6.2.

7. Ownership

7.1 All Confidential Information shall remain the exclusive property of the Discloser, and no right, title or interest in or to any of the Confidential Information or any material developed therefrom is transferred to the recipient party hereby or by its delivery to the recipient party hereunder.

8. Reservation of Rights and Acknowledgement

8.1 Each Party reserves all rights in its Confidential Information. The disclosure of Confidential Information by one Party does not give the other Party or any other person any license or other right in respect of any Confidential Information beyond the rights expressly set out in this Agreement.

8.2 Except as expressly stated in this Agreement, neither Party makes any express or implied warranty or representation concerning its Confidential Information, including but not limited to the accuracy or completeness of the Confidential Information.

8.3 The disclosure of Confidential Information by the Parties shall not form any offer by, or representation or warranty on the part of, that Party to enter into any further agreement with the other party in relation to the Purpose.

8.4 The disclosure of Confidential Information by the Parties shall not constitute evidence of any intent of the Parties to purchase any products or services of the other Party, neither encouragement to expend funds in the Parties' development, planning or research efforts.

8.5 Each Party shall not solicit any change in the organization, business practice, services or products of the other Party.

9. Liability for Breach, Unauthorized Disclosure and Inadequacy of Damages

9.1 The Recipient shall indemnify the Discloser and its Representatives against, and hold them harmless from, any loss, liability, claim, damage, equitable relief, remedies or expenses (including reasonable legal fees and expenses) suffered or incurred by the Discloser or any of its Representatives as a result of the unauthorized disclosure by the Recipient or any of its Representatives of any of the Confidential Information disclosed to it by the Discloser, with or without the necessity of proving damages, whether in connection with a suit or action instituted by a third party or otherwise, to the extent arising from or in connection with any breach of the Recipient under this Agreement.

9.2 In the event of any unauthorized access to, disclosure or loss of, or inability to account for, any Confidential Information of the Discloser, the Recipient will promptly:

- (a) notify the Discloser in writing.
- (b) take all commercially reasonable actions as may be necessary or reasonably requested by the Discloser, to limit the disclosure or loss and any damage resulting therefrom; and
- (c) cooperate in all commercially reasonable respects with the Discloser to limit the impact of the disclosure or loss and any damage resulting therefrom.

9.3 Without prejudice to any other rights or remedies that each Party may have, each Party acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of this Agreement by the other Party. Accordingly, each Party shall be entitled to the remedies of injunctions, specific performance or other equitable relief for any threatened or actual breach of this Agreement.

10. No Obligation to Continue Discussions

10.1 Nothing in this Agreement shall impose an obligation on either Party to continue discussions or negotiations in connection with the Purpose, or an obligation on each Party to disclose any information (whether Confidential Information or otherwise) to the other Party.

11. Ending Discussions and Duration of Confidentiality Obligations

11.1 If either Party decides not to continue to be involved in the Purpose with the other party, it shall notify that other party in writing in accordance with this Clause 11.

11.2 This Agreement may be terminated by either Party by providing sixty (60) days advanced written notice to the other Party, or by mutual agreement in writing.

11.3 Notwithstanding the end of discussions between the Parties in relation to the Purpose pursuant to Clause 11.1, each Party's obligations under this Agreement shall continue in full force and effect for a period of five (5) years from the date of last disclosure of any Confidential Information by either Party.

11.4 The end of discussions relating to the Purpose shall not affect any accrued rights or remedies to which either Party is entitled.

11.5 The end of discussions shall not affect either of the Parties' rights or obligations with respect to the Confidential Information disclosed prior to the day of end of discussions and shall continue as long as the Recipient has custody of or control over the Discloser's Confidential Information.

11.6 This Agreement shall survive for five (5) years following the date of any such end of discussions.

12. No Partnership, Agency or License

12.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute any Party the

agent of another Party, authorize any Party to make or enter into any commitments for or on behalf of any other Party, or grant or confer any rights by license by one Party to another Party in relation to the Purpose or any Confidential Information.

12.2 Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

13. Non-competition

13.1 The Parties shall not use any Confidential Information for the purpose of developing by itself or by any third party any products or business proposals which are in competition with or similar to those in relation to the Purpose.

13.2 Without the other Party's prior written consent, neither party shall, during the course of this Agreement and for a period of twelve (12) months after termination of this Agreement, either on its own account or in conjunction with or on behalf of any person directly or indirectly, approach, solicit business from, entice away from the other Party, or pursue any business opportunity or endeavour, or otherwise do any business with any third party, vendor or customer of the other Party with whom it came into contact in the previous twelve (12) months in connection with the Purpose contemplated under this Agreement, or whose particulars it received as part of the Confidential Information provided to it in connection with this Agreement, other than by any such customer or supplier with whom the party under this obligation had done business or come into contact prior to the date of this Agreement.

14. General

14.1 Assignment and other dealings

Neither Party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement without the other Party's expressed prior written consent.

14.2 Entire Agreement

- (a) This Agreement constitutes the entire understanding between the Parties relating to the subject matter of this Agreement at the date hereof to the exclusion of any terms implied by law which may be excluded by contract, and terminates and supersedes all previous agreements, written or oral, course of dealings and arrangements between the Parties.
- (b) No statements or agreements, oral or written, made prior to or at the signing hereof shall vary or modify the written terms hereof; and neither Party shall at any time claim any amendment, modification or release from any provision hereof by mutual agreement, acknowledgement, or otherwise, unless such amendment is in writing signed by both Parties and makes specific reference to this Agreement.

14.3 Variation

No variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their authorized representatives).

14.4 No Waiver

- (a) No failure of any Party to exercise, and no delay by it in exercising, any right, power or remedy in connection with this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise preclude any other or further exercise thereof.
- (b) No instances of bankruptcy, receivership, assignment, attachment or seizure procedures, whether initiated by or against either Party, nor by the rejection of any agreement between the Parties, by a trustee of either Party in case of bankruptcy, or by either Party as a debtor-in-possession of either Party shall operate as a waiver of the rights and obligations contained herein.
- (c) Any express waiver of any breach of this Agreement shall not be deemed to be a waiver of any subsequent breach, whether such breach or default

is the same as, similar to, or different from the breach waived.

14.5 Severability

- (a) If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.
- (b) If any provision of part-provision of this Agreement is deemed deleted under Clause 14.5(a) above, the Parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

14.6 Notices

- (a) Any notice required by this Agreement or given in connection with it, shall be in writing and given to the other Party by hand or by registered mail, or by prepaid postage, or by a courier for next Business Day delivery agreed by both Parties.
- (b) Any notice required by or given in connection with this Clause 4 or Clause 5 shall be given in writing at least thirty (30) days before such disclosure, and all asserted grounds for disclosure shall be stated clearly therein.
- (c) This Clause 14.6 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

14.7 Third Party Rights

The Contracts (Right of Third Parties) Ordinance (Chapter 623 of the laws of Hong Kong) shall not apply to this Agreement and unless specifically provided herein, no person other than the Parties hereto shall have any rights under it nor shall it be enforceable by any person other than the Parties hereto.

14.8 Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

15. Governing Law and Jurisdiction

15.1 The validity, construction and performance of this Agreement shall be governed and interpreted in accordance with the laws of Hong Kong.

15.2 Each party hereby irrevocably submits to the exclusive jurisdiction of the courts of Hong Kong for the resolution of any claim, dispute or matter howsoever arising under or in connection with this Agreement.

[Signature Page to Follow]

IN WITNESS whereof the Parties hereto have hereunto executed this Agreement the day and year first hereinbefore written.

SIGNED BY **[Name of Party 1]**)

)

its director(s) / authorised signature(s) (duly)

authorised by resolution of the board of)

directors) for and on behalf of **[Name of Party**)

1] whose signature(s) is/are verified by / in the)

presence of:)

)

Signature of witness: _____

Name of witness: _____

SIGNED BY **[Name of Party 2]**)

)

its director(s) / authorised signature(s) (duly)

authorised by resolution of the board of)

directors) for and on behalf of **[Name of Party**)

2] whose signature(s) is/are verified by / in the)

presence of:)

)

Signature of witness: _____

Name of witness: _____

Sample Agreement #2: Proof of Concept (PoC)

(This example relates to a proof-of-concept agreement relating to using a third party solution for a particular project.)

This AGREEMENT is made on the [•] day of [month] [year]

BETWEEN: -

1. [FULL COMPANY NAME] of [REGISTERED ADDRESS] ("**Party 1**"), incorporated and registered in [];

AND

2. [FULL COMPANY NAME] of [REGISTERED ADDRESS] ("**Party 2**"), incorporated and registered in []

(each a "**Party**", and collectively "**Parties**")

WHEREAS

- (A) Party 1 is the developer of [technology] and owns all know-how, and other intellectual property rights with respect to such technology (the "**Technology**").
- (B) Party 2 desires to obtain from Party 1 the Technology for use in [insert details of business] of Party 2.
- (C) The Parties have agreed to undertake a proof-of-concept study to determine the possibility of integrating the [technology] owned by Party 1 into the [insert details of business] of Party 2, to perform [insert details of the desired outcome].

NOW, THEREFORE, in consideration of the mutual promises and undertakings set forth herein, the Parties agree as follows:

1. Definitions

"**Agreement**" means this agreement and any supplement, amendment or variation

thereto or thereof made in accordance with the provisions of this agreement.

“Data” means the data of the Project for use in the Verification, as set forth in Schedule 2.

“Preliminary Schedule” means the schedule as set forth in Schedule 3.

“Project” means [insert details of the project] of Party 2.

“Report” means a report on the Verification submitted by Party 1 to Party 2.

“Technology” means [insert details of the technology owned by Party 1], details of which are set forth in Schedule 1.

“Verification” means a verification concerning the introduction or application of the Technology to the Project.

2. Purpose

- 2.1. In consideration of Party 2 entering into this Agreement, Party 1 will conduct a technical verification to preliminarily evaluate whether the Technology can be successfully implemented into the Project, with the view and aim of executing a joint research and development agreement between the Parties for full implementation of the Technology into the Project (hereinafter the **“Purpose of the Verification”**).

3. Verification

- 3.1. Party 2 shall provide Party 1 with the Data within [28] days of execution of this Agreement.
- 3.2. Party 1 shall conduct the Verification and endeavor to make every effort to complete the Purpose of the Verification in accordance to the Preliminary Schedule, and provide Party 2 with a written report of the findings within one month after the period for Verification (the **“Report”**).

- 3.3. Party 2 shall have 30 days to review the Report and provide Party 1 with written acceptance of the Report, or to raise objection or require Party 1 to conduct further testing in writing. For avoidance of doubt, objections may relate to formal insufficiencies such as failure to provide results on an item to be verified, inconsistency between actual results of the Verification and the findings in the Report, and/or typographical errors and omissions. Party 1 shall conduct further testing and re-submit an amended Report satisfying the objection raised by Party 2 for further approval.
- 3.4. If not objection is raised pursuant to clause 3.3 above, the Report shall be deemed to be accepted by Party 2 and the Purpose of Verification shall be deemed fulfilled.

4. Payment

- 4.1. Party 2 shall pay Party 1 the following sums in installments: -
(a) Upon signing of this Agreement: HK\$[•]
(b) Within 30 days after the Report is accepted: HK\$[•]
- 4.2. All payments made pursuant to this Agreement shall be in Hong Kong dollars. Payments shall be made by wire transfer or by cheque made payable to [insert Party 1 company name or any other recipient name].
- 4.3. Any payments by Party 2 that are not paid within thirty (30) days after such payments are due under this Agreement shall bear interest, to the extent permitted by law, at the Hong Kong Dollar Prime Rate as reported by Hang Seng Bank Limited on the date such payment is due.

5. Intellectual Property Rights

- 5.1. Intellectual Property Rights shall mean all vested contingent and future intellectual property rights including but not limited to goodwill, reputation, rights in confidential information, copyright, trade marks, logos, service marks, devices plans, models, diagrams, specifications, source and object code materials, data and processes, design rights, patents, know how, trade secrets, inventions, get up, database rights (whether registered or

unregistered) and any Licensed Products or registration for the protection of these rights and all renewals and extensions thereof existing in any part of the world whether now known or in the future created.

- 5.2. Party 2 agrees and acknowledges that the entire right and title to the Technology shall remain solely and exclusively owned by Party 1. Party 2 shall not have any interest whatsoever in the Technology.
- 5.3. The Data of Party 2 are required to be used by Party 1 in conducting the Verification. Party 2 shall grant to Party 1 a royalty-free, non-exclusive, non-transferrable, non-sublicensable, and irrevocable license to use such Data solely for the purpose of conducting the Verification. Party 1 agrees and acknowledges that the entire right and title to all Data shall remain solely and exclusively owned by Party 2. Except as expressly provided for under this Agreement, Party 1 shall not have any interest whatsoever in the Data.
- 5.4. All intellectual property rights that arise in connection with the Report or in the course of the Verification shall vest solely in Party 1.
- 5.5. For avoidance of doubt, the Report and any and all other written deliverables under this Agreement submitted by Party 1 to Party 2 shall be the sole property of Party 2. Party 1 acknowledges all written deliverables under this Agreement shall be considered "works made for hire" to the extent permitted by applicable copyright law. Party 1 irrevocably assigns and transfers to Party 2 all right, title and interest worldwide in and to such written deliverables.

6. Confidential Information

- 6.1. Confidential Information means all but not limited to confidential information and conversations regarding the designs as well as all data, materials, products, digital works and content, technology and technical information, computer programs and applications, know-how, algorithms, methodologies, source codes, specifications, manuals, business plans and processes, software, marketing plans and designs, financial information and other information, whether disclosed in writing, orally, visually, by samples, or by any other media, relating to the Purpose of the Verification which the discloser

or its representatives directly or indirectly discloses, or makes available, to the recipient or its representatives before, on or after the date of this Agreement.

6.2. Information is not Confidential Information if:

- (a) it is, or becomes, generally available to the public other than as a direct or indirect result of the information being disclosed by the recipient or its representatives or by any of the recipient's representatives or related persons in breach of this Agreement.
- (b) it was available to the recipient on a non-confidential basis prior to disclosure by the discloser.
- (c) it was, is, or becomes available to the recipient on a non-confidential basis from a person who, to the recipient's knowledge, is not under any confidentiality obligation in respect of and is in lawful possession of that information.
- (d) it was lawfully in the possession of the recipient before the information was disclosed by the discloser.
- (e) it is independently developed by either Party not in breach of this Agreement provided that any claim of independent development must be substantiated by corroborating evidence; or
- (f) the Parties agree in writing that the information is not confidential.

6.3. In return for the discloser making Confidential Information available to the recipient, the recipient undertakes to the discloser that it shall:

- (a) keep the Confidential Information secret and confidential.
- (b) not use or exploit the Confidential Information in any way except for the Purpose of the Verification.

- (c) not directly or indirectly divulge, disclose or communicate, or permit to be divulged, disclosed, communicated, or make available any Confidential Information in whole or in part to any person, except as strictly necessary for the Purpose of the Verification and expressly permitted by the discloser, and in accordance with this Agreement.
 - (d) not copy, reduce to writing or otherwise record the Confidential Information except as strictly necessary for the Purpose of the Verification. Any of such copies, reductions to writing and records shall be the property of the discloser; and
 - (e) any Confidential Information is reduced to writing or otherwise stored or recorded in any tangible form shall not be duplicated and/or reproduced by either Party except for the Purpose of the Verification.
- 6.4. Both Parties shall establish and maintain adequate security measures and precautions, including any reasonable and agreed security measures as proposed by the discloser, to safeguard the Confidential Information from unauthorized access or use.
- 6.5. The recipient may disclose the Confidential Information to its representatives on the basis that it:
- (a) informs those representatives of the confidential nature of the Confidential Information before it is disclosed; and
 - (b) procures that those representatives comply with the confidentiality obligations in this Clause 6 as if they were the recipient.
- 6.6. The recipient shall be liable for the actions or omissions of the representatives in relation to the Confidential Information as if they were the actions or omissions of the recipient.
- 6.7. Subject to this Clause 6, the Parties shall not disclose, publish or otherwise reveal or make available any Confidential Information to any third party unless specifically and expressly authorised and consented by the other

Party.

6.8. Subject to the provisions of this Clause 6, a party may disclose Confidential Information to the minimum extent required by:

(a) an order of any court of competent jurisdiction or any regulatory, judicial, governmental or similar body or any taxation authority of competent jurisdiction.

(b) the laws or regulations of any country to which its affairs are subject.

6.9. Before a Party discloses any Confidential Information pursuant to Clause 6.8 it shall, to the extent permitted by law, use all reasonable endeavors to give the other Party as much notice of this disclosure as possible.

6.10. If a Party is unable to inform the other Party before Confidential Information is disclosed pursuant to Clause 6.8 it shall, to the extent permitted by law, inform the other Party of the full circumstances of the disclosure and the information that has been disclosed as soon as reasonably practicable after such disclosure has been made.

7. Return or Destruction of Confidential Information

7.1. If so requested by the discloser at any time by notice in writing to the recipient, the recipient shall within ten (10) calendar days:

(a) destroy or return to the discloser all documents and materials and any copies containing, reflecting, incorporating or based on the discloser's Confidential Information.

(b) erase all the discloser's Confidential Information from its computer and communications systems and devices used by it, or which is stored in electronic form.

(c) to the extent technically and legally practicable, erase all the discloser's Confidential Information which is stored in electronic form on systems

and data storage services provided by third parties; and

- (d) provide written confirmation to the discloser that it has complied with the requirements of this Clause 7.1.

7.2. Nothing in Clause 7.1 shall require the recipient to return or destroy any documents and materials containing or based on the discloser's Confidential Information that the recipient is required to retain by applicable law, or to satisfy the requirements of a regulatory authority or body of competent jurisdiction, to which it is subject. The provisions of this Agreement shall continue to apply to any documents and materials retained by the Recipient pursuant to this Clause 7.2.

8. Warranties & Limitation of Liability

8.1. Party 1 represents, warrants and agrees that:

- (a) It is a corporation duly organized, validly existing and in good standing under the law.
- (b) It will provide reasonable care, skills and professional expertise in the performance of the Verification and the presentation of the results thereof. Party 2 shall provide Party 1 with such information and assistance as may be reasonably required by Party 1 for the provision of the Verification under this Agreement.
- (c) The results and deliverables of the Verification will be provided to Party 1 on an "AS IS" basis. Party 1 disclaims all warranties, express or implied, including but not limited to the implied warranties of merchantability and fitness for a particular purpose and accepts no liability with respect to usage of the results and deliverables of the written deliverables.
- (d) The use of the results and deliverables of the Verification will be left to the discretion of Party 2, and Party 1 shall not responsible for any claims or liabilities associated, either directly or indirectly, with the use of any results and deliverables arising from the Verification by Party 2, its

subsidiaries, affiliates, associates, agents or any parties.

8.2. Party 2 represents, warrants and agrees that:

- (a) It is a corporation duly organized, validly existing and in good standing under the law.
- (b) It shall not have any claim whatsoever (whether under this Agreement, in tort or otherwise) against Party 1 and its officers, directors, employees, agents, affiliates and successors arising from or in relation to or in connection with the Verification or the results and deliverables, and Party 2 hereby irrevocably and unconditionally waives any such claim if Party 2 does have any such claim.

9. Term & Termination

- 9.1. This Agreement shall commence on the Effective Date and shall remain in force for a term of 6 months, or until the date on which the Report is accepted, whichever is earlier.
- 9.2. Without affecting any other right or remedy available to it, either Party shall have the right to terminate this Agreement on giving the other Party not less than [•] ([•]) months' written notice of termination.
- 9.3. Without prejudice to any other rights, either Party shall have the right to terminate this Agreement with immediate effect by giving written notice to the other Party if:
 - (a) The other Party is in material breach of this Agreement and such default shall continue uncured for a period of [•] ([•]) business days after receipt by the other Party of written notice thereof.
 - (b) The other Party is unable to pay its debts when due or shall make any assignment for the benefit of creditors, or shall file or permit to be filed any petition under the bankruptcy or insolvency laws of any jurisdiction, country or place, or shall have or suffer a receiver or trustee to be

appointed for its business or property, or be adjudicated a bankrupt or an insolvent.

- (c) The other Party fails to perform any of the material terms, conditions, agreements or covenants contained in this Agreement which breach is irremediable.

10. Effect of Expiration of Termination

- 10.1. Upon the expiration or termination of this Agreement, all rights granted to each Party hereunder shall automatically and immediately revert to the granting Party.
- 10.2. Upon expiration of this Agreement, the Parties shall immediately begin discussions on entering into a joint research and development agreement for the purpose of fully implementing the Technology into the Project once it is verified that the Project is viable. Party 2 shall consider whether to proceed to the phase of joint research and development and notify Party 1 of its decision in writing within 1 month after completing the checking of the Report.

11. No Partnership, Agency or License

- 11.1. Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute any Party the agent of another Party, authorize any Party to make or enter into any commitments for or on behalf of any other Party, or grant or confer any rights by license by one Party to another Party in relation to the Purpose or any Confidential Information.
- 11.2. Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

12. General

12.1. Assignment and other dealings

- (a) Neither Party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement without the other Party's expressed prior written consent.

12.2. Entire Agreement

- (a) This Agreement constitutes the entire understanding between the Parties relating to the subject matter of this Agreement at the date hereof to the exclusion of any terms implied by law which may be excluded by contract, and terminates and supersedes all previous agreements, written or oral, course of dealings and arrangements between the Parties.
- (b) No statements or agreements, oral or written, made prior to or at the signing hereof shall vary or modify the written terms hereof; and neither Party shall at any time claim any amendment, modification or release from any provision hereof by mutual agreement, acknowledgement, or otherwise, unless such amendment is in writing signed by both Parties and makes specific reference to this Agreement.

12.3. Variation

- (a) No variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their authorized representatives).

12.4. No Waiver

- (a) No failure of any Party to exercise, and no delay by it in exercising, any right, power or remedy in connection with this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise preclude any other or further exercise thereof.
- (b) No instances of bankruptcy, receivership, assignment, attachment or seizure procedures, whether initiated by or against either Party, nor by the rejection of any agreement between the Parties, by a trustee of either Party in case of bankruptcy, or by either Party as a debtor-in-possession

of either Party shall operate as a waiver of the rights and obligations contained herein.

- (c) Any express waiver of any breach of this Agreement shall not be deemed to be a waiver of any subsequent breach, whether such breach or default is the same as, similar to, or different from the breach waived.

12.5. Severability

- (a) If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.
- (b) If any provision of part-provision of this Agreement is deemed deleted under Clause 12.5(a) above, the Parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

12.6. Notices

- (a) Any notice required by this Agreement or given in connection with it, shall be in writing and given to the other Party by hand or by registered mail, or by prepaid postage, or by a courier for next business day delivery agreed by both Parties.
- (b) Any notice required by or given in connection with this Clause 6.9 or Clause 6.10 shall be given in writing at least thirty (30) days before such disclosure, and all asserted grounds for disclosure shall be stated clearly therein.
- (c) This Clause 12.6 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

12.7. Third Party Rights

- (a) The Contracts (Right of Third Parties) Ordinance (Chapter 623 of the laws of Hong Kong) shall not apply to this Agreement and unless specifically provided herein, no person other than the Parties hereto shall have any rights under it nor shall it be enforceable by any person other than the Parties hereto.

12.8. Counterparts

- (a) This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

13. Governing Law and Jurisdiction

- 13.1. The validity, construction and performance of this Agreement shall be governed and interpreted in accordance with the laws of Hong Kong.
- 13.2. Each party hereby irrevocably submits to the exclusive jurisdiction of the courts of Hong Kong for the resolution of any claim, dispute or matter howsoever arising under or in connection with this Agreement.

[Signature Page to Follow]

IN WITNESS whereof the Parties hereto have hereunto executed this Agreement the day and year first hereinbefore written.

SIGNED BY **[Name of Party 1]**)
)
its director(s) / authorised signature(s) (duly)
authorised by resolution of the board of)
directors) for and on behalf of **[Name of Party**)
1] whose signature(s) is/are verified by / in the)
presence of:)
) _____

Signature of witness: _____

Name of witness: _____

SIGNED BY **[Name of Party 2]**)
)
its director(s) / authorised signature(s) (duly)
authorised by resolution of the board of)
directors) for and on behalf of **[Name of Party**)
2] whose signature(s) is/are verified by / in the)
presence of:)
) _____

Signature of witness: _____

Name of witness: _____

Schedule 1

[Technology]

Schedule 2

[Data]

Schedule 3

[Preliminary Schedule]

Sample Agreement #3: Collaborative R&D Agreement

This AGREEMENT is made on the [•] day of [month] [year]

BETWEEN: -

1. [FULL COMPANY NAME] of [REGISTERED ADDRESS] (“**Client**”), incorporated and registered in [];

AND

2. [FULL COMPANY NAME] of [REGISTERED ADDRESS] (“**Researcher**”), incorporated and registered in []

(each a “**Party**”, and collectively “**Parties**”)

WHEREAS

- A. WHEREAS Researcher is a company registered in Hong Kong.
- B. WHEREAS Client wishes to obtain services from Researcher on [details of the project] with the specific scope of work and deliverables as described in Schedule 1 to this Agreement (hereinafter referred to as the “**Research Services**”).

NOW, THEREFORE, in consideration of the mutual promises and undertakings set forth herein, the Parties agree as follows:

1. Definitions

“**Agreement**” means this agreement and any supplement, amendment or variation thereto or thereof made in accordance with the provisions of this agreement.

“**Principal Investigator**” shall be the main contact person of Researcher under this Agreement as designated by Researcher from time to time.

2. **Engagement of Research Services**

2.1 In consideration of Client's entering into this Agreement, Researcher will provide the Research Services and deliverables to Client as set forth in Schedule 1 to this Agreement upon the terms and conditions of this Agreement. The Research Services will commence after signing of this Agreement and upon receipt by Researcher of the full payment as stipulated in Clause 3.1 and proceed as per the time schedule indicated in Schedule 1.

2.2 **Principal Investigator**

Professor [name] is designated by Researcher to be the initial Principal Investigator under this Agreement. [If, for any reason, Professor [name] is unable to continue to serve as Principal Investigator and a successor acceptable to both Researcher and Client is not available, this Agreement shall be terminated as provided in Clause 6.]

2.3 **Liaison**

[Name] will be Client's liaison officer for the Research Services.

2.4 Researcher shall only be obligated to provide the Research Services as expressly specified in Schedule 1 to this Agreement but not other services not expressly specified herein. In particular, unless otherwise agreed, Researcher shall have no obligation to update or further modify the results of the Research Services after completion of the Research Services. Any additional service which is not expressly specified in this Agreement shall be subject to separate mutual agreement between Researcher and the Client. Without limiting the generality of the foregoing, Researcher reserves the right to reject any request for additional services.

3. **Payment**

3.1 Client will pay Researcher a total non-refundable sum of HK\$[•] upon

signing of this Agreement. Said amount will be paid by Client in favour of Researcher within thirty (30) days of receipt by Client of an invoice issued by Researcher. So far as payment is concerned, time is of the essence.

- 3.2 All payments made pursuant to this Agreement shall be in Hong Kong dollars. Payments shall be made by wire transfer or by cheque made payable to [insert Researcher company name or any other recipient name].
- 3.3 Any payments by Client that are not paid within thirty (30) days after such payments are due under this Agreement shall bear interest, to the extent permitted by law, at the Hong Kong Dollar Prime Rate as reported by Hang Seng Bank Limited on the date such payment is due.

4. **Intellectual Property Rights**

- 4.1 Researcher will utilize the background intellectual property specified in Schedule 2 (hereinafter referred to as “**Researcher Background Intellectual Property**”) in providing the Research Services. Client agrees and acknowledges that the entire right and title to all Researcher Background Intellectual Property shall remain solely and exclusively owned by Researcher, and Researcher shall have the right to utilize and further develop Researcher Background Intellectual Property for any purposes with any parties. Except as expressly provided for under this Agreement, Client shall not have any interest whatsoever in Researcher Background Intellectual Property.
- 4.2 In the event certain background intellectual property (hereinafter referred to as “**Client Background Intellectual Property**”) owned by Client are required to be used by Researcher in providing the Research Services, Client shall grant to Researcher a royalty-free, non-exclusive, non-transferrable, non-sublicensable, and irrevocable license to use such Client Background Intellectual Property solely for the purpose of conducting the Research Services. Researcher agrees and acknowledges that the entire right and title to all Client Background

Intellectual Property shall remain solely and exclusively owned by Client and that Client shall have the right to utilize and further develop Client Background Intellectual Property for any purposes with any parties. Except as expressly provided for under this Agreement, Researcher shall not have any interest whatsoever in Client Background Intellectual Property.

- 4.3 The ownership of all right, title and interest in the results directly generated from the Research Services and the associated intellectual property rights (hereinafter referred to as “**Foreground Intellectual Property**”) shall vest and be owned absolutely by the Client, save that the relevant investigators of Researcher shall enjoy any and all moral rights as inventors to any such Foreground Intellectual Property.
- 4.4 Where the Foreground Intellectual Property incorporates any Researcher Background Intellectual Property, Researcher shall grant to the Client a worldwide, royalty-free, non-exclusive, non-transferrable and irrevocable license, sublicensable to Client’s affiliates, to use such Researcher Background Intellectual Property for the purpose of utilizing the deliverables from the Research Services and future commercialization, and for no other purpose.
- 4.5 Ownership of all right, title and interests in any intellectual property rights created during the course of the Research Services that are not directly related to the Research Services and are not required in order for Client to utilize the Foreground Intellectual Property shall be determined in good faith based on inventive contribution and in consent through a written agreement between the Parties. Each Party shall solely own any such intellectual property rights that are generated solely by its employees, independent contractors, or consultants.

5. **Confidentiality and Similar Research Services**

- 5.1 For the purposes of this Agreement, “**Confidential Information**” means all information and/or materials disclosed by one Party to the other Party in confidence hereunder which information and/or materials are marked

as confidential or proprietary, or if disclosed verbally, reduced to writing and delivered to the receiving Party, marked as confidential, within fifteen (15) days after the date of disclosure.

- 5.2 Confidential Information shall not include information which (i) was in the public domain at time of disclosure, (ii) is disclosed with the prior written approval of the disclosing Party, (iii) becomes known to the receiving Party on a non-confidential basis from a source other than the disclosing Party which is not prohibited from disclosing such information, (iv) is independently developed by the receiving Party, or (v) is disclosed pursuant to a government or court order.
- 5.3 Both Parties shall maintain confidential any Confidential Information both during the term of this Agreement and for three (3) years after its completion or termination, and both Parties shall use the Confidential Information solely for the purposes of this Agreement.
- 5.4 Notwithstanding anything contained herein, each Party may disclose Confidential Information to its officers, employees, consultants and agents and students on a need-to-know basis to facilitate performance of the Research Services, provided that such persons agree to be bound by terms at least as restrictive as those contained herein.
- 5.5 Notwithstanding any provision in this Agreement, Researcher may publish the Research Services after providing Client with a fifteen (15) day period in which to review each publication to identify any inadvertent disclosure of Confidential Information.
- 5.6 Notwithstanding any provision in this Agreement, Client acknowledges and agrees that Researcher may use the name of Client, the title and the scope of the Research Services solely for internal reporting purposes.
- 5.7 Client agrees and acknowledges that Researcher performs, for other persons or companies, services (the “**Other Services**”) of a like nature or similar in whole or in part to the Research Services and it is expressly understood that nothing herein contained shall prevent, or is intended to

prevent, Researcher from performing or continuing to perform hereafter the Other Services for any other persons or companies whatsoever on the condition that the performance of the Other Services shall not interfere with the proper performance of the Research Services to be rendered by Researcher to Client hereunder.

- 5.8 Notwithstanding the obligations of confidentiality and non-use set forth in this Clause 5, the receiving Party shall be permitted to disclose the other Party's Confidential Information that is required to be disclosed to comply with applicable laws, court order or governmental regulations, provided that the receiving Party provides prior written notice of such disclosure to the disclosing Party and takes reasonable and lawful actions to avoid and/or minimize the degree of such disclosure. The prior written notice must be given as soon as reasonably possible in order to permit the Party originally disclosing such information to challenge such disclosure or to seek a protective order or some other accommodation to protect the confidentiality of the information that is required to be disclosed.

6. **Termination**

- 6.1 Either Party (in this Clause called the "**Terminating Party**") shall be entitled to terminate this Agreement by written notice to the other Party if that Party commits any breach of any provision of this Agreement and, in the case of a breach capable of remedy, fails to remedy the same within fifteen (15) days after receipt of a written notice from the Terminating Party specifying in detail the breach.
- 6.2 Either Party shall be entitled to terminate this Agreement by providing the other Party with thirty (30) days' written notice.
- 6.3 Client shall pay Researcher for the part of Research Services that has been conducted by Researcher and the expenses committed or incurred by Researcher prior to the termination of this Agreement. Researcher shall have no obligations to provide any part of the Research Services to Client upon the termination of this Agreement.

- 6.4 In the event of the termination of this Agreement, Client shall retain ownership of the results and deliverables of the Research Services completed up to and including the date of termination. No refund will be made by Researcher upon termination of this Agreement in any circumstances. Any termination of this Agreement shall be without prejudice to any other rights a Party may be entitled to at law or under this Agreement and shall not affect any accrued rights of either Party.
- 6.5 Clauses 4, 5, 6.3, 6.4, 6.5, 7.2 to 7.7, 7.9 to 7.12, 8.7 and 8.8 shall survive any expiration or termination of this Agreement.

7. **Warranty and Limitation of Liability**

- 7.1 Researcher agrees to provide reasonable care, skills and professional expertise in the performance of the Research Services and the presentation of the results thereof. Client shall provide Researcher with such information and assistance as may be reasonably required by Researcher for the provision of Research Services under this Agreement.
- 7.2 The results and deliverables of the Research Services and the Foreground Intellectual Property (if any) will be provided to Client on an "AS IS" basis in accordance with the rights granted under Clause 4 of this Agreement. Researcher disclaims all warranties, express or implied, including but not limited to the implied warranties of merchantability and fitness for a particular purpose and accepts no liability with respect to usage of the results and deliverables of the Research Services and Foreground Intellectual Property (if any).
- 7.3 Subject to the rights granted under Clause 4 of this Agreement, the use of the results and deliverables of the Research Services and Foreground Intellectual Property (if any) will be left to the discretion of Client, and Researcher is not responsible for any claims or liabilities associated, either directly or indirectly, with the use of any results and deliverables arising from the Research Services and Foreground Intellectual

Property (if any) by Client, its subsidiaries, affiliates, associates, agents or any parties.

- 7.4 Researcher shall make no warranty as to the patentability of Researcher Background Intellectual Property, results and deliverables of the Research Services and Foreground Intellectual Property (if any).
- 7.5 Researcher makes no warranties of non-infringement with respect to any third-party rights and title, including patent and intellectual property rights, with regard to the Researcher Background Intellectual Property, results and deliverables of the Research Services and Foreground Intellectual Property (if any).
- 7.6 Client must not use (or permit any other party to use) the name of Researcher or any variation, adaptation, or abbreviation thereof, or any name of their employees, or any registered or unregistered trademarks, service marks, business names, trade names, and/or logos owned or controlled by Researcher in any literature or announcements relating to the Research Services and this Agreement, or for product and/or service endorsement and public promotion without obtaining prior written permission from Researcher, which shall not be unreasonably withheld.
- 7.7 Notwithstanding anything in this Agreement, Client shall not claim, sue, challenge or bring any lawsuits and proceedings against Researcher in connection to the use of the Researcher Background Intellectual Property and/or the results and deliverables of the Research Services and/or the Foreground Intellectual Property (if any), and irrevocably and unconditionally agrees to release Researcher and its officers, directors, employees, agents, affiliates, successors and assignees from any and all liability for any and all loss, harm, damage or claim of any kind (whether under this Agreement, in tort or otherwise) arising from or in relation to or in connection with the Research Services or the results and deliverables of the Research Services or the Foreground Intellectual Property (if any) or the Researcher Background Intellectual Property or this Agreement and waive any rights which Client may have to claim against any of them. Further, Researcher shall in no event be liable to Client for loss of profits,

business, revenue, goodwill or for indirect or consequential loss or damage.

- 7.8 Notwithstanding anything in this Agreement, neither Party shall be in breach of this Agreement if it fails to discharge any obligation imposed on it hereunder, if the sole reason for the failure is any cause or event outside the control of the Party in question, including terrorism, war, military action, riot, acts of government, act of God, earthquake, typhoon, storm, extreme weather, flooding, interruption of water, power or any essential supply, fire, arson or any criminal act by any third party, trade or labour disputes or any other cause or event outside the reasonable control of the Party in question. The Party invoking this clause shall give the other Party written notice and full particulars of such force majeure event as soon as possible after the occurrence of the cause upon which the Party is relying. Both Researcher and Client shall use reasonable efforts to mitigate the effects of any force majeure on their respective part.
- 7.9 Notwithstanding anything in this Agreement, Researcher's aggregate liability (if any) to Client (whether under this Agreement, in tort or otherwise) shall not in any event exceed the actual sum already paid by Client to Researcher under this Agreement.
- 7.10 Subject to the rights granted under Clauses 4 of this Agreement, in the event Client uses the results and deliverables of the Research Services and/or the Foreground Intellectual Property (if any) for any commercial purposes, Client warrants that it has full responsibility to control the specification, material, quality, manufacturing method of any products and/or services generated and/or derived from the use of the results and deliverables of the Research Services and/or the Foreground Intellectual Property (if any); and shall comply with all the relevant laws and regulations controlling the export of certain commodities and technical data including but not limited to the relevant laws and regulations which prohibit, or require a license for, the export of certain types of commodities and technical data to specific countries. Client shall further acknowledge and agree that the results and deliverables of the

Research Services and/or the Foreground Intellectual Property (if any) shall only be used for non-military applications. Client hereby gives written assurance to Researcher that it shall comply with all the relevant laws and regulations, that it shall be solely liable for any violation of such laws and regulations by itself, and that it shall fully indemnify, defend and hold harmless Researcher against the consequences of any such violation. For the avoidance of doubt, Client shall be responsible to conduct freedom-to-operate searches and infringement clearance on their products and/or services prior to commercialization.

7.11 Notwithstanding anything in this Agreement, Client hereby agrees and acknowledges that at all times it shall not have any claim whatsoever (whether under this Agreement, in tort or otherwise) against Researcher and its officers, directors, employees, agents, affiliates and successors arising from or in relation to or in connection with the Research Services or the results and deliverables of the Research or the Foreground Intellectual Property (if any) or the Researcher Background Intellectual Property or this Agreement, and Client hereby irrevocably and unconditionally waives any such claim if Client does have any such claim.

7.12 Client warrants and undertakes that it, its employees, agents, consultants or any personnel participate in the Research Services will not commit and have not committed any offense under the Prevention of Bribery Ordinance in relation to the Research Services under this Agreement.

8. **Miscellaneous**

8.1 The Parties enter into this Agreement as independent contractors. Nothing herein shall be construed as establishing any employer/employee, partnership or joint venture relationship between the Parties. Neither Party is authorized to act as agent of any other Party save as authorized by this Agreement.

8.2 The benefit or burden of this Agreement shall not be dealt with in any

way by either Party whether by assignment, sub-licensing or otherwise without the prior written consent of the other Party save as expressly authorized by this Agreement.

- 8.3 The invalidity or unenforceability of any particular provision of this Agreement will not in any way affect any other of its provisions and if any provision is held to be invalid or unenforceable, the remainder of this Agreement will be construed in all respects as if the invalid or unenforceable provision had been omitted.
- 8.4 This Agreement may not be supplemented or amended in any way except by written consent of all the Parties.
- 8.5 This Agreement constitutes the entire agreement between the Parties for the subject matter referred to in this Agreement. Any prior arrangements, agreements, representation or undertakings in respect of the Research Services are superseded.
- 8.6 The Parties agree that a spirit of co-operation and respect for one another is of utmost importance to a mutually satisfactory relationship. If disputes do arise, the Parties will make every effort to come to a fair, practical and speedy adjustment to the differences.
- 8.7 This Agreement is made under and shall be construed according to the Laws of the Hong Kong Special Administrative Region of the People's Republic of China, without reference to conflicts of law provisions or principles. Any dispute, controversy or claim arising out of or in connection with this Agreement, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force. The appointing authority shall be Hong Kong International Arbitration Centre ("**HKIAC**"). The place of arbitration shall be in Hong Kong at HKIAC. There shall be only one arbitrator. The language to be used in the arbitral proceedings shall be English.
- 8.8 This Agreement is personal to and is made solely for the benefit of the

Parties hereto and shall not create or give any rights to or purport to confer any benefits on any third parties whatsoever. The application of the Contracts (Rights of Third Parties) Ordinance (Chapter 623 of the laws of Hong Kong) and/or any comparable law in any jurisdiction giving to, or conferring on, third parties the right to enforce any terms of this Agreement is expressly excluded, and no terms of this Agreement are, or intended to be, enforceable by any person not being a party to it. The rights of the Parties hereto to terminate, rescind or agree any amendment, waiver, variation or settlement under or relating to this Agreement, or any terms of this Agreement, are not subject to the consent of any third party.

[Signature Page to Follow]

IN WITNESS whereof the Parties hereto have hereunto executed this Agreement the day and year first hereinbefore written.

SIGNED BY **[Name of Client]**)
)
its director(s) / authorised signature(s) (duly)
authorised by resolution of the board of)
directors) for and on behalf of **[Name of)**
Client] whose signature(s) is/are verified by /)
in the presence of:)
) _____

Signature of witness: _____

Name of witness: _____

SIGNED BY **[Name of Researcher]**)
)
its director(s) / authorised signature(s) (duly)
authorised by resolution of the board of)
directors) for and on behalf of **[Name of)**
Researcher] whose signature(s) is/are)
verified by / in the presence of:)
) _____

Signature of witness: _____

Name of witness: _____

Schedule 1:

Scope of Work

[Insert scope of the project]

Deliverables

[Insert the required deliverables]

Time Schedule

Milestones		Timeline
1	[Insert details of first milestone]	
2	[Insert details of second milestone]	
3	[Insert details of third milestone]	

Schedule 2:

Researcher Background Intellectual Property

Title:

Patent Status:



Sample Agreement #4: License Agreement

This AGREEMENT is made on the [•] day of [month] [year]

BETWEEN: -

3. [FULL COMPANY NAME] of [REGISTERED ADDRESS] ("**Licensor**"), incorporated and registered in [];

AND

4. [FULL COMPANY NAME] of [REGISTERED ADDRESS] ("**Licensee**"), incorporated and registered in []

(each a "**Party**", and collectively "**Parties**")

WHEREAS:

- A. Licensor is the developer of [technology] and owns all patents, know-how, and other intellectual property rights with respect to such technology (the "**Technology**").
- B. Licensee desires to obtain from the Licensor, and Licensor desires to grant to the Licensee, an [exclusive/non-exclusive] license under the Technology and to develop and commercialize the Technology in the Field in the Territory (each as defined below), subject to the terms and subject to the conditions set out below.

NOW, THEREFORE, in consideration of the mutual covenants, conditions and terms hereinafter set forth, and for other good and valuable consideration, **IT IS HEREBY AGREED** as follows:

1. DEFINITIONS AND INTERPRETATION

- 1.1. In this Agreement the following expressions shall have the following meanings unless the context otherwise requires: -

“Business Day”	shall mean a day other than a Saturday, Sunday or public holiday in the Hong Kong Special Administrative Region during which banks are open for business.
“Confidential Information”	shall mean any data or information concerning or connected with this Agreement or any of the transactions or arrangements contemplated herein, including the Technology and any Intellectual Property Rights contained therein.
“Effective Date”	shall mean the date of this Agreement.
“Technology”	shall mean the [details of technology], as indicated in the attached Schedule 1.
“Term”	Commencing on [•] and expiring on [•] (both days inclusive) unless sooner terminated as provided herein.
“Territory”	Hong Kong Special Administrative Region, the People’s Republic of China and [•] only.

1.2. In this Agreement, unless otherwise specified:

- (a) Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
- (b) The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.

1.3. a reference to a statute or statutory instrument or any of their provisions is to be construed as a reference to that statute or statutory instrument or such provision as the same may have been or may after the Effective Date be amended or re-enacted;

1.4. grammatical variants of terms defined in this Clause 1 will bear their

corresponding meanings; and

1.5. a reference to:

- (a) "approval" or "consent" means the prior written approval or consent of the relevant party.
- (b) "notice" means written notice as defined in Clause 15;
- (c) a "third party" means any person other than the parties or their respective Affiliates.

2. GRANT OF LICENSE

2.1. The Licensor hereby grants to the Licensee as of the Effective Date, subject to, and in accordance with, for the term of this Agreement, a non-exclusive, non-transferable license to make available and use the Technology in the Territory.

2.2. The Licensor further agrees to provide to the Licensee, at its best endeavors and as soon as practicable upon the Licensee's request, maintenance services and deliverables during the Term, including without limitation: -

2.2.1. Implementation of software, including installation, development, usability test, deployment, user acceptance test, performance customization, commercial launch, and support after commercial launch thereof; and

2.2.2. Ongoing support of the software including maintenance thereof and performance customization based on the Technology.

3. REMUNERATION AND PAYMENT

3.1. In consideration of the grant of license and maintenance services pursuant to clause 2 hereinabove, the Licensee shall pay to the Licensor: -

3.1.1. an upfront payment of HK\$[•] within fourteen (14) days of the Effective

Date of this Agreement; and

3.1.2. a yearly license fee of HK\$[•] within fourteen (14) days of the anniversary date of this Agreement, for the Term of this Agreement.

3.2. All payments will be made in Hong Kong dollars to the Licensor's account (details as follows) or as otherwise directed by the Licensor:

Bank name:	
Bank address:	
Account holder name:	
Account number:	
SWIFT code:	

3.3. The Licensee shall pay, and hold the Licensor forever harmless from, all taxes, customs duties, levies, imposts or any similar charges now or hereafter imposed.

3.4. The Licensee shall keep and maintain accurate books of account and records covering all transactions relating to this Agreement at its usual place of business. The Licensor or its designee shall be entitled to:

3.4.1. audit and inspect such books and records, at any time or times during or after the Term of the Agreement during reasonable business hours and upon [•] ([•]) days prior written notice to the Licensee; and

3.4.2. obtain copies and summaries of such books and records, solely with reference to transactions relating to the Agreement. The Licensee shall retain all such books of account and records for a minimum of [•] ([•]) months after expiration or termination of this Agreement.

4. INTELLECTUAL PROPERTY

4.1. Intellectual Property Rights shall mean all vested contingent and future intellectual property rights including but not limited to goodwill, reputation, rights in confidential information, copyright, trade marks, logos, service marks, devices plans, models, diagrams, specifications, source and object code materials, data

and processes, design rights, patents, know how, trade secrets, inventions, get up, database rights (whether registered or unregistered) or registration for the protection of these rights and all renewals and extensions thereof existing in any part of the world whether now known or in the future created.

- 4.2. The Licensee acknowledges that the Licensor is the owner of the Technology and all Intellectual Property Rights contained therein, and the Licensee shall not challenge the Licensor's claim to ownership of the Technology. Any goodwill derived from the use by the Licensee of the Technology shall accrue to the Licensor.
- 4.3. Neither this Agreement nor any action, omission or statement by the Licensor or the Licensee, nor the Licensee's use of the Technology shall in any way confer or imply an assignment of rights, title or interest thereto, or to any element or portion thereof or any other rights, including, without limitation, copyrights, trade marks, trade names, service marks, patents, know-how, or goodwill associated therewith, the ownership of which shall be and at the times remain solely and exclusively with the Licensor.
- 4.4. The Licensee shall not, during the Term, any extension and/or renewal thereof, or at any time thereafter, dispute or contest, directly or indirectly, the validity of any of the Intellectual Property Rights pertaining hereto or the Licensor's ownership thereof, or in any way prejudice the Licensor's rights of ownership thereof, nor shall the Licensee assist or aid others whether directly or indirectly in doing so.
- 4.5. The Licensee shall not, directly or indirectly, do, assist the doing of, nor permit to be done any act that may diminish or might jeopardize or invalidate any of the Licensor's rights in the Intellectual Property Rights.

5. LICENSEE'S REPRESENTATIONS, WARRANTIES & INDEMNIFICATION

- 5.1. The Licensee represents, warrants and agrees that:

- 5.1.1. It is a corporation duly organized, validly existing and in good standing under the law.

- 5.1.2. It has full corporate power and authority to conduct its business as now being conducted and as contemplated hereby and holds all necessary licenses and permits from all government entities for the proper conduct of said business.
- 5.1.3. It has the unrestricted right, power and authority to enter into this Agreement and to perform its obligations hereunder, and neither the execution and delivery of this Agreement nor the consummation of the actions contemplated hereby will (i) violate any provisions of its charter documents, (ii) violate, conflict with or constitute a default under any contract to which it is a party or (iii) violate any law binding on it.
- 5.1.4. It will comply with all applicable laws, regulations, ordinances and other requirements involving the use of the Technology and the conduct of the Licensee's business in connection therewith.
- 5.1.5. It will not harm, misuse or bring disrepute to the Technology or the Intellectual Property Rights.
- 5.2. The Licensee hereby indemnifies and agrees to defend and hold harmless forever the Licensor, and their respective agents, representatives, employees, attorneys, successors and assigns from and against any and all claims, demands, losses, costs and expenses (including attorneys' fees reasonably incurred by Licensor), investigations, damages, judgments, penalties and liabilities of any kind or nature whatsoever, directly or indirectly arising out of, resulting from, relating to or connected with:-
 - 5.2.1. any unauthorized use of the Technology by the Licensee and/or its related companies.
 - 5.2.2. any breach of any obligation, representation, warranty or covenant of the Licensee and/or its related companies.
 - 5.2.3. any alleged defects and/or inherent dangers in or use by any person or entity of the Technology.

- 5.2.4. the Licensee's design, manufacture, distribution, shipment, advertising, promotion or sale of the Technology or the promotional by itself and/or by its related companies.
 - 5.2.5. any defamation or invasion of the right of privacy, publicity or other personal or property right.
 - 5.2.6. any breach of any confidentiality or trade secret provision or agreement;
 - 5.2.7. any use of any design, patent, process, method or device.
 - 5.2.8. any infringement of any Intellectual Property Rights not licensed hereunder by the Licensor; or
 - 5.2.9. the Licensee's non-compliance with any applicable federal, state or local laws or with any other applicable regulations.
- 5.3. The Licensee shall as soon as it becomes aware of (i) any use or proposed use by any third party which may amount to infringement of the Intellectual Property Rights, or (ii) any allegations that the Intellectual Property Rights infringes any third party right, promptly notify the Licensor and will make no comment or admission to anyone else regarding these matters. Unless otherwise agreed:
- 5.3.1. The Licensor will have the conduct of all claims regarding infringement or alleged infringement of the Intellectual Property Rights.
 - 5.3.2. The Licensor may direct the Licensee to defend any such claim at the Licensee's sole cost and expense.
 - 5.3.3. The Licensor may, at its option, engage counsel to defend such claim at the Licensee's sole cost and expense for which the Licensee shall pay within [•] ([•]) Business Days upon being invoiced therefore.
 - 5.3.4. No settlement of any claim for which indemnity shall be made hereunder shall be made by the Licensee without the prior written consent of the Licensor.

- 5.3.5. The Licensee shall on request, fully co-operate with the Licensor regarding any such claim.

6. TERM & TERMINATION

- 6.1. This Agreement shall commence on the Effective Date and, unless terminated earlier in accordance with this Clause 6, shall remain in force for the Term.
- 6.2. Without affecting any other right or remedy available to it, the Licensor shall have the right to terminate this Agreement on giving the Licensee not less than [•] ([•]) months' written notice of termination.
- 6.3. Without prejudice to any other rights, the Licensor shall have the right to terminate this Agreement with immediate effect by giving written notice to the Licensee if:
- 6.3.1. The Licensee breaches any term or provision under this Agreement and fails to remedy the same within 30 days of written notice from the Licensor.
- 6.3.2. A second breach of any term of provision under this Agreement, regardless of whether the Licensee had cured any prior failure or breach.
- 6.3.3. If the Licensee is unable to pay its debts when due, or shall make any assignment for the benefit of creditors, or shall file or permit to be filed any petition under the bankruptcy or insolvency laws of any jurisdiction, country or place, or shall have or suffer a receiver or trustee to be appointed for its business or property, or be adjudicated a bankrupt or an insolvent.
- 6.3.4. If the Technology is not being used pursuant to the terms and conditions of this Agreement.
- 6.3.5. If the Licensee fails to perform any of the material terms, conditions, agreements or covenants contained in this Agreement which breach is irremediable.

6.3.6. If there is a material breach of any representation or warranty made by Licensee in connection with this Agreement, and such default shall continue uncured for a period of [•] ([•]) Business Days after receipt by the Licensee of written notice thereof.

6.4. The Licensee will be solely responsible for and will fully indemnify the Licensor in respect of any claims, demands, suits judgment and/or any action including legal proceedings that may be brought against the Licensor and all Licensor's losses, damages, expenses and costs occasioned thereby or resulting therefrom.

7. EFFECT OF EXPIRATION OR TERMINATION

7.1. Upon the expiration or termination of this Agreement, all rights granted to the Licensee hereunder shall automatically and immediately revert to the Licensor.

7.2. Forthwith upon termination or expiration, the Licensee shall discontinue and use its best endeavors to procure its affiliates to discontinue any use of the Technology.

7.3. Each Party shall, within 30 days of termination (i) return to the other Party all copies (including tangible copies, electronic backup copies, and other intangible copies) of any Confidential Information belonging to the other Party, or (ii) destroy and procure its affiliates to destroy the same and provide written confirmation of such destruction to the other Party within ten (10) days of such destruction.

7.4. Each of the Parties shall undertake and procure its affiliates to undertake not to use any Confidential Information of the other Party gained by it to further itself in its trade or to the detriment of the other Party unless such information had become or subsequently becomes public knowledge otherwise than by reason of any act or default of the first-mentioned Party or its affiliates.

7.5. Each Party's rights and obligations existing prior to termination shall survive termination of this Agreement and neither Party shall not be relieved or released from any of these obligations.

8. CONFIDENTIAL INFORMATION

- 8.1. Each Party undertakes to the other Party that it shall (and shall procure that its affiliates shall) respect and keep confidential all Confidential Information of the said other Party, including commercial information of the said other Party to which it may obtain access as a result of the negotiation, performance or otherwise in connection with the terms of this Agreement, and shall (and shall procure that its affiliates shall) ensure that such Confidential Information is not divulged or disclosed to any third party.
- 8.2. At all times during the continuance of this Agreement and after its expiration or termination (howsoever caused), any Party shall, and shall procure that its affiliates shall keep secret and confidential and not, without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed), disclose, communicate or divulge to any person, or make any announcement on, divulge or otherwise make public in any manner any Confidential Information.
- 8.3. Without prejudice to the generality of Clauses 8.1 and 8.2 hereof:
 - 8.3.1. The Licensee agrees that the Technology is proprietary to the Licensor, and that the Technology is Confidential Information.
 - 8.3.2. The Licensee agrees that it will use the same degree of care and means to protect the proprietary rights of the Licensor in the Technology and other Confidential Information belonging to the Licensor as it utilizes to protect its own information of a similar nature, but in any event not less than all reasonable measures.
 - 8.3.3. each Party acknowledges that distribution, copying, duplicating or otherwise reproducing all or any part of Confidential Information of the other Party (except as otherwise provided for by this Agreement) will be considered a material breach of this Agreement; and
 - 8.3.4. the Licensor reserves all rights not otherwise explicitly granted to the Licensee in this Agreement, including, but not limited to any Intellectual

Property Rights or any other rights.

8.4. Notwithstanding anything provided in this Clause 8: -

8.4.1. a Party (the “**Receiving Party**”) shall not be in breach of this Clause 8 where its disclosure of any data or information received from the other Party (the “**Disclosing Party**”) is required either by reason of law or applicable regulation or if the relevant data or information comes into the public domain otherwise than by reason of the default of the Receiving Party or its affiliates or if such disclosure is required for judicial proceedings, or is otherwise required to give effect to this Agreement, provided that:-

(i) the Receiving Party provides written notice to the Disclosing Party the requirement to release Confidential Information of the Disclosing Party (including with the notice a copy of any subpoenas, orders and other documents pertinent to the requirement) so as to afford a meaningful opportunity for the Disclosing Party to seek appropriate protection of its Confidential Information.

(ii) the Receiving Party reasonably co-operates with the Disclosing Party to seek such protection; and

(iii) the Receiving Party does not in any event disclose more Confidential Information than is required by law; and

8.4.2. a Receiving Party shall not be in breach of this Clause 8 where its disclosure of any data or information received from the Disclosing Party is made to the Receiving Party’s professional advisers.

9. NO PARTNERSHIP OR AGENCY

9.1. This Agreement does not constitute and shall not be construed as constituting a partnership, agency, or joint venture between the Licensor and the Licensee. The Licensee shall have no right to obligate or bind the Licensor in any manner whatsoever and nothing herein contained shall give or is intended to give any right

of any kind to any third party.

10. SUB-LICENSING

10.1. The license hereby granted is and shall be personal to the Licensee and shall not be assignable by any action of the Licensee or by operation of law, and any attempt as such assignment shall be null and void.

10.2. The Licensee shall not have the right to grant any sub-licenses. The Licensors reserves all the rights to grant sub-licenses to others regarding the Technology.

10.3. This Agreement shall inure to the benefit of and shall be binding upon the Licensors's successors and assigns.

11. NOTICE

11.1. Whenever notice is required to be given under this Agreement, it shall be deemed to be good and sufficient notice if in writing, signed by an officer or an authorized agent of the party serving such notice and sent by e-mail or mailed by registered or certified mail, or personal delivery or overnight air to the other party at the address stated below unless notification of a change of address is given in writing.

11.2. For the purpose of delivery of notices under this Agreement, the address and e-mail address of the Licensors is:

Address:

Email:

Attention:

11.3. For the purpose of delivery of notices under this Agreement, the address and e-mail address of the Licensee is:

Address:

Email:

Attention:

11.4. Any such notice or communication shall be deemed to have been given on (i) the day such notice or communication is personally delivered, (ii) three (3) days after such notice or communication is mailed by prepaid certified or registered mail, (iii) one (1) working day after such notice or communication is sent by overnight courier, or (iv) the day such notice or communication is sent electronically, provided that the sender has received a confirmation of such electronic transmission.

12. FORCE MAJEURE

12.1. The Licensee agreed that all the employees, managers, executives, directors, contractors of the Licensee shall comply with the terms and conditions of this Agreement.

12.2. Neither party shall be liable for failure to perform any of their obligations hereunder when such failure is caused by or results from events, circumstances, or causes beyond its reasonable control, such as (i) strike, blacklisting, boycott or sanctions however incurred; (ii) acts of God, public enemies, authority of law, embargo, quarantine, riot, insurrection or war; (iii) inability to obtain raw materials; or (iv) any other cause beyond their respective control.

12.3. In the event either party is unable to perform its obligations as a consequence of any of the contingencies set forth in this section for a period of [•] ([•]) months or more, either party hereto may terminate this Agreement, which termination shall relieve each party of any liability to the other based upon such termination.

13. ENTIRE AGREEMENT

13.1. This Agreement contains the entire understanding of the parties. There are no representations, warranties, promises, covenants of understandings, oral or otherwise, other than those herein contained.

14. VARIATION

14.1. The terms of this Agreement may not be amended, modified, waived, discharged or terminated except by the express written agreement signed by the Parties

hereto.

15. NO WAIVER

15.1. No waiver by either party of a breach or default hereunder shall be deemed waiver by such Party of a subsequent breach or default of a like or similar nature.

16. SEVERABILITY

16.1. If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.

16.2. If any provision of part-provision of this Agreement is deemed deleted under Clause 16.1 above, the Parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

17. GOVERNING LAW

17.1. This Agreement, its validity, construction and effect, and any dispute or claim arising out of or in connection thereto shall be governed and construed in accordance with the laws of Hong Kong, without reference to its conflicts of laws' principles.

18. DISPUTE RESOLUTION

18.1. The Parties agree that arbitration shall be the sole, mandatory and exclusive forum to settle any controversy or claim arising out of or relating to this Agreement, or the breach thereof.

18.2. Any dispute, controversy or claim arising out of or relating to the Agreement, or breach hereof, shall be submitted to arbitration under the Hong Kong International Arbitration Centre Administered Arbitration Rules in force when the Notice of Arbitration is submitted in accordance with these Rules.

18.3. The arbitration tribunal ("**Tribunal**") shall consist of one (1) arbitrator. The arbitrator shall be appointed by the Licensor. The place of arbitration shall be Hong Kong and the language to be used in the arbitration shall be English.

18.4. Any award made by the Tribunal shall be final and binding on the Parties, and the Parties agree to be bound thereby and to act accordingly.

18.5. Any award made by the Tribunal may be entered in any court having the jurisdiction thereof.

18.6. The costs of arbitration and the costs of enforcing the arbitration award (including witness expenses and reasonable legal fees) shall be borne by the losing Party, unless otherwise determined by the arbitration award.

19. COUNTERPARTS

19.1. This Agreement may be executed in any number of counterparts by the Parties; each of which when so executed and delivered shall be a duplicate original, but all the counterparts shall together constitute one and the same agreement.

[Signature Page to Follow]

IN WITNESS WHEREOF the parties have entered into this Agreement the day and year first above written.

(“Licensor”)

(“Licensee”)

Signature:
(with authorized company chop)

Signature:
(with authorized company chop)

Name:
Date:

Name:
Date:

Schedule 1
[details relating to the Technology]

Sample Agreement #5: Technology Assignment

This AGREEMENT is made on the [•] day of [month] [year] (the “**Effective Date**”)

BETWEEN: -

3. [FULL COMPANY NAME] of [REGISTERED ADDRESS] (“**Assignor**”),
incorporated and registered in [];

AND

4. [FULL COMPANY NAME] of [REGISTERED ADDRESS] (“**Assignee**”),
incorporated and registered in []

(each a “**Party**”, and collectively “**Parties**”)

WHEREAS: -

- A. The Assignor is the owner of the intellectual property and technology and software assets as shown and/or described in the **First Schedule** (hereinafter called the “**Intellectual Property Assets**”).
- B. The Assignor and the Assignee have agreed that all intellectual property rights, titles to, and interests, including all copyrights, design patents, trademarks, service marks, applications for any of the foregoing, know-how, object code and source codes, and any other similar protected rights subsisting in the Intellectual Property Assets (the “**Intellectual Property Rights**”) are to be assigned from the Assignor to the Assignee thoroughly.

NOW THIS ASSIGNMENT WITNESSETH as follows: -

1. ASSIGNMENT

- 1.1. The Assignor, in consideration of HK\$[•] and other valuable and good consideration, the receipt and sufficiency of which are hereby acknowledged by the Assignee, IRREVOCABLY ASSIGNS to the Assignee with full worldwide

right, title and interest absolutely in and to the Intellectual Property Rights in all Intellectual Property Assets including but not limited to systems, computer programs (downloadable or non-downloadable), computer software, documentation and code, including assemblers, applets, compilers, source code, source code listings, object code, data (including image and sound data), design tools and user interfaces, in any form or format, however fixed, software or software recorded, information, messages, data, computer operating systems or programs, computer utility software and programs, recorded computer software and programs, computer utility programs, source codes, platforms of which constituting the Intellectual Property Assets, and all other works which may have been adapted from the Intellectual Property Assets or from which the Intellectual Property Assets themselves may have been adapted whatsoever, and any common law and statutory rights thereof to sue and obtain all remedies against any party.

1.2. The Assignment shall include the right for the Assignee to bring proceedings against any third party in respect of the Intellectual Property Rights, including but not limited to the proceedings against any third party for infringement of the Intellectual Property Rights or for passing off or for otherwise infringing the rights subsisting in the Intellectual Property Rights, and for claiming against past damage.

1.3. On or after the Effective Date, Assignor will, without charge and promptly upon request by the Assignee, as may be requested by the Assignee in order to effect and perfect the grants, conveyances and assignments contained herein or to enable the Assignee to obtain the full benefits of this Agreement and the transactions contemplated hereby: -

1.3.1. deliver to the Assignee all records, data or other documents relating to the Intellectual Property Assets that are in the Assignor's possession.

1.3.2. execute and deliver assignments, licenses, consents, documents or further instruments of transfer, including without limitation the Copyright Assignment in the **Second Schedule**; and

1.3.3. take other reasonable actions, render other assistance and execute other

documents.

1.4. Without limiting the foregoing, the Assignee shall have the exclusive right to use, license, sublicense, prepare derivative works from, and otherwise use and exploit the Intellectual Property Assets and Intellectual Property Rights. The Assignor hereby waives any and all moral rights, including any right to identification of authorship or limitation on subsequent modification, that the Assignor (or its employees, agents or consultants) has or may have in any of the Intellectual Property Assets or Intellectual Property Rights.

2. TRANSFER AND DELIVERY

2.1. On the Effective Date, the Assignor shall deliver to the Assignee:

2.1.1. the Intellectual Property Assets and any related documentation available, [in the medium and method of delivery as agreed];

2.1.2. any and all usernames and passwords (as applicable) to grant the Assignee full, complete and exclusive access to the Intellectual Property Assets; and

2.1.3. an original signed Copyright Assignment as set forth in the **Second Schedule** to be countersigned by the Assignee.

2.2. The Parties agree that the Assignee shall not assume any liabilities associated with the Intellectual Property Assets that arose prior to or on the Effective Date, regardless of whether any such liabilities are determined or asserted after the Effective Date.

3. REPRESENTATIONS AND WARRANTIES

3.1. The Assignor represents and warrants that:-

3.1.1. it has the right, power and authority to enter into this Agreement and assign to the Assignee the rights contemplated in this Agreement.

3.1.2. each of the Intellectual Property Assets are original works and not copied wholly or substantially from any other works.

3.1.3. each of the Intellectual Property Assets are free and clear of any liens or encumbrances.

3.1.4. it has not made any assignment of or granted any license in respect of the rights hereby assigned to any other party.

3.1.5. it is and was at all material times the first owner and exclusive owner of the Intellectual Property Rights.

3.1.6. the Intellectual Property Assets and Intellectual Property Rights will not infringe any third party's intellectual property rights.

3.1.7. it has no knowledge of any facts or circumstances that would render any of the Intellectual Property Rights invalid or unenforceable.

3.1.8. there is no action, claim, proceedings or investigations of any nature pending, or to the Assignor's knowledge, threatened against the Assignor relating to the Intellectual Property Assets and Intellectual Property Rights, nor is there any reasonable basis therefor; and

3.1.9. to the Assignor's knowledge, there is no person or entity infringing or misappropriating the Intellectual Property Assets and Intellectual Property Rights.

4. INDEMNIFICATION

4.1. The Assignor shall indemnify and hold harmless the Assignee and its officers, directors, and employees from and against any and all damages, losses, costs, liabilities and expenses (including reasonable attorneys' fees) arising out of or related to a breach or alleged breach which, if true, would constitute a breach by the Assignor of any of the representations or warranties set forth in clause 3 hereinabove.

4.2. The Assignor's obligation to indemnify the Assignee under clause 4.1 shall be subject to the Assignee: -

4.2.1. providing the Assignor with written notice of any third-party claim; and

4.2.2. providing the Assignor with proper and full information and reasonable assistance to defend and/or settle any such claim or action.

4.3. If the Assignee received notice of a claim that any of the Intellectual Property Assets and/or Intellectual Property Rights infringes any third party's intellectual property rights, or if the Assignee reasonably believes that such a claim may occur, the Assignee shall notify the Assignor. In the event of the foregoing or if Assignor reasonably believes that such a claim may occur, Assignor shall, with the Assignee's written consent, either: (i) procure for the Assignee the right to continue to exercise the rights to such Intellectual Property Assets and Intellectual Property Rights granted to the Assignee under this Agreement; or (ii) provide the Assignee with alternative non-infringing technology with substantially equivalent functionality.

4.4. The Assignor shall have no liability hereunder, with respect to any claim or damages to the extent arising from or relating to:

4.4.1. any modification made to the Intellectual Property Assets by a party other than the Assignor, if such infringement would not have occurred but for such modification; or

4.4.2. any combination of the Intellectual Property Assets by the Assignor hereunder with software, hardware or other technology or materials supplied by anyone other than the Assignor, if such infringement or misappropriation would not have occurred but for such combination.

5. SUCCESSORS AND ASSIGNS

5.1. This Assignment is binding on and shall ensure for the benefit of each party's respective successors, personal representatives and permitted assigns (as the case may be).

6. NOTICE

6.1. Notices under this Agreement shall be in writing and sent to a party's address as set out on the first page of this Agreement. Notice may be given and shall be deemed received (i) by post: two business day after posting and (ii) by hand: on delivery.

7. GOVERNING LAW AND JURISDICTION

7.1. This Assignment shall be governed by and construed in accordance with the laws of Hong Kong and the parties hereto submit to the exclusive jurisdiction of the courts of Hong Kong.

[The rest of this page is intentionally left blank.]

IN WITNESS whereof the parties hereto have hereunto duly executed this Assignment on the day and years first above written.

SIGNED BY **[Name of Assignor]**)
)
its director(s) / authorised signature(s) (duly)
authorised by resolution of the board of)
directors) for and on behalf of **[Name of)**
Assignor] whose signature(s) is/are verified)
by / in the presence of:)
) _____

Signature of witness: _____

Name of witness: _____

SIGNED BY **[Name of Assignee]**)
)
its director(s) / authorised signature(s) (duly)
authorised by resolution of the board of)
directors) for and on behalf of **[Name of)**
Assignee] whose signature(s) is/are verified)
by / in the presence of:)
) _____

Signature of witness: _____

Name of witness: _____

FIRST SCHEDULE

(the “**Intellectual Property Assets**” referred to hereinabove)

No.	Description	Name of Author	Date of Creation
1.	[Insert details of the relevant technology/software/intellectual property assets]		
2.	[Insert details of the relevant technology/software/intellectual property assets]		
3.	[Insert details of the relevant technology/software/intellectual property assets]		

SECOND SCHEDULE
COPYRIGHT ASSIGNMENT AGREEMENT

THIS COPYRIGHT ASSIGNMENT AGREEMENT is made the _____ day _____ of [month] [year]

For good and valuable consideration, the receipt of which is hereby acknowledged, **[Name of Assignor]**, a [•] corporation having its principal place of business at [REGISTERED ADDRESS] (the “**Assignor**”), hereby grants and assigns to **[Name of Assignee]**, a [•] corporation having its principal place of business at [REGISTERED ADDRESS] (the “**Assignee**”) all right (including all software copyright), title and interest whatsoever, throughout the world, in and to the intellectual property assets listed in the table below:-

No.	Description	Name of Author	Date of Creation
1.	[Insert details of the relevant technology/software/intellectual property assets]		
2.	[Insert details of the relevant technology/software/intellectual property assets]		

This assignment is made pursuant to and is subject to all of the terms of the Software Assignment Agreement between the Assignor and Assignee, dated as of [date] [year].

This Agreement becomes effective from the date of execution.

Assignor
[Name of Assignor]

Assignee
[Name of Assignee]

Date:

Date:

Sample Agreement #6: Use Agreement for AI and Software

(This example relates to a use agreement for software and AI services on an online platform, on subscription basis.)

This AGREEMENT is made the [•] day of [month] [year].

BETWEEN

- (1) [Name of Licensor] whose registered office is situated at [Registered address of Licensor] (the “**Provider**”); and
- (2) [Name of Licensee] (Business Registration Certification no.: [•]) whose registered office is situated at [Registered address of the Licensee] (the “**Customer**”)

Provider and Customer shall at times be referred to collectively herein as the “**Parties**”.

RECITALS

- A. Provider has developed and operates an artificial intelligence (“**AI**”) software-as-a-service platform that enables users to [define purpose].
- B. The Customer desires to access and use the Platform (as defined below), and the Provider is willing to provide the Platform subject to the terms and conditions as set forth below.

NOW THEREFORE, in consideration of the mutual covenants, conditions and terms hereinafter set forth, and for other good and valuable consideration, **IT IS HEREBY AGREED** as follows:

1. DEFINITIONS AND INTERPRETATION

- 1.1. In this Agreement the following expressions shall have the following meanings unless the context otherwise requires: -

“**Authorized User**” shall mean all natural persons (employees) of the

Customer who are authorized by the Customer to access and use the Platform for the purposes outlined in this Agreement.

“Effective Date” shall mean the date of this Agreement.

“Intellectual Property Rights” shall mean all vested contingent and future intellectual property rights including but not limited to goodwill, reputation, rights in confidential information, copyright, trade marks, logos, service marks, devices plans, models, diagrams, specifications, source and object code materials, data and processes, design rights, patents, know how, trade secrets, inventions, get up, database rights (whether registered or unregistered) or registration for the protection of these rights and all renewals and extensions thereof existing in any part of the world whether now known or in the future created.

“Order Form” shall mean the order form as set out in Schedule 1.

“Platform” shall mean [insert description or link to the platform]

“Services” shall mean the provision of the Platform to the Customer, as further detailed in the Order Form.

1.2. In this Agreement, unless otherwise specified:

(c) Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.

(d) The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.

1.3. a reference to a statute or statutory instrument or any of their provisions is to be

construed as a reference to that statute or statutory instrument or such provision as the same may have been or may after the Effective Date be amended or re-enacted.

1.4. grammatical variants of terms defined in this Clause 1 will bear their corresponding meanings; and

1.5. a reference to:

(d) "approval" or "consent" means the prior written approval or consent of the relevant party.

(e) "notice" means written notice as defined in Clause 15;

(f) a "third party" means any person other than the parties or their respective Affiliates.

2. GRANT OF LICENSE

2.1. The Provider hereby grants to the Customer as of the Effective Date, subject to, and in accordance with, for the term of this Agreement, a non-exclusive license to use the Platform.

3. REPRESENTATIONS & WARRANTIES

3.1. Each Party represents, warrants and agrees that:

3.1.1. It has full legal power and authority to enter into this Agreement and has taken (or will take) all necessary actions to execute, deliver, and perform its obligations hereunder.

3.1.2. its performance under this Agreement constitutes a binding obligation and does not conflict with or result in a breach of any other agreement, instrument, or obligation to which it is a party, nor does it violate any applicable law, court order, or government regulation.

- 3.2. The Provider makes no warranty regarding the compatibility, fitness, or performance of the Customer's equipment with the Platform. The Provider further disclaims any express or implied warranties regarding the results the Customer may obtain from using the Platform, including, without limitation, any implied warranties of merchantability, fitness for a particular purpose, or non-infringement. The Platform is provided "as is" and "as available."
- 3.3. All warranties, conditions, and other terms implied by law, whether by statute or otherwise, are expressly disclaimed.

4. CUSTOMER OBLIGATIONS

4.1. The Customer shall:

- 4.1.1. secure and maintain all necessary licenses, permissions, legal and regulatory authorizations, consents, and permits required for the Customer to receive the Services and to enable the Provider to deliver the Services and fulfill its obligations under this Agreement.
- 4.1.2. ensure that all information provided to the Provider is accurate, complete, and sufficient for the proper delivery of the Services.
- 4.1.3. refrain from any acts, omissions, or permissions that could weaken, damage, or harm the reputation or goodwill associated with the Provider's Intellectual Property Rights.
- 4.1.4. regularly review and update its Authorized User information to ensure accuracy and compliance with this Agreement.
- 4.1.5. adhere to all usage rights, limitations, and restrictions outlined in this Agreement.
- 4.1.6. comply with all applicable laws and the Provider's mandatory policies; and
- 4.1.7. upon request, certify that the Customer is in full compliance with the

terms of this Agreement.

5. PROVISION AND USE OF THE PLATFORM

5.1. The Customer acknowledges and agrees that:

5.1.1. the Provider does not guarantee that the Platform will operate uninterrupted, in a timely manner, securely, error-free, or free from viruses, vulnerabilities, or other malicious software. No information or advice obtained from the Provider or through the Platform shall create any warranty not expressly stated in this Agreement.

5.1.2. if the Customer is dissatisfied with the Platform, the Customer's sole and exclusive remedy is to discontinue its use; and

5.1.3. where the Platform includes links to other websites and resources provided by third parties, those sites and resources are offered solely for informational purposes. Such websites and any content contained therein are not endorsed by the Provider, and the Provider has no control over their content.

5.2. The Customer acknowledges that the Provider may need to perform maintenance on the Platform or on its related equipment and systems from time to time. While the Provider will use reasonable efforts to provide the Customer with advance notice and minimize disruption, the Customer understands that continuous availability cannot be guaranteed. In no event shall the Customer be entitled to any discount, rebate, or refund of Fees due to interruptions or maintenance activities.

5.3. The Provider reserves the right, without liability, to suspend or restrict the Customer's access to the Platform if the Provider reasonably believes that:

5.3.1. the Customer is in breach of this Agreement or the Provider's policies; and/or

5.3.2. there is a reasonable suspicion or detection of viruses, vulnerabilities,

malware, or other harmful software associated with the Customer's account or usage of the Platform.

5.4. Except as expressly permitted by this Agreement, the Customer shall not, nor allow any Authorized User or any third party to:

5.4.1. reproduce, alter, adapt, modify, arrange, extract, reutilize, exploit, translate, recompile, decompile, disassemble, reverse-engineer, distribute, mix with any other data, or create derivative works from all or part of the Platform.

5.4.2. share, redistribute, sell, sublicense, rent, lease, lend, store, or otherwise make available (including free of charge) the Platform or any content found on it, in any format or medium, without the Provider's prior written consent.

5.4.3. post, access, store, distribute, transmit, or upload to the Platform any materials that are corrupt, contain viruses or vulnerabilities, impersonate, offend, disparage, damage the reputation or goodwill of either Party, interrupt the Services, restrict other customers' use, or are unlawful, harmful, defamatory, obscene, infringing, or otherwise objectionable.

5.4.4. remove or obscure any copyright or other proprietary notices contained in the Platform.

5.4.5. access or use the Platform in any manner intended to bypass account limitations or controls, or that violates any applicable laws, third-party privacy rights, or Intellectual Property Rights.

5.4.6. use the Platform for development purposes or to create applications, software, or technology that interacts with, interferes with, or distorts the performance or integrity of the Platform.

5.4.7. cache, store, or otherwise utilize any portion of the Platform or its content in a way that competes with or reproduces its features, functions, or graphical attributes.

- 5.4.8. conduct tests or performance evaluations of the Platform without the Provider's prior written consent.
- 5.4.9. engage in any conduct that may damage the reputation of the Provider or the Platform.
- 5.4.10. use the Platform to transmit malicious code or unlawful material, or otherwise use the Platform in any manner inconsistent with this Agreement.
- 5.4.11. share, modify, interface, copy, broadcast, reproduce, port, or route the Platform or any part of it to any other equipment, network, or software without the Provider's prior written consent; and
- 5.4.12. use the Platform for any purpose other than as expressly permitted by this Agreement.
- 5.5. The Provider reserves the right, at its sole discretion, to modify the Services and/or the Platform without prior notice, provided that such modifications do not materially degrade the overall functionality of the Platform.

6. INTELLECTUAL PROPERTY RIGHTS

- 6.1. All Intellectual Property Rights in the data, materials, and content that the Customer uploads, submits, or otherwise provides ("**Customer Data**") remain the exclusive property of the Customer.
- 6.2. The Provider hereby grants the Customer a non-exclusive, non-transferable, non-sublicensable license to access and use the Platform during the Term, solely for the Customer's internal business operations.
- 6.3. The Customer grants the Provider a limited, non-exclusive license to use, process, and store Customer Data solely for the purpose of delivering and improving the Services, in accordance with the Customer's instructions and applicable privacy policies.

- 6.4. Any third-party software or components integrated into the Platform are subject to their own licensing terms, and the Provider makes no additional grant of rights in such materials beyond those expressly provided by the third-party licensors.
- 6.5. Any feedback, suggestions, or recommendations provided by the Customer regarding the Services is hereby deemed non-confidential and is granted to the Provider as a perpetual, irrevocable, worldwide, royalty-free license to use, modify, and incorporate such feedback into the Services without any obligation to the Customer.
- 6.6. The rights and obligations under this Section 6 shall survive the termination or expiration of this Agreement.

7. FEES AND PAYMENT

- 7.1. In consideration of the Services, the Customer shall pay the Provider the fees in accordance with the invoicing process as set forth in the Order Form (the “**Fees**”). Any amount payable under this Agreement is exclusive of any sales tax (or similar taxes), duties, fees, and levies imposed by any government or other authority from time to time, which shall be paid by the Customer in addition to the Fees in the manner and at the rate prescribed by law.
- 7.2. All undisputed payments due from the Customer to the Provider under this Agreement shall be made in full without any offset, deduction, or withholding, including, without limitation, for any counterclaims.
- 7.3. Unless otherwise stated in the Order Form, each invoice that is not subject to a bona fide dispute shall be payable by the Customer within thirty (30) days of the invoice date. For clarity, time is of the essence for all payments of Fees by the Customer to the Provider. All payments shall be made in Hong Kong Dollars in cleared funds by wire transfer to the bank account designated by the Provider from time to time.
- 7.4. In the event of any disagreement or dispute regarding an invoice amount, the Parties agree to use reasonable efforts to reach an amicable resolution. Any

adjustment mutually agreed upon in writing by the Parties shall be reflected by the Provider on a revised invoice, enabling the Customer to fulfill its payment obligations. Any invoice not disputed in writing, along with the supporting documentation, within ten (10) calendar days of receipt shall be deemed accepted without reservation.

8. CONFIDENTIALITY

- 8.1. For the purposes of this Agreement, “**Confidential Information**” means all information and/or materials disclosed by one Party to the other Party in confidence hereunder which information and/or materials are marked as confidential or proprietary, or if disclosed verbally, reduced to writing and delivered to the receiving Party, marked as confidential, within fifteen (15) days after the date of disclosure.
- 8.2. Confidential Information shall not include information which (i) was in the public domain at time of disclosure, (ii) is disclosed with the prior written approval of the disclosing Party, (iii) becomes known to the receiving Party on a non-confidential basis from a source other than the disclosing Party which is not prohibited from disclosing such information, (iv) is independently developed by the receiving Party, or (v) is disclosed pursuant to a government or court order.
- 8.3. The receiving Party shall maintain confidential any Confidential Information both during the term of this Agreement and for three (3) years after its completion or termination, and both Parties shall use the Confidential Information solely for the purposes of this Agreement.
- 8.4. The receiving Party shall:
- 8.4.1. protect and safeguard the confidentiality of the disclosing Party’s Confidential Information with at least the same degree of care as the receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care;
 - 8.4.2. not use the disclosing Party’s Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or

perform its obligations under this Agreement; and

8.4.3. not disclose any such Confidential Information to any person or entity, except to its officers, employees, consultants and agents on a need-to-know basis to facilitate performance of the Services, provided that such persons agree to be bound by terms at least as restrictive as those contained herein.

8.5. Notwithstanding the obligations of confidentiality and non-use set forth in this Clause 8, the receiving Party shall be permitted to disclose the disclosing Party's Confidential Information that is required to be disclosed to comply with applicable laws, court order or governmental regulations, provided that the receiving Party provides prior written notice of such disclosure to the disclosing Party and takes reasonable and lawful actions to avoid and/or minimize the degree of such disclosure. The prior written notice must be given as soon as reasonably possible in order to permit the disclosing Party to challenge such disclosure or to seek a protective order or other remedy to protect the confidentiality of the information that is required to be disclosed.

9. LIMITATION OF LIABILITY

9.1. The Customer shall be responsible for all actions and omissions of all Authorized Users of the Platform under this Agreement.

9.2. Nothing in this Agreement shall limit or exclude the liability of either Party or its officers, employees, consultants and agents for death or personal injury resulting from negligence, or for fraud, fraudulent misrepresentation, gross negligence, willful misconduct, or any other liability that cannot be limited by law.

9.3. In no event shall any Party be liable for any indirect, consequential, or special damages (including, without limitation, loss of profit, loss of business or loss of goodwill) howsoever arising (whether from breach of contract, tort including negligence, breach of statutory duty or otherwise), even if such loss was foreseeable or the Party was advised of the possibility of such damages.

9.4. To the extent permitted by law and subject to Clauses 9.2 and 9.3 above, each

Party's total aggregate liability shall be limited to the total amount of fees paid by the Customer to the Provider for the Services giving rise to the claim during the twelve (12) months immediately preceding the first even giving rise to such liability.

10. TERM

- 10.1. This Agreement shall commence on the Effective Date and continue for an initial term of [•] years unless sooner terminated as provided herein.
- 10.2. Upon expiration of the initial term, this Agreement shall automatically renew on a [monthly/yearly] basis unless either Party provides written notice of non-renewal at least [•] days prior to the end of the then-current term.
- 10.3. For avoidance of doubt, the initial term together with any renewal term under this Clause 10 shall collectively be deemed the "Term".

11. TERMINATION

- 11.1. Either Party may terminate this Agreement without reason upon [•] days' prior written notice.
- 11.2. Either Party may immediately terminate this Agreement or an Order Form upon written notice if the other Party:
 - 11.2.1. materially breaches this Agreement, and such breach is incapable of cure, or, if the breach is capable of cure, fails to cure such breach within [•] days after receiving written notice of the breach.
 - 11.2.2. becomes insolvent or is generally unable to pay its debts as they become due.
 - 11.2.3. files, or has filed against it, a petition for voluntary or involuntary bankruptcy, or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law.

- 11.2.4. makes or seeks to make a general assignment for the benefit of its creditors.
- 11.2.5. applies for, or has appointed, a receiver, trustee, custodian, or similar agent by order of a court of competent jurisdiction to take charge of or sell any material portion of its property or business; or
- 11.2.6. is dissolved or liquidated.
- 11.3. The expiration or termination of this Agreement shall not affect any rights or obligations that: (i) are intended to survive such expiration or termination; and (ii) were incurred by the Parties prior to such expiration or termination.
- 11.4. Upon the expiration or termination of this Agreement for any reason, each Party shall promptly:
 - 11.4.1. return to the other Party all documents and tangible materials (including any copies) containing, reflecting, incorporating, or based on the other Party's Confidential Information, or at the other Party's election, destroy the same forthwith.
 - 11.4.2. permanently erase all of the other Party's Confidential Information from its computer systems (except for copies that are required to be retained under applicable laws); and
 - 11.4.3. certify in writing to the other Party that it has complied with these requirements.
- 11.5. Upon the expiration or termination of this Agreement:
 - 11.5.1. the Services shall immediately cease.
 - 11.5.2. the Customer and its Authorized Users shall immediately stop using the Platform.

- 11.5.3. all licenses granted by the Provider to the Customer shall terminate.
- 11.5.4. the Provider shall have the right to invoice for any Fees incurred but not yet invoiced or paid by the Customer in connection with the Services, and the Customer shall pay such Fees.
- 11.5.5. any provision that expressly or implicitly is intended to survive the expiration or termination of this Agreement shall remain in effect; and
- 11.5.6. all other rights and obligations shall immediately cease, without prejudice to any rights, obligations, claims (including claims for damages due to breach), or liabilities that have accrued prior to the date of termination or expiry.

12. ARTIFICIAL INTELLIGENCE

- 12.1. For the purposes of this Agreement, “**AI Technology**” means any and all machine learning, deep learning, and other artificial intelligence technologies, including statistical learning algorithms, models (including large language models), neural networks, and other artificial intelligence tools or methodologies, all software implementations of any of the foregoing, and related hardware or equipment capable of generating various types of content (including text, images, video, audio, or computer code) based on user-supplied prompts.
- 12.2. For the purposes of this Agreement, “**Training Data**” means any and all information, data, materials, text, prompts, images, and other content that is used to train, validate, test, retrain, or improve any AI Technology, except for Customer Data.
- 12.3. The Provider has implemented and is in material compliance with policies and procedures for the ethical, trustworthy, and responsible use, implementation, and provisioning of AI technology, including for:
 - 12.3.1. developing, implementing, and provisioning AI Technology in a way that promotes transparency, accountability, safety, security, fairness, accuracy,

validity, reliability, and human interpretability; and

12.3.2. identifying and mitigating bias in Training Data and the Services. In addition, the Provider's management has oversight and approval over its collection and use of Training Data, including the development, implementation, and provisioning of AI Technology.

12.4. The Provider confirms it is in compliance with all laws applicable to the Provider's development, implementation, and provision of AI Technology.

12.5. The Provider does not warrant that AI-generated output will be free from errors, bias, or inaccuracies. All content generated by the AI Technology is provided "as is" without any express or implied warranties, including warranties of merchantability, fitness for a particular purpose, or non-infringement. The Customer acknowledges that it is responsible for reviewing AI-generated content and that the Provider shall not be liable for any damages arising from or related to its use.

12.6. The Provider retains all rights in the underlying AI Technology. Unless otherwise agreed in writing, any content generated by the AI Technology remains the property of the Provider, with the Customer receiving only a limited license to use such content solely for its internal business purposes. The Provider makes no warranty that AI-generated content is original or free of infringement, and the Customer is responsible for ensuring its proper use.

12.7. The Provider will periodically review and update its AI policies and procedures to comply with evolving legal standards and industry best practices. The Provider reserves the right to modify its AI Technology and related policies at its discretion, provided that such modifications do not materially degrade the Services.

12.8. The Customer is advised to review AI-generated output before relying on it for critical decisions. The Provider recommends that the Customer exercise appropriate human oversight to verify the accuracy and suitability of such content for its intended purposes.

13. NO PARTNERSHIP OR AGENCY

- 13.1. This Agreement does not constitute and shall not be construed as constituting a partnership, agency, or joint venture between the Provider and the Customer. The Customer shall have no right to obligate or bind the Provider in any manner whatsoever and nothing herein contained shall give or is intended to give any right of any kind to any third party.

14. SUB-LICENSING

- 14.1. The license hereby granted is and shall be personal to the Customer and shall not be assignable by any action of the Customer or by operation of law, and any attempt as such assignment shall be null and void.
- 14.2. The Customer shall not have the right to grant any sub-licenses. The Provider reserves all the rights to grant sub-licenses to others regarding the Services.
- 14.3. This Agreement shall inure to the benefit of and shall be binding upon the Provider's successors and assigns.

15. NOTICE

- 15.1. Whenever notice is required to be given under this Agreement, it shall be deemed to be good and sufficient notice if in writing, signed by an officer or an authorized agent of the party serving such notice and sent by e-mail or mailed by registered or certified mail, or personal delivery or overnight air to the other party at the address stated below unless notification of a change of address is given in writing.
- 15.2. For the purpose of delivery of notices under this Agreement, the address and e-mail address of the Provider is:

Address:

Email:

Attention:

- 15.3. For the purpose of delivery of notices under this Agreement, the address and

e-mail address of the Customer is:

Address:

Email:

Attention:

- 15.4. Any such notice or communication shall be deemed to have been given on (i) the day such notice or communication is personally delivered, (ii) three (3) days after such notice or communication is mailed by prepaid certified or registered mail, (iii) one (1) working day after such notice or communication is sent by overnight courier, or (iv) the day such notice or communication is sent electronically, provided that the sender has received a confirmation of such electronic transmission.

16. FORCE MAJEURE

- 16.1. Neither party shall be liable for failure to perform any of their obligations hereunder when such failure is caused by or results from events, circumstances, or causes beyond its reasonable control, such as (i) strike, blacklisting, boycott or sanctions however incurred; (ii) acts of God, public enemies, authority of law, embargo, quarantine, riot, insurrection or war; (iii) inability to obtain raw materials; or (iv) any other cause beyond their respective control.
- 16.2. In the event either party is unable to perform its obligations as a consequence of any of the contingencies set forth in this section for a period of [•] ([•]) months or more, either party hereto may terminate this Agreement, which termination shall relieve each party of any liability to the other based upon such termination.

17. ENTIRE AGREEMENT

- 17.1. This Agreement contains the entire understanding of the parties. There are no representations, warranties, promises, covenants of understandings, oral or otherwise, other than those herein contained.

18. VARIATION AND NO WAIVER

- 18.1. The terms of this Agreement may not be amended, modified, waived, discharged or terminated except by the express written agreement signed by the Parties hereto.
- 18.2. No waiver by either party of a breach or default hereunder shall be deemed waiver by such Party of a subsequent breach or default of a like or similar nature.

19. SEVERABILITY

- 19.1. If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.
- 19.2. If any provision of part-provision of this Agreement is deemed deleted under Clause 19.1 above, the Parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

20. GOVERNING LAW

- 20.1. This Agreement, its validity, construction and effect, and any dispute or claim arising out of or in connection thereto shall be governed and construed in accordance with the laws of Hong Kong, without reference to its conflicts of laws' principles.
- 20.2. Nothing in this Agreement is intended to be contrary to the laws of any country or political sub-division thereof. In the event that any of the subsection or particular terms or conditions set forth herein are held to be unenforceable by a court with competent jurisdiction, such subsection or particular term of condition therein shall be deemed modified to the extent required within the jurisdiction of such Court and the Agreement shall otherwise remain in full force and effect in such jurisdiction and in its entirety in other jurisdictions.

21. DISPUTE RESOLUTION

- 21.1. The Parties agree that arbitration shall be the sole, mandatory and exclusive forum to settle any controversy or claim arising out of or relating to this Agreement, or the breach thereof.
- 21.2. Any dispute, controversy or claim arising out of or relating to the Agreement, or breach hereof, shall be submitted to arbitration under the Hong Kong International Arbitration Centre Administered Arbitration Rules in force when the Notice of Arbitration is submitted in accordance with these Rules.
- 21.3. The arbitration tribunal ("**Tribunal**") shall consist of one (1) arbitrator. The arbitrator shall be appointed by the Licensor. The place of arbitration shall be Hong Kong and the language to be used in the arbitration shall be English.
- 21.4. Any award made by the Tribunal shall be final and binding on the Parties, and the Parties agree to be bound thereby and to act accordingly.
- 21.5. Any award made by the Tribunal may be entered in any court having the jurisdiction thereof.
- 21.6. The costs of arbitration and the costs of enforcing the arbitration award (including witness expenses and reasonable legal fees) shall be borne by the losing Party, unless otherwise determined by the arbitration award.

22. COUNTERPARTS

- 22.1. This Agreement may be executed in any number of counterparts by the Parties; each of which when so executed and delivered shall be a duplicate original, but all the counterparts shall together constitute one and the same agreement.

[Signature Page to Follow]

IN WITNESS WHEREOF the parties have entered into this Agreement the day and year first above written.

("Provider")

("Customer")

Signature:
(with authorized company chop)

Signature:
(with authorized company chop)

Name:
Date:

Name:
Date:

Schedule 1
[Order Form]

[特許庁委託事業]
香港知財取引調査（技術取引・共同研究編）

2025 年 9 月
禁無断転載

[調査受託]
ONC Lawyers

独立行政法人 日本貿易振興機構
香港事務所
(知的財産部)