

JOINT VENTURE AGREEMENT

Between

VIBRO CONSTRUCTION COMPANY LIMITED

And

TITAN FOUNDATION LIMITED

For

CONTRACT NO. CC/2023/2B/095

**EXCAVATION AND LATERAL SUPPORT WORKS (STAGES 1 & 2) FOR
THE INTEGRATED BASEMENT AND UNDERGROUND ROAD IN
ZONE 2A, 2B AND 2C**

Of

THE WEST KOWLOON CULTURAL DISTRICT

For

WEST KOWLOON CULTURAL DISTRICT AUTHORITY

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THIS JOINT VENTURE AGREEMENT ("Agreement") is executed as a DEED on 3rd October 2024

BETWEEN:

VIBRO CONSTRUCTION COMPANY LIMITED, a company incorporated and existing under the laws of Hong Kong and having its registered office at 11/F, Chevalier Centre, 8 Wang Hoi Road, Kowloon Bay, Hong Kong ("**Vibro**")

AND

TITAN FOUNDATION LIMITED, a company incorporated and existing under the laws of Hong Kong and having its registered office at **Units 601-605, 6/F, Tower B, Manulife Financial Centre, 223 Wai Yip Street, Kwun Tong, Kowloon, Hong Kong** ("**Titan**")

Hereinafter individually known as a "**Party**" and collectively known as the "**Parties**"

WHEREAS:

1. The Employer has invited tenders for the execution of the Works relating to Contract No. **CC/2023/2B/095**, and if a tender is accepted, the Employer may enter into a contract with the successful contractor for the execution and completion of the Works in accordance with the Contract. Vibro (H.K.) Limited ("**Vibro HK**") has been invited by the Employer and a tender has been submitted by (and awarded to) Vibro HK accordingly.
2. The Parties hereby intend to form a joint venture, on a "joint and several", and "integrated and unincorporated" basis, for the purposes of joint preparation of the Tender for the Project and entering into a sub-contract with Vibro HK ("**Sub-Contract**" and the works hereunder referred to as "**Sub-Contract Works**") and, if the Tender is accepted by the Employer, for the execution and completion of the Sub-Contract Works under the Sub-Contract.
3. The Parties enter into this Agreement for the purpose of regulating their respective rights and obligations between the Parties in the Joint Venture and in connection with the preparation of the Tender and, upon the execution of the Contract with the Employer by Vibro HK, the execution and completion of the Sub-Contract Works and the performance of the Sub-Contract pursuant to this Agreement.

NOW IT IS HEREBY AGREED as follows:

1. DEFINITIONS

- 1.1. The following words and expressions shall have the meanings hereby assigned to them except where the context requires otherwise:

"**Affiliate**" means any entity which a Party has a majority ownership interest in, whether directly or indirectly, or otherwise related to the Party through other Affiliates, including its holding company, parent company, or subsidiary company.

"**Agreement**" means this Joint Venture Agreement and amendments, if any, as may be amended by the Parties in accordance with Clause 37 from time to time.



"**Capital Notice**" means a notice which the JV Board issues to the Parties for calling of the working capital from the Parties in accordance with the provisions of Clause 11.

"**Conditions of Tender**" means the requirements of the Employer for the submission of the Tender.

"**Continuing Party**" means the Parties who are not in default of this Agreement and exercise the right against the Defaulting Party in accordance with the provisions of Clause 24.

"**Contract**" means the agreement to be entered by Vibro HK with the Employer for the construction of Works on the terms and conditions referred to in the Tender submitted by Vibro HK (as the same may be amended by negotiation by Vibro HK with the Employer in accordance with the terms of this Agreement).

"**Contractor**" means Vibro HK when Vibro HK is awarded and has executed the Contract with the Employer for the execution and completion of the Works and performance of the Contract.

"**Contribution Notice**" means the notice issued to a Non-Paying Party by the JV Board (but without the vote of the Non-Paying Party) in accordance with the provisions of Clause 11.4.

"**Defaulting Party**" means the Party who is in default of this Agreement in accordance with the provisions of Clause 24.

"**Demand Notice**" means the notice which the JV Board (but without the vote of the Defaulting Party) issues to the Defaulting Party in accordance with the provisions of Clause 24.4.4.

"**Deputy Project Manager**" means the manager, if any, appointed to carry out the functions specified in Clause 9.7

"**Director**" means the Chief Executive Officer or Managing Director or Director of a Party.

"**Dispute**" means any dispute, controversy, claim or difference of any kind (including any question regarding the existence, validity, interpretation, performance, breach or termination of this Agreement) between the Parties arising from or in connection with this Agreement.

"**Employer**" means the West Kowloon Cultural District Authority.

"**Exclusion Notice**" means the notice which the Continuing Party issues to the Defaulting Party in accordance with the provisions of Clause 24.

"**Hong Kong**" means the Hong Kong Special Administrative Region of the People's Republic of China.

"**Joint Venture**" means the collaboration of the Parties acting together for the purposes of this Agreement. The name of the Joint Venture shall be as follows or such other name as the Parties may decide:

Vibro–Titan Joint Venture

"**Joint Venture Bank Account**" means the account to be opened and operated in accordance with Clause 10.

"**Joint Venture Final Account**" means the final account to be prepared and approved in accordance with the provisions of Clause 14.

"**Joint Venture Leader**" means the leader of the Joint Venture specified in Clause 8.



"**JV Board**" means the management board established by the Parties in accordance with Clause 7.

"**Non-Paying Party**" means the Party who fails to pay and deposit the working capital called and stipulated in the Capital Notice in accordance with the provisions of Clause 11.

"**Notice of Dispute**" means a notice which a Party issues to the other Party in accordance with the provisions of Clause 31.

"**Organization Chart**" means the organization chart appended to this Agreement as Appendix 1.

"**Participation Shares**" means the respective shares of the Parties in the Joint Venture as stated in (and as may be adjusted prior to the submission of the Tender in accordance with Clause 6.2) Clause 6.1 and as changed in accordance with this Agreement, where applicable.

"**Project**" means the construction and completion of the Works for which Vibro HK shall execute and complete as the Contractor for the Employer in accordance with the Contract.

"**Project Management**" means the site project team comprising the Project Manager and other members of the site project team in accordance with Clause 9 and shall include the members shown in the Organization Chart set out in Appendix 1.

"**Project Manager**" means the manager appointed and to act and in charge of the execution and completion of the Works under the Contract in accordance with Clause 9.

"**Security**" means any instruments or agreements executed in the forms of bond, guarantee, indemnity, surety, warranty, counter guarantee, counter indemnity, including any company, parent company guarantee or indemnity, required to secure the performance of any Party or the Joint Venture against any obligations and liabilities in connection with the Tender, the Contract, the Sub-Contract and this Agreement.

"**Tender**" means the offer submitted by Vibro HK to the Employer on terms and conditions jointly agreed by the Parties for the execution and completion of the Works for the Project in the name of Vibro HK, as may be amended by agreement between Vibro HK and the Employer in accordance with the Conditions of Tender.

"**Tender Cost**" means any costs incurred by the Parties for the preparation and submission of the Tender and the negotiation of the Tender and the Contract, if the Tender is accepted by the Employer, until the execution of the Contract or, if the Tender is not accepted by the Employer, until the termination of this Agreement.

"**Third Party**" means any company, corporate, governmental department, authority, agency, individual, firm, partnership, joint venture, institutes or association in any form (whether or not having a separate legal personality) other than any Party, the Parties, or (for the purpose of Clause 20 only) its holding company, and the Joint Venture.

"**Top Sheet**" means the recording form which under VIBRO's tendering system the tender team is required to fill in the tender sum and its breakdowns (including direct costs, preliminaries, overheads and profit etc.) and any other terms and conditions agreed between the Parties for the Tender, for the purpose of future reference in budget control and project management if the Tender is successful and Vibro HK has entered into the Contract with the Employer.

"**Triggering Event**" means an event which triggers the winding-up of the business and affairs of the Joint Venture in accordance with the provisions of Clause 2.



"Working Day" means any day other than a general holiday by virtue of the General Holidays Ordinance (Cap. 149).

"Works" means, as the context of the Contract requires, the execution and completion of all works for the Project, which shall be required to be executed and performed in accordance with the Contract, including the provision of the planning, management, execution, completion, maintenance, testing, commissioning, training, manuals, records, shop drawings and as built drawings, certification, the provision of guarantees and warranties, measurements and BIM, as required.

"Wai Kee" means Wai Kee Holdings Limited, a company listed on The Stock Exchange of Hong Kong Limited (Stock Code: 610), and the holding company of Titan

- 1.2. In this Agreement, where the context so requires, references to the singular shall include the plural and vice versa, and references to one gender include all genders.
- 1.3. References to Clauses are to the clauses of this Agreement and references to Appendices are to the appendices of this Agreement, unless specified otherwise in this Agreement.
- 1.4. A reference to any document, agreement or contract (including the Contract, the Sub-Contract and this Agreement) or part or provision of a document, agreement or contract includes a reference to that document, agreement or contract or part or provision as it may be amended, modified, or supplemented from time to time.
- 1.5. The table of contents and clause headings in this Agreement are inserted for convenience of reference only and shall not affect the construction of this Agreement.
- 1.6. Any consent or approval to be given or agreement to be reached shall be in writing.
- 1.7. All references to writing and written notices include, unless specified otherwise in this Agreement, any mode of reproducing works in a legible and non-transitory form, including emails and faxes.
- 1.8. Appendices including attachments, sketches, diagrams, drawings, tables and other information specifically referred to herein and/or appended hereto shall form an integral part of this Agreement unless specifically stated otherwise herein.
- 1.9. References to "include", "includes" and "including" shall be construed as if followed by the words "but without limitation".
- 1.10. If a period of time is specified from a given day or the day of a given act or event, such period shall be calculated exclusive of that day unless it is otherwise specified.

2. OBJECT, COMMENCEMENT AND TERMINATION

OBJECT

- 2.1. The object of this Agreement is to define the respective rights and obligations of the Parties in the Joint Venture for the preparation and submission of the Tender and the subsequent execution and completion of the Sub-Contract Works and the performance of the Sub-Contract for the Project.
 - 2.1.1. The Joint Venture shall be a fully integrated and unincorporated joint venture.
 - 2.1.2. The Parties shall be jointly and severally liable to the Employer for all obligations and liabilities of the Joint Venture, under or in connection with the Tender, the Contract, the Sub-Contract and the Project.



- 2.1.3. The Parties shall act in good faith, be fair, reasonable and honest in a co-operative manner towards the Joint Venture for all matters and issues in relation to the preparation and submission of the Tender, the execution of the Sub-Contract and the execution and completion of the Sub-Contract Works, the performance of the Contract, the Sub-Contract and this Agreement.
- 2.1.4. The Parties shall work diligently as members of the Joint Venture in the performance of their duties and obligations for the Tender. Upon execution of the Contract and the Sub-Contract, the Parties shall perform the Sub-Contract Works and this Agreement in accordance with the Contract and the Sub-Contract, subject to the provisions of this Agreement.
- 2.1.5. The Parties shall prepare a competitive and conforming Tender to be submitted by Vibro HK to the Employer in accordance with the Conditions of Tender and the provisions of this Agreement.
- 2.1.6. The Tender shall be prepared by the Parties and submitted to the Employer by Vibro HK on terms and conditions agreed unanimously by the Parties.
- 2.1.7. For the purpose of Clauses 2.1.5 and 6, in the event that such unanimity, cannot be reached by the Parties for a competitive and conforming Tender, then the Parties shall, subject to Clause 2.3.1, agree unanimously prior to the due date for the submission of the Tender any such other terms and conditions as shall constitute a conforming Tender with the most favourable commercial terms (highest tender price and most conservative technical and commercial terms and conditions) to ensure that the Tender shall be submitted in the name of Vibro HK and in accordance with the Conditions of Tender
- 2.1.8. Without prejudice to the generality of this Agreement and in relation to the Tender, the Contract, the Sub-Contract and the Sub-Contract Works, the Parties shall not without unanimous consent.
- 2.1.8.1 change the nature or scope of the Joint Venture's business under this Agreement; or
- 2.1.8.2 enter into any transactions under this Agreement which are not on arm's length basis.

COMMENCEMENT

- 2.2. This Agreement shall take effect from the date on which this Agreement is signed by all Parties, although the obligations of the Parties under this Agreement, including without limitation to the generality of the foregoing, Titan's obligation to provide (a) any initial working capital pursuant to a Capital Notice under Clause 11 or (b) any security, guarantee or performance bond under Clause 12 shall be conditional upon the shareholders of Wai Kee (being the holding company of Titan), other than those who are required under the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited ("**Listing Rules**") to abstain from voting, approving the transactions contemplated under this Agreement as required under Chapter 14A of the Listing Rules (the "**CP**") This Agreement shall remain in full force and effect until the termination of this Agreement in accordance with the provisions of Clauses 2.3 and 2.4. The approval of the transactions contemplated under this Agreement as required under the CP and the shareholders of Wai Kee shall be obtained by Titan not later than 30 October 2024 (or such later date as may be agreed by the Parties).



TERMINATION

- 2.3. The Parties shall wind-up the business and affairs of the Joint Venture upon the first occurrence of any one of the following Triggering Events:
- 2.3.1. the Employer does not accept the Tender submitted by Vibro HK
 - 2.3.2. the Employer awards the Contract to a Third Party; or
 - 2.3.3. the Project is cancelled or indefinitely suspended by way of a formal notice from the Employer; or
 - 2.3.4. the Parties agree unanimously in writing to terminate this Agreement; or
 - 2.3.5. the due completion or termination of the Contract and the Sub-Contract and the due performance of this Agreement by the Parties.
- 2.4. Following the activation of the Triggering Event and the completion of the winding-up of the business and affairs of the Joint Venture, this Agreement shall be terminated upon (to the extent applicable, depending upon the particular termination event):
- 2.4.1. all obligations and liabilities of the Joint Venture have been discharged and fulfilled in accordance with the Contract, the Sub-Contract and this Agreement; and
 - 2.4.2. the Security (if any) has been returned, cancelled or called; and
 - 2.4.3. the agreement and settlement of the Joint Venture Final Account including the disposal of any asset of the Joint Venture.
- 2.5. Subject to Clause 3, the rights and/or obligations of the Parties among each other accrued prior to the termination of this Agreement shall survive the termination of this Agreement including the rights and/or obligations of a Party to claim against the other Parties in respect of any antecedent breach of the terms and conditions of this Agreement.
- 2.6. The provisions contained in Clauses 20, 21, 22, 24, 31 and 32 shall survive the termination of this Agreement.

3. UNSUCCESSFUL TENDER

If the Employer does not award the Contract to Vibro HK for whatever reason, no Party shall have the right or entitlement to claim against the other Parties or the Joint Venture for any costs, losses, expenses, damages, contributions and/or compensations as the consequence of such failure to secure the award of the Contract by the Employer to Vibro HK and, save for the cost incurred and to be settled in accordance with Clause 5.

4. SUCCESSFUL TENDER

- 4.1. If the Tender is accepted by the Employer, such acceptance shall be binding on the Parties jointly and severally as the Joint Venture. Vibro undertakes to procure the entry of the Sub-Contract between Vibro HK as the Contractor and the Joint Venture as the Sub-Contractor in accordance with this Clause 4.
- 4.2. The Parties shall execute the Sub-Contract by their respective duly authorized representatives
- 4.3. Save and except Bored Piling Works more particularly described under Appendix 3 of this Agreement, which are to be sub-contracted to Vibro by Vibro HK, the remaining



part of the Works shall be sub-contracted to the Joint Venture as the Sub-Contract Works in accordance with the requirements of the Contract.

- 4.4. Vibro HK as the Contractor and the Joint Venture as the Sub-Contractor shall be responsible for performing their respective parts of works as allocated to them under the Sub-Contract arrangement in accordance with Clause 4.3 and Appendix 3. The Joint Venture shall have absolute discretion in the performance of its respective parts of works under the Sub-Contract and Vibro HK, as the Contractor, shall take all necessary actions to facilitate the communications between the Joint Venture and the Employer in respect of the Sub-Contract Works in accordance with the request of the Joint Venture.
- 4.5. Notwithstanding the Bored Piling Works which are to be subcontracted to Vibro by Vibro HK, Vibro shall also be responsible to the Joint Venture for performing the Bored Piling Work under this Agreement.

5. TENDER PREPARATION AND TENDER COST

TENDER PREPARATION

- 5.1. The Parties shall collaborate to form a tender team comprising suitable, capable and experienced professionals and technical personnel to prepare the Tender in accordance with the Conditions of Tender and the provisions of this Agreement. The Joint Venture Leader shall be responsible for compiling and in the name of Vibro HK delivering to the Employer the documentation for the Tender.
- 5.2. The agreed terms and conditions of the Tender shall be recorded on the Top Sheet which shall be agreed by the Parties before submission of the Tender. The Parties shall be jointly and severally bound by the Top Sheet.

TENDER COST

- 5.3. Each Party shall bear its own internal Tender Cost and shall not be reimbursed by the Joint Venture whether such cost has been included in the estimate of the Tender or not, unless the Parties have agreed otherwise in writing as recorded on the Top Sheet.
- 5.4. Any Tender Cost incurred for consultants and any other Third Parties with the prior approval of the Parties before the same is incurred shall be borne and settled by the Parties in accordance with their respective Participation Shares in the Joint Venture. If the Tender is successful and Vibro HK has entered into the Contract with the Employer, the Joint Venture shall bear and reimburse such Tender Cost to the Parties if such Tender Cost has been settled by the Parties.
- 5.5. The Joint Venture shall reimburse such Tender Cost under Clauses 5.3 and 5.4 to the Parties within one (1) month upon entering into the Contract with the Employer. For Tender Cost under Clause 5.3 which the Parties have agreed will be borne by the Joint Venture, if the Tender is not successful, such Tender Cost shall be settled by the Parties in accordance with their respective Participation Shares within one (1) month upon confirmation by the Employer that the Contract will not be awarded to Vibro HK.

6. PARTICIPATION SHARES

- 6.1. The Participation Shares shall be as follows:



Vibro	60%
Titan	40%

- 6.2. Not used
- 6.3. All rights, interests, assets (including all properties and equipment acquired jointly in the name of the Joint Venture), liabilities, obligations, undertaking and risks arising out of or in connection with this Agreement or the Contract or the Sub-Contract and all profits or losses arising out of the joint execution and completion of the Works, the performance of the Contract, the Sub-Contract and this Agreement shall (except as specified otherwise in this Agreement) be shared or borne by the Parties in accordance with the Participation Shares.
- 6.4. Each Party shall place at the disposal of the Joint Venture the benefit of its individual experience, technical knowledge and skills and shall in all respects bear its share of the responsibilities and burdens of completing the Works and the Sub-Contract Works and of performing the Contract and this Agreement in good faith including the provision of resources as required by the Works, the Contract, the Sub-Contract and this Agreement.
- 6.5. Except insofar as the contrary is otherwise provided in this Agreement, each Party shall indemnify and keep indemnified the other Parties against losses or liabilities of all and any kind and nature in connection with the Project, the Contract, the Sub-Contract and this Agreement which exceed the shares of the respective Parties in accordance with the Participation Shares of the respective Parties in the Joint Venture by reason of the joint and several liability sustained by the Party in accordance with the Contract, the Sub-Contract and this Agreement.
- 6.6. Each Party shall indemnify and keep indemnified the other Parties against any losses or damages suffered by the other Parties as a result of any gross negligence, breach of its obligations under this Agreement, omission or fraudulent or criminal action of the Party and shall have a duty to take all reasonable actions whether it is requested by the other Parties or otherwise to mitigate the actual or potential losses or damages of the other Parties in this connection.
- 6.7. Where the Parties undertake joint and several liabilities to the Employer, the Contractor and/or any Third Party, the acceptance of such liabilities by any Party shall be without prejudice to the Party's rights in accordance with Clause 24 or as otherwise provided in this Agreement in relation to the liabilities, obligations and responsibilities as between the Parties themselves.

7. JV BOARD

- 7.1. The business of the Joint Venture shall be managed by a JV Board. The JV Board shall be established upon the award of the Contract by the Employer to Vibro HK. The JV Board shall be the highest authority of the Joint Venture and shall have the fullest power and authority to make decisions of the Joint Venture, including decisions in performing the Contract, the Sub-Contract or in connection with the Project.
- 7.2. The JV Board shall comprise four (4) representatives from the Parties of the Joint Venture which include:
- Two (2) representatives from Vibro, and
 - Two (2) representatives from Titan



- 7.2.1. The representatives of the Parties on the JV Board (including alternate or replacement representatives authorized to act in accordance with Clause 7.4) shall be deemed to have been delegated with the full authority to transact on behalf of the appointing Parties all matters and issues in relation to the business of the Joint Venture on the JV Board save for the power of varying the terms and conditions of this Agreement which shall be retained by and/or vested in the Parties.
- 7.2.2. Each Party shall cause its representative(s) to act reasonably and in the interest of the Joint Venture with an aim for the Joint Venture to discharge its obligations and duties under the Contract and the Sub-Contract in accordance with the requirements under the Contract, the Sub-Contract and this Agreement.
- 7.3. The powers to make general policies and to monitor and control the business and operations of the Joint Venture shall be vested in the JV Board. Without prejudice to the generality of the application of powers by the JV Board, the powers vested in the JV Board include:
- 7.3.1. approving the policy for the operations of the Joint Venture and making policy decisions as are necessary which may affect the interests of the Parties, including those relating to the procurement of major plant and equipment, materials and subcontracts and the employment of senior management and supervisory staff and the management structure thereof; and
- 7.3.2. approving operational manuals and procedures for the Joint Venture, including safety, quality and environmental policies and procedures; and
- 7.3.3. appointing the Project Manager and approving the seconded senior members of the Project Management, and also approving their respective functions, duties, limits of authorities and remunerations; and
- 7.3.4. instructing orders and guidelines to the Project Manager and senior members of the Project Management for the execution and performance of their functions competently in accordance with the policies and objectives set by the JV Board; and
- 7.3.5. approving the setting up of the Joint Venture Bank Account and the manner and procedures for the operation and control of the same in accordance with Clause 10; and
- 7.3.6. approving, amending or revising the budgets for the Project and other budgetary estimates of the Project; and
- 7.3.7. approving the books of account, including the Joint Venture Final Account in accordance with Clause 14.8, which shall be kept and maintained to meet the best accounting practice and all applicable statutory requirements; and
- 7.3.8. appointing external independent auditors to carry out annual and/or other financial audits of the Joint Venture Accounts; and
- 7.3.9. approving the working capital requirements for the Project; and
- 7.3.10. approving the requirements of project finance for the Project and approving the banks or other financial institutions which shall provide the project finance for the Project; and



- 7.3.11. approving the timing and amount of any distribution of profit or cash surplus if any to be made to the Parties and/or any contribution to be made by the Parties; and
- 7.3.12. approving subcontract(s) including any amendments after its execution with subcontractors; and
- 7.3.13. approving, executing and amending any contracts or supplemental agreements that are to be executed by the Joint Venture with respect to the implementation of the Works and the Sub-Contract Works under the Contract and the Sub-Contract, the Project, or this Agreement with any other Third Party; and
- 7.3.14. resolving any dispute arising from and in connection with the Works and the Sub-Contract Works, the Contract, the Sub-Contract and this Agreement with any Third Parties including the Employer and determining whether to commence (including appointment of legal or other professional representatives) any legal, arbitral or other form of proceedings against the Employer or any other Third Parties and approving the defence of any actions taken by the Employer and/or any other Third Parties against the Joint Venture. In this connection, Vibro undertakes to procure the Contractor to take all necessary actions to facilitate the performance of this Clause 7.3.14; and
- 7.3.15. approving any technical and commercial matters of significant importance proposed by the Project Manager for the determination of the JV Board concerning the execution and completion of the Works and the Sub-Contract Works and the performance of the Contract, the Sub-Contract and this Agreement; and
- 7.3.16. approving any major procurement of goods and services, placement of contracts including contract variations, and settlement of disputes with any Third Party including the Employer which exceed the limits of authorities of the Project Manager.
- 7.4. Any Party may from time to time authorize and appoint in writing at least seven (7) Working Days before the meeting of the JV Board an alternate and/or replacement of its representatives to attend, participate in and vote on its behalf in any meeting of the JV Board at which the Party elects to be represented by the alternate and/or replacement representatives.
- 7.5. The quorum of the meetings of the JV Board shall be constituted by the attendance at the meetings of the JV Board of at least one (1) representative or its designated alternate from each of the Parties.
- 7.6. The JV Board shall, unless agreed otherwise in writing between the Parties, meet every month and the meeting of the JV Board shall be held in Hong Kong, in person or by means of internet. In addition, any Party or the Project Manager may propose to the other Parties to have a meeting of the JV Board at any time for matters and issues to be discussed by and for the approval of the JV Board. An advance notice in writing requesting any proposed meeting of the JV Board shall be served by any Party or the Project Manager who requested the meeting of the JV Board to the other Parties at least seven (7) Working Days before the proposed meeting of the JV Board. The meeting of the JV Board shall be held and chaired by a representative from the Joint Venture Leader within seven (7) Working Days of the date of the advance notice unless otherwise agreed by the representatives of the JV Board. All business



transacted at meetings of the JV Board shall be duly recorded in a set of book of minutes by the Joint Venture Leader, copies of which shall be distributed to all representatives of the JV Board within seven (7) Working Days after each meeting of the JV Board. Such minutes shall be deemed to have been approved by the Parties if no objection in writing has been raised to the Parties within a period of seven (7) Working Days after the receipt of the same by the Parties.

- 7.7. Each representative of the JV Board shall be entitled to cast one vote only on the JV Board in respect of a subject matter which requires a resolution of the JV Board. All votes are of the same weight. All decisions of the JV Board shall be taken by a unanimous vote of the representatives from the Parties of the Joint Venture on the JV Board.
- 7.8. If a unanimous vote on any matter which requires a resolution and /or the required quorum fails to be reached in any meeting of the JV Board, the meeting shall be adjourned and shall be re-convened with the same agenda within three (3) Working Days for a resolution by the Parties.
- 7.9. In the event that a unanimous vote or the required quorum is not achieved in a meeting re-convened in accordance with Clause 7.8, the matter shall be referred to the Director of each Party (hereinafter collectively the "Director") by the Joint Venture Leader [immediately after conclusion of such re-convened meeting of the JV Board] for a unanimous resolution.
- 7.10. In the event that a unanimous resolution is not reached by the Directors within seven (7) Working Days [of the referral under Clause 7.9] and the matter is critical to the fulfilment of the obligations of the Joint Venture under the Contract and the Sub-Contract, the Joint Venture Leader may make an interim decision in good faith in the best interest of the Joint Venture and as reasonably necessary or appropriate to:
- (i) avoid, correct or address an imminent emergency situation that threatens life, health, safety and/or property; or
 - (ii) avoid (including corrective measures to correct or address imminent danger of such involvement) a default or waiver of rights or benefits under the Contract and the Sub-Contract; or
 - (iii) avoid (including corrective measures to correct or address imminent danger of such involvement) partial or total suspension of the Works and/or the Sub-Contract Works or delay in the Works and/or the Sub-Contract Works schedule that might reasonably be expected to result in a failure to meet the required dates set forth in the Contract and/or the Sub-Contract, including any Key Date, substantial completion for Stages and Sections of Works and/or the Sub-Contract Works, Portion Handover Date and final acceptance of the Works and/or the Sub-Contract Works (all terms as defined under the Contract and/or the Sub-Contract); or
 - (iv) avoid (including corrective measures to correct or address imminent danger of such involvement) a breach by the Joint Venture of any environmental or, safety or other statutory requirements, rules regulations and laws,

If any Party is not satisfied with the interim decision of the Joint Venture Leader, it may refer such decision to dispute resolution pursuant to Clause 31 within a period of fourteen (14) Working Days. Unless and until an interim decision of the Joint Venture Leader under this Clause 7.10 is overturned or altered by a unanimous decision of the JV Board or the Directors or by a mediation settlement or an arbitral award under Clause 31, such interim decision shall be complied with by the Joint Venture.



- 7.11. Decisions of the JV Board may be made without the requirement for a formal meeting of the JV Board provided that such arrangement is approved in writing by the JV Board at least seven (7) Working Days before any such proposed meeting of the JV Board and a written confirmation recording the resolution of the subject matter is served on each Party within seven (7) Working Days thereof.
- 7.12. No Parties shall commit or undertake any obligations on behalf of the Joint Venture or claim to be acting in the capacity of the Joint Venture in any dealings with the Employer and/or any Third Parties unless it has been pre-approved in writing by the JV Board.
- 7.13. The representatives of the Parties appointed to the JV Board shall not be entitled to any remuneration or expenses for their attendance of the meeting of the JV Board, or while they are acting on behalf of the respective Parties in the JV Board in respect of any business of the Joint Venture.
- 7.14. No representative or alternate shall be liable to the Joint Venture or to the Parties by reason of him representing a Party in the JV Board, except where his action constitutes gross negligence or actual fraudulent or dishonest conduct of his own.

8. JOINT VENTURE LEADER

- 8.1. Vibro shall be the Joint Venture Leader.
- 8.2. Without prejudice to the generality of the foregoing and subject to the overriding authority and control of the JV Board, the Joint Venture Leader shall be responsible for the following functions and tasks:
- 8.2.1. liaison with Vibro HK for submission of Tender to the Employer
- 8.2.2. nomination of the Project Manager as stipulated in Clause 9.1
- 8.2.3. verifying that the Works and the Sub-Contract Works and the Joint Venture are being properly managed by the Project Manager and the Project Management; and
- 8.2.4. verifying that the Joint Venture is properly set-up in accordance with the laws of Hong Kong; and
- 8.2.5. leading technical and commercial negotiations with the Employer for the award of the Contract to Vibro HK and post-contract negotiations, liaison and reporting as directed by the JV Board, including necessary correspondence; although the presence of the other Parties in any negotiations is not precluded; and
- 8.2.6. convening meetings of the JV Board in accordance with the reasonable requests of the Parties and/or the Project Manager and preparing meeting minutes for distribution to all representatives of the JV Board; and
- 8.2.7. preparing reports to the JV Board on all matters within the jurisdiction of the Joint Venture Leader.
- 8.3. The Joint Venture Leader shall receive (in its capacity as such) a fee in a total amount equal to One Percent (1.0%) of the value of the Works which is paid by the Employer under the Contract. Payment of the said fee shall be made by the Joint Venture in instalments in proportion to the payment received by the Joint Venture from the Employer. This fee shall be the full reimbursement due for all matters under this Agreement, including duties of the Joint Venture Leader as listed in Clause 8.2 above, unless otherwise expressly stated and provided for elsewhere.



- 8.4. Save for the responsibilities as stipulated in this Agreement, the Joint Venture Leader shall not incur separate or additional obligations and liabilities for being and acting in the capacity as the Joint Venture Leader.

9. PROJECT MANAGEMENT

- 9.1. The Project Manager, the Deputy Project Manager, and other senior members of the Project Management under this Clause 9 shall be provided by the Joint Venture to the Contractor for the management of the Project in accordance with the terms and conditions to be set out under the Contract and the Sub-Contract.

The Project Manager, the Deputy Project Manager, and members of the Project Management shall act in accordance with the directions of the JV Board in respect of the Contract Works and the Sub-Contract Works.

The Project Manager shall be nominated by the Joint Venture Leader and appointed by the JV Board. Save as stated in the provision of Clause 9.7 herein, the other senior members of the Project Management shall be seconded by the respective Parties to the Joint Venture subject to the approval of the JV Board, all in accordance with Clause 7.3.3.

- 9.2. For the purpose of this Agreement, the senior members of the Project Management shall be members designated as senior members in and as shown on the Organization Chart. The structure of the Project Management shall not be changed except with the prior approval of the JV Board.
- 9.3. The JV Board shall have the authority to remove the Project Manager or any other senior members of the Project Management if the Project Manager or any such other senior members of the Project Management fail to perform his functions or obligations delegated by the JV Board. If the Project Manager or any other senior members of the Project Management are removed by the JV Board, the replacement of the Project Manager or any such other senior members of the Project Management shall be nominated and appointed in accordance with Clause 9.1.
- 9.4. The JV Board shall delegate in writing to the senior members of the Project Management, which shall include the Project Manager, and the Deputy Project Manager, such limits of authorities as are necessary for the effective performance of their roles, duties and functions. The JV Board may change any such limits of authorities by written notification to the senior members of the Project Management from time to time.
- 9.5. The Parties shall make available to the Project Manager and the other senior members of the Project Management through the JV Board such information and other necessary assistance as the Project Manager and the Project Management may reasonably require to perform their functions and discharge their duties.

PROJECT MANAGER

- 9.6. The Project Manager shall act and fulfil his functions and duties in accordance with the directions of the JV Board and in consultation with the Deputy Project Manager (if any).

The roles, duties and functions of the Project Manager shall include:

- 9.6.1. the implementation of the policies and directions as determined and instructed by the JV Board and the making of all daily operational decisions necessary for the efficient and effective execution and completion of the



- Works and the Sub-Contract Works and performance of the Contract and the Sub-Contract; and
- 9.6.2. the making of proposals for the approval of the JV Board for the site management structure and personnel required for the efficient and effective execution of the Works and the Sub-Contract Works and performance of the Contract and the Sub-Contract with their respective roles in the structure. The management structure shall as far as practically possible follow the proposed structure submitted with the Tender and shall in any event be subject to the approval of the Contractor, the JV Board and, if applicable, the Employer; and
- 9.6.3. the supervision, management and coordination of the Deputy Project Manager, senior members of the Project Management and all the other staff employed by or seconded to the Joint Venture; and
- 9.6.4. through together with the Deputy Project Manager, the monitoring, control and regulation of the duly and timely completion of the deliverables of the Project; and
- 9.6.5. the management and monitoring of the employment of resources, progress, problems, planning, constraints, requirements, budget, cashflow, risks, opportunities, disputes, proceedings, claims, damages, losses, summons, fines, incidents and any other matters or events in relation to the Project, the Works, the Sub-Contract Works, the Contract and/or the Sub-Contract which shall be brought to the attention of the JV Board for discussion and resolution; and
- 9.6.6. the dissemination of the direction and instruction of the JV Board to the Deputy Project Manager; and
- 9.6.7. the representation of the Joint Venture under the Sub-Contract (including through correspondence, meeting, presentation, consultation) in dealing with the Employer, the Employer's representatives, and any other Third Party within the authority which has been delegated by the JV Board; and
- 9.6.8. the approval of payment applications and certifications; and
- 9.6.9. all other roles, duties and functions as the JV Board may assign from time to time.

DEPUTY PROJECT MANAGER

- 9.7. The Deputy Project Manager, as a senior member of the Project Management, shall be nominated by Project Manager and appointed by the JV Board. In carrying out the functions of the Deputy Project Manager, the Deputy Project Manager shall be supported by the Project Manager. The Deputy Project Manager shall report directly to the Project Manager.

Subject only to the higher authority of the JV Board and the Project Manager, the roles, duties and functions of the Deputy Project Manager shall include:

- 9.7.1. the overall project planning, design, scheduling and construction for ensuring that the Contractor and the Joint Venture complies with the requirements of the Contract, safety codes and other regulations of the Contract so that the Works are performed in accordance with the best practice and industry standards in particular in relation to design, construction, survey, safety, security, quality, health and environmental matters; and



- 9.7.2. organizing, monitoring, and verifying the accounts of the Joint Venture in the monitoring role, including the setting up and maintenance of the procedures and systems for the financial and commercial wellbeing of the Joint Venture; and
- 9.7.3. the preparation and submission, prior to each meeting of the JV Board or at such other intervals as the JV Board may direct, of statements and reports in such format and including such contents (whether technical, construction, design, safety, security, quality, environment or other information) as the JV Board may determine in relation to the Works, the Sub-Contract Works, the Contract, the Sub-Contract and the performance of the Joint Venture; and
- 9.7.4. the immediate actions, performed in professional and ethical manner by using his best judgment, of rectifying, repairing and removing any risks in safety, potential injuries and/or life losses, provided always that the Deputy Project Manager shall whenever possible consult first with the JV Board and the Project Manager by whatever means in the most effective and efficient manner for directions concerning his proposed actions and report to the JV Board and the Project Manager on whatever actions have been taken to mitigate or remove or avoid the risk at the earliest possible time; and
- 9.7.5. all other roles, duties and functions as the Project Manager may assign from time to time.

10. JOINT VENTURE BANK ACCOUNT

- 10.1. The JV Board shall open the Joint Venture Bank Account in the name of the Joint Venture with such bank and at such locations in Hong Kong as agreed by the JV Board. Vibro HK undertakes to procure the release of payment received by the Contractor from the Employer and/or any other Third Parties in relation to the Sub-Contract Works to the Joint Venture Bank Account within 7 working days upon receipt of such payment.
- 10.2. Financial contributions in respect of working capital provided in accordance with Clause 11 and all other sums of money received by each Party or by Vibro HK from the Employer and/or any other Third Parties in connection with the Works, the Sub-Contract Works, the Contract, the Sub-Contract and this Agreement shall promptly be paid to the credit of the Joint Venture Bank Account.
- 10.3. No payments shall be made or monies withdrawn from the Joint Venture Bank Account except as authorized by the JV Board in accordance with Clause 10.4 for the purpose of executing and completing the Works, the Sub-Contract Works, the performance of the Contract, the Sub-Contract and this Agreement by the Joint Venture, including that for the acquisition of resources, or repayment of financial contributions to the Parties, or distribution of profits in accordance with Clauses 14.8 and 14.9, or payment for indemnity of any liabilities incurred with banks or financial institutions in accordance with any agreements made in relation to the provisions of any loans, facilities, overdrafts, guarantees or other services to the Joint Venture in accordance with this Agreement.
- 10.4. The Joint Venture Bank Account shall be operated in accordance with a mandate laid down by the JV Board. Such mandate shall stipulate, inter alia, that all instructions including withdrawal and transfer of any payments from the Joint Venture Bank Account shall be instructed by at least:
- One (1) authorized signatory from Vibro
- One (1) authorized signatory from Titan.



- 10.5. Each Party shall nominate at least one (1) representative, or their alternates or replacements, as their authorized signatories for the operation of the Joint Venture Bank Account for the approval of the JV Board.
- 10.6. Payments which are to be made and drawn from the Joint Venture Bank Account for the purposes of performing the Contract, the Sub-Contract or in connection with the Project or this Agreement shall be approved by the JV Board (or the Project Manager if such authority is delegated by the JV Board in accordance with the limits of authorities approved by the JV Board).
- 10.7. Before the Joint Venture Bank Account is open, the Parties may need to make payment and incur expenditure for execution of the Works and the Sub-Contract Works by themselves. Subject to agreement by the JV Board all these payment and expenditure shall be charged to the Joint Venture Bank Account once the Joint Venture Bank Account has been opened and reimbursed to the Parties.

11. WORKING CAPITAL

- 11.1. The JV Board shall as necessary and from time to time determine the amounts of working capital which shall be required by the Joint Venture for the proper execution and completion of the Works, the Sub-Contract Works, and the performance of the Contract, the Sub-Contract and this Agreement and serve a Capital Notice on the Parties requesting such amounts.
- 11.1.1. The Parties shall pay to the credit of the Joint Venture Bank Account the working capital requested by the Capital Notice in accordance with the Participation Shares within Seven Working Days (7) of the Capital Notice unless otherwise agreed by the JV Board.
- 11.1.2. Any further sum requested by a further Capital Notice shall be paid by the Parties to the credit of the Joint Venture Bank Account in the same manner if so informed by such further Capital Notice served by the JV Board or any longer period as agreed by the JV Board and specified in the Capital Notice.
- 11.1.3. In any event, such working capital provided by the Parties to the Joint Venture shall not earn interest against the Joint Venture and the Project.
- 11.1.4. Working capital for the purpose of the Project, the Contract, the Sub-Contract and this Agreement shall be in Hong Kong Dollars and payable in Hong Kong.
- 11.2. For the avoidance of doubt, funds available for the execution and completion of the Works and the Sub-Contract Works and the performance of the Contract and the Sub-Contract by the Joint Venture shall be provided and applied in the following order of priority:
- 11.2.1. Firstly, advance payments and monthly payments or such other payments received from the Employer.
- 11.2.2. Then, working capital as determined by the JV Board and provided by the Parties to the Joint Venture in proportion to the Participation Shares in accordance with Clause 11.1.
- 11.3. Should any Party fail to pay any of its share of working capital within the time specified in the Capital Notice, without prejudice to the rights of and remedies available to the other Parties, such Non-Paying Party shall be deemed to be in breach of this Agreement and be liable to pay interest to the other Party for the amount of the un-



paid working capital. The amount of interest shall be five percent (5%) per annum over and above the prime lending rate for Hong Kong Dollars of The Hongkong and Shanghai Banking Corporation Limited in Hong Kong at the material time calculated daily from the date upon which payment of its share of the working capital shall have become due in accordance with the Capital Notice until the payment or portion of the payment of such working capital is duly settled by the Non-Paying Party.

- 11.4. In the event that the Non-Paying Party fails to pay its share of working capital within twenty-eight (28) Working Days from the due date for payment of working capital specified in the Capital Notice, without prejudice to the rights of and remedies available to the other Parties, in particular in accordance with Clause 24.1.3, the other Parties shall have the right, acting through the JV Board, to notify the Non-Paying Party in a Contribution Notice with immediate effect that:
- 11.4.1. The respective share of the Non-Paying Party in the interests and profits (but excluding liabilities and obligations in the losses, costs, expenses, securities, burdens, sufferings and charges which have been incurred or otherwise) of the Joint Venture shall be adjusted proportionally to reflect the actual working capital paid and deposited in the Joint Venture Bank Account by the Parties, and,
- 11.4.2. The proportionate liability of the Non-Paying Party to share any liabilities and obligations in the losses, costs, expenses, securities, burdens, sufferings and charges which have been incurred or otherwise until the date on which the Contract, the Sub-Contract and this Agreement is fully performed and the obligations and liabilities of the Parties and the Joint Venture are fully discharged and fulfilled shall remain in the Participation Shares as stated in Clause 6.1, and,
- 11.4.3. all costs and expenses incurred by the other Parties directly or indirectly as a result of the default of the Non-Paying Party shall be reimbursed by the Non-Paying Party to the other Parties.
- 11.5. The Contribution Notice made by any Party in accordance with Clause 11.4 shall not be made in a vexatious and/or malicious manner.
- 11.6. Without prejudice to the rights of and remedies available to the other Parties not in default, the provisions of Clause 11 shall not limit the rights of the other Parties not in default as provided in accordance with Clause 24.
- 11.7. No distributions of profit or cash surplus, including final and interim distributions, shall be made by the Joint Venture to the Parties unless the Parties agree unanimously in a meeting of the JV Board.
- 11.8. For the avoidance of doubt, if the working capital required from Titan exceeds HK\$[50 million] and Wai Kee is required under the Listing Rules to obtain further shareholders approval to provide any such excess working capital, Titan shall procure that shareholders approval be obtained as soon as practicable thereafter (and in any event within [10 weeks] (or such period as may be agreed between the Parties) (the "**Contribution Period**") after the relevant Capital Notice. Notwithstanding that, all deadlines in this Clause for the provision of working capital shall remain unchanged and any Party failing to pay any of its share of working capital within the time specified in the Capital Notice shall be liable to pay interest to the other Party for the amount of the un-paid working capital in accordance with this Clause.



12. SECURITY

- 12.1. The Parties shall procure the execution of all necessary Security as required by the Employer and/or by any other Third Parties for the due performance of the Contract and/or this Agreement. As between the Parties, the liability of each Party under such Security shall be in proportion to its Participation Share.
- 12.2. In the event that any Security is required by any banks or financial institutions to be provided by the Parties, as members of the Joint Venture, severally in connection with the Tender and/or the Contract and/or the Sub-Contract and/or this Agreement, then the Parties shall provide severally and in the Participation Shares of the Parties in the Joint Venture any such Security in a form satisfactory to the Parties and the banks or financial institutions.
- 12.3. Any Security that has been provided by or provided on behalf of the Parties should, if called, be drawn down simultaneously in proportion to the Participation Shares for the sum being called by the beneficiary. In the event that such Security is drawn down by the beneficiary at the material time not in proportion to the Participation Shares of the Parties, then the Parties shall pay to each other such sums in order to maintain the sharing of the liabilities of the respective Parties in proportion to the Participation Shares within seven (7) Working Days from such drawdown by the beneficiary unless otherwise agreed by the JV Board.
- 12.4. In the event that a bank or financial institution providing any Security (other than for the purpose of raising working capital for the Project) requires that indemnities or guarantees be provided jointly and severally by the Parties for the benefit of the Joint Venture, then the Parties shall provide such joint and several indemnities or guarantees as required by the bank or financial institution. As between the Parties themselves, each Party shall provide to the other Parties with bank counter-indemnities or counter-guarantees severally in proportion to the Participation Shares in a form acceptable to the Parties to indemnify them in event that the joint and several indemnities or guarantees are not called and satisfied in proportion to the Participation Shares for whatever reason.
- 12.5. Guarantees as required in accordance with the Contract shall be provided by Vibro HK and be the responsibility of the Parties to provide the corresponding Guarantees to Vibro HK in accordance with the Participation Shares and this Agreement.
- 12.6. Bonds as required in accordance with the Contract shall be provided by Vibro HK. Titan shall provide to Vibro HK, within fourteen (14) calendar days of the later of the date of the Letter of Acceptance or the fulfilment of the CP, a bond with bank or financial institution for the amount of HK\$47,880,975.00 (being the Contract sum x 5% x 40%) in a form similar to the bond provided by Vibro HK to the Employer. Upon the Employer's release of Vibro HK's bonds under the Contract, the Joint Venture Leader shall release these bonds provided by Titan within fourteen (14) calendar days.
- 12.7. The costs and expenses incurred by each Party in the provision or procurement of the provision of any Security for and in the name of Vibro HK for the Employer in accordance with the Contract shall be to the account of the Joint Venture.
- The costs and expenses incurred by Vibro HK and Titan in the provision of the bond under Clause 12.6 shall be to the account of the Joint Venture.
- 12.8. (no use)
- 12.9. The Parties shall use their reasonable endeavours to ensure that at all times they notify each other in writing of any such claims and consequent legal actions under Clause 12.3.



13. INVOICING

- 13.1. The Parties shall submit monthly invoices with breakdowns to the Project Manager on or before the last day of each calendar month in respect of the costs incurred and chargeable to the Joint Venture for the provision of resources and services by the Parties as stated in this Agreement and/or by the decision of the JV Board (including for any costs of staff seconded, plant or any equipment and materials provided to the Joint Venture as contemplated under Clause 17) for the related period ending on or before the last day of each calendar month.
- 13.2. The Project Management shall ensure that payments due to the Parties from the Joint Venture are duly certified and settled in accordance with this Agreement.
- 13.3. Payment of the said invoices shall, upon approval by the JV Board or the Project Manager according to the limits of authorities, be due for payment by the Joint Venture within ten (10) Working Days, unless the payment can be made sooner, from the receipt of the corresponding payment from the Employer and/or any Third Parties.
- 13.4. The Project Manager shall prepare, or cause a competent staff to prepare, in accordance with the terms and conditions of the Contract statements for the applications of payments (interim or otherwise) and shall forward the statements for the applications of payments to the Employer and/or the Employer's representative in accordance with the Contract for certifications of the payments and settlement of the payments periodically. In the event that the Employer makes payments to Vibro HK in response to the Project Manager's applications as set out in this Clause 13.4 or otherwise, Vibro HK shall cause the Project Manager to ensure such payments in respect of the Contract Works and the Sub-Contract Works be deposited to the Joint Venture Bank Account promptly in accordance with Clause 10.1. A copy of the statements for applications of payment related to the Contract Works and the Sub-Contract Works shall be sent to the Parties at the same time upon submission to the Employer and/or the Employer's representative.
- 13.5. The Project Manager shall ensure timely payments by the Employer and any other Third Parties for all sums which fall due to the Joint Venture.

14. ACCOUNTS

- 14.1. The accounts of the Joint Venture shall be kept in such manner as decided by the JV Board for the compliance of the same by the Project Manager. The accounts of the Joint Venture shall include the full and proper books of accounts and records of and relating to the Contract, the Sub-Contract and this Agreement. Such books of accounts and records shall be kept at a place or places as the JV Board shall approve and shall not be removed from such place or places without the prior consent of the JV Board. Such books of accounts and records shall be kept for such period as required by the applicable laws and by the JV Board.
- 14.2. The books and all records shall be made available for inspection by any Party (or such representatives or agents appointed by it in writing for such purposes) during normal business hours. Each Party (or such representatives or agents appointed by it in writing for such purposes) shall have the right to make copies of the books and records but all such copies shall be kept confidential and shall not be disclosed to any Third Parties without the prior written consent of the Joint Venture save for complying with any statutory obligations, procuring or claiming under insurances or obtaining professional advice.
- 14.3. Until and unless the Joint Venture Final Account and all obligations and liabilities have been agreed, settled, discharged and fulfilled by the Joint Venture, a monthly account shall be prepared for all assets and liabilities of or relating to the Joint Venture and a



balance sheet and a profit and loss account, together with cost and cash flow projections shall be prepared and verified by the Project Manager, and provided to the Parties and the JV Board on or before the 15th day of each calendar month for the accounting period ending on the last day of each preceding calendar month. Any Party may submit an objection with grounds of objection to the JV Board within two (2) calendar weeks from the receipt of the monthly account. If the objection is found to be justified, the account shall immediately be rectified.

- 14.4. In addition to the balance sheet and profit and loss account to be prepared and provided in accordance with Clause 14.3, the JV Board shall have the right to procure from the Project Manager for presentation to the Parties a report on the financial position of the Joint Venture including the cash flow and the shares of the profit / loss of the respective Parties in the Joint Venture calculated in accordance with the Participation Shares calculated for such other period as instructed by the JV Board from time to time.
- 14.5. The financial year of the Joint Venture shall start on 1st July every year and end at 30th June of the following year. All books of accounts and other financial documents of the Joint Venture shall be audited at least once a year (or unless otherwise agreed by the JV Board) by an independent firm of auditors or Certified Public Accountants approved and appointed by the JV Board. The cost of the audit shall be charged to and paid by the Joint Venture. An auditor's report together with a certified balance sheet and profit and loss account shall reach the JV Board within six (6) calendar months of the end of each financial year. In respect of the final auditor's report together with a certified balance sheet and profit and loss account, it shall reach the JV Board within three (3) calendar months of the agreement and settlement of the Joint Venture Final Account in accordance with Clause 14.8.
- 14.6. Subject to Clause 31, any difference regarding the accounts of the Joint Venture shall firstly be settled by the auditors or Certified Public Accountants in accordance with Clause 14.5 who shall act as an expert and not as an arbitrator.
- 14.7. Notwithstanding the foregoing, any Party shall be entitled at any time upon reasonable notice and at its own cost to cause the said books of accounts and other financial documents to be audited by its own internal and/or other auditor or auditors. Each Party hereby undertakes to allow the auditors of the other sufficient access to Joint Venture and (if reasonably necessary) the records of that Party for the purposes of reporting transactions effected under this Agreement **[RSRB: LR14A.58 requirement included here to be on the safe side.]**
- 14.8. Upon receipt by Vibro HK of the full and final payments for all sums due from the Employer in accordance with the Contract and any other agreements with the Employer, the receipt by the Joint Venture of any other full and final payments for all sums due from any other Third Party in accordance with any agreements between the Third Party and the Joint Venture or by the operation of the applicable laws, the receipt of the proceeds for the realization of all the assets of the Joint Venture in accordance with Clause 18, and the discharge of all outstanding obligations and liabilities of the Joint Venture in accordance with the Contract, the Sub-Contract and this Agreement (including any payments of cash surplus in accordance with Clause 11.7), the JV Board shall cause a Joint Venture Final Account to be prepared by the Project Manager or the Project Management or their authorized delegates to ascertain (including ascertaining any necessary adjustments to take account of the sums to be due between the Parties themselves) the final gross profit and the final net profit after tax if any or the loss incurred by the Joint Venture for the approval of the JV Board.
- 14.9. Upon approval of the Joint Venture Final Account by the JV Board, each Party shall by the direction of the JV Board be paid by or pay to the Joint Venture its share of the



net profit after tax or of the loss incurred by the Joint Venture in accordance with the Participation Shares after taking into account of any interim distributions of profit or cash surplus or any other payments outlaying if any. The total net profit after tax or loss accountable to the Joint Venture shall be the difference between

- 14.9.1. the total of all monies received by the Joint Venture and deposited into the Joint Venture Bank Account, and
 - 14.9.2. all costs (including authorized accrued liabilities) incurred in connection with the execution of the Works and the Sub-Contract Works and the performance of the Contract and the Sub-Contract in relation to this Agreement.
- 14.10. The costs referred in Clause 14.9.2 shall include but not limited to the following costs for the purpose of Clause 14.9:
- 14.10.1. all Tender Costs approved by the Parties in accordance with Clause 5;
 - 14.10.2. fees paid or payable to the Joint Venture Leader under Clause 8.3;
 - 14.10.3. the cost of any services performed by the Parties and approved by the JV Board;
 - 14.10.4. the repayment of all sums provided by the Parties as working capital in accordance with Clause 11;
 - 14.10.5. the cost of staff seconded by the Parties in accordance with Clause 17;
 - 14.10.6. all rates, taxes, duties or other fiscal dues levied for the Project in Hong Kong in the name of the Joint Venture but excluding the same levied on the Parties individually;
 - 14.10.7. fees, costs or expenses expressly agreed in writing by the JV Board to be paid to Third Party in the settlement of any claim for any kind of disputes;
 - 14.10.8. amounts agreed by the JV Board as being a necessary or prudent provision for any liabilities (including settlements, latent defects and maintenance liabilities) or contingency reasonably anticipated after the settlement of the Joint Venture Final Account; and
 - 14.10.9. any other reasonable and justifiable reserves (including legal and company secretarial and bank charges), if any, which shall be determined and approved by the JV Board.

15. INSURANCE

- 15.1. The JV Board shall cause the Project Manager to take out and to maintain all insurance policies for the adequate protection and coverage of the risks as necessitated and as required by the Contract and the Sub-Contract, by the applicable laws and/or by the material circumstances for the execution and completion of the Works and the Sub-Contract Works and the performance of the Contract, the Sub-Contract and this Agreement.
- 15.2. The JV Board shall cause the Project Manager to ensure that the insurance policies which are suitable and available at reasonable commercial premium rates are taken out and maintained (including insurances for differences in covers and conditions) to cover the risks and liabilities of the Joint Venture arising from and in connection with the Works and the Sub-Contract Works, the Contract and the Sub-Contract and this Agreement, irrespective of whether the costs of such insurance are recoverable or deemed recovered from the Employer as a cost or as a risk in accordance with the Contract and the Sub-Contract.



16. TAXATION

- 16.1. Each Party shall be responsible for its own obligations and liabilities incurred for any rates, taxes, duties or other fiscal dues levied from time to time on it locally and elsewhere arising from or in connection with its participation in and being a member of the Joint Venture for the Project.
- 16.2. Each Party shall undertake to indemnify and keep indemnified the Joint Venture and the other Parties against any liabilities incurred by the Joint Venture and/or the other Parties for any such rates, taxes, duties or other fiscal dues in respect of which it is primarily liable in accordance with Clause 16.1.
- 16.3. For the purpose of Clauses 16.1 and 16.2, tax clearance certificates from relevant authorities shall be provided by each and every Party to the JV Board to justify the clearance of tax liabilities of the Parties which may be attached to the Joint Venture by the operation of applicable laws in or from any jurisdiction by any authorities. It is a condition that the tax clearance certificate shall be provided before the tax liabilities or provisions of the relevant Party are cleared in relation to the preparation of the annual and the final audited financial statements and the Joint Venture Final Account.

17. RESOURCES AND PROCUREMENT

PERSONNEL

- 17.1. Staff required for the execution and completion of the Works and the Sub-Contract Works and the performance of the Contract and the Sub-Contract shall be seconded as far as practically possible and reasonable by the Parties to the Joint Venture. Other staff not seconded from the Parties shall be employed by the Joint Venture.
- 17.2. Staff seconded by the Parties to the Joint Venture shall obey the reasonable instructions of the Project Manager. Such staff shall not be withdrawn from the Project by the employing Party without consultation of the Project Manager and the consent of the JV Board whose consent shall not be unreasonably withheld or delayed.
- 17.3. The Project Manager shall determine the staff requirements as he considers necessary and appropriate for the proper execution and completion of the Works and the Sub-Contract Works and approve the secondment of the staff by the Parties and the appointment of staff by the Joint Venture, including the terms and conditions of such secondment or appointments. The deployment of the resources shall comply with the resource plan included in the Tender allowance and/or otherwise proposed by the Parties and approved by the JV Board.
- 17.4. For the avoidance of doubt, the JV Board may overrule the decision of the Project Manager made in accordance with Clause 17.3 above.
- 17.5. Wherever it is reasonable and practicable, the Parties shall be given the opportunity to offer staff for the consideration of the JV Board and/or the Project Manager, and shall make sure that such staff are available for the Works and the Sub-Contract Works to the extent that they are capable of fulfilling the proposed functions and duties assigned to them.
- 17.6. No Party shall solicit or offer or accept an offer from any staff seconded to the Joint Venture by any other Party for employment or contract for services in its own company or Affiliate in the course of the Contract and the Sub-Contract and two (2) years thereafter without the written consent of the employing Party.



- 17.7. The costs of any seconded staff shall be charged to the Joint Venture. Such costs shall be calculated in accordance with the principles set out in Appendix 2 and invoiced under Clause 13.

OTHER RESOURCES

- 17.8. All plant, equipment and materials which are necessary for the execution and completion of the Works and the Sub-Contract Works and the performance of the Contract and the Sub-Contract shall be purchased and/or procured by and in the name of the Joint Venture at the most economically viable rates and prices and on the best terms and conditions available in the market subject to the approval of the JV Board unless this Agreement provides otherwise. The cost incurred thereof shall be chargeable to the account of the Joint Venture. Where such plant, equipment and materials are provided to the Joint Venture by any Party, the Joint Venture shall reimburse that Party for the hiring rate or purchase price of the plant, equipment and materials as the JV Board shall approve prior to such commitment being made by the Joint Venture.
- 17.9. All plant, equipment and materials which are purchased or procured by the Joint Venture shall become the assets of the Joint Venture.
- 17.10. Rental plant, equipment and materials made available to the Joint Venture by any Party shall not become the assets of the Joint Venture except to the extent required by the provisions of the Contract and the Sub-Contract.
- 17.11. All plant, equipment, materials and subcontracts which are procured to enable the Joint Venture to execute and complete the Works and the Sub-Contract Works and to perform the Contract and the Sub-Contract shall be procured in the name of the Joint Venture unless it is decided by the JV Board in writing that it is more advantageous for a Party to place the order for and on behalf of the Joint Venture. In such event, the cost and expense for such placement of the order shall be borne and settled or reimbursed by the Joint Venture in place of the Party or to the Party. For the avoidance of doubt, notwithstanding that such order or contract is made in the name of that Party, such Party shall be considered as the agent for the Joint Venture in this regard. The Joint Venture shall be responsible for the costs of such assets, including operation, insurance and maintenance costs. The ownership of such assets shall be transferred to the Joint Venture as soon as practicable after acquisition.

18. ASSETS

- 18.1. All plant, equipment, materials and other real or other property which are purchased and/or owned by the Joint Venture (which, for the avoidance of doubt, for the purposes of this Clause, shall exclude any plant, equipment and materials provided by and/or hired from the Parties) shall become the assets of the Joint Venture. When these assets are no longer required and/or are surplus for the proper execution and completion of the Works and the Sub-Contract Works, subject to the terms and conditions of the Contract and the Sub-Contract, these assets shall be disposed of by selling in the open market subject to the terms and conditions approved by the JV Board. If a Party is willing to purchase such assets in whole or in part, then that Party shall have a pre-emptive right to purchase the same on the same terms as the best bona fide offer received from a Third Party. This pre-emptive right shall be exercised within fifteen (15) calendar days from the date the JV Board informs the interested Party of the best offer received. In any case, the Project Manager shall take steps to secure the best possible prices for selling such assets.



- 18.2. To the extent required by the provisions of the Contract and the Sub-Contract it is hereby agreed and declared that all plant, equipment, materials and other real or other property provided by any of the Parties or hired, purchased or acquired by them or the Joint Venture shall be and become the property of the Joint Venture upon delivery to the site of the Project until the completion and handing over of the Works and the Sub-Contract Works to the Employer.
- 18.3. All proceeds from the sales of the plant, equipment, materials and other real or other property of the Joint Venture shall be paid to credit of the Joint Venture Bank Account.

19. INFORMATION

- 19.1. The Parties shall in the execution and completion of the Works and the Sub-Contract Works and for the performance of the Contract and the Sub-Contract grant licence to the Joint Venture for the patents, proprietary systems, designs or processes, other intellectual property or other technical or business know-how, which are necessary for the Joint Venture to discharge and fulfil its obligations and liabilities in connection with the Works and the Sub-Contract Works and the Contract and the Sub-Contract.
- 19.2. In the event that cost is associated with the provision of the patents, proprietary systems, designs or processes, other intellectual property or other technical or business know-how, the provision of such properties shall be subject to separate written agreements between the Parties and the Joint Venture. Where appropriate, the terms and conditions of these charges shall be specified in such separate agreements between the Parties and the Joint Venture. Notwithstanding that, it is the condition precedent that the Party shall serve notice in writing on the Joint Venture of his intention to charge at the time of offering these provisions.
- 19.3. Any property rights including the patents, copy rights and any other intellectual property rights shall be retained and vested with the Party who offers the information. However, the Party who offers the information pursuant to Clause 19.1 shall be deemed to have granted irrevocable licence free of charge to the other Parties for the use of the information for the purpose of the Works and the Sub-Contract Works, the Contract, the Sub-Contract and this Agreement until the completion and termination of the same.

20. CONFIDENTIALITY

- 20.1. Until the termination of this Agreement and for a period of three (3) years thereafter each Party undertakes on behalf of itself, its employees, agents and representatives that all information acquired by that Party (the "**Receiving Party**") from any other Party (the "**Disclosing Party**") shall be treated as confidential information and trade secret by the Receiving Party and shall not be used for any purposes other than the preparation and submission of the Tender, the execution of the Works and the Sub-Contract Works and the performance of the Contract and the Sub-Contract and of this Agreement without the prior written consent of the Disclosing Party.
- 20.2. No Party shall disclose any confidential information or any information whatsoever relating to or contained in the Tender, the Contract or this Agreement to any Third Parties without the prior written approval of the JV Board, unless and until such information:
- 20.2.1. is at the time it is acquired, or later becomes, public knowledge other than by breach of the foregoing paragraph; or
- 20.2.2. is in the possession of the Receiving Party with the full right to disclose prior to its receipt from the Disclosing Party; or



- 20.2.3. is independently received by the Receiving Party from a Third Party having the full right to disclose; or
- 20.2.4. is required to be disclosed in accordance with any applicable laws or regulations including the rules of The Stock Exchange of Hong Kong Limited, or any order of the court, the Government of Hong Kong or other regulatory body including the Securities and Futures Commission of Hong Kong; or
- 20.2.5. as required to be disclosed for obtaining legal advice or resolving dispute in accordance with the provisions of Clause 31.

21. PUBLICITY

- 21.1. Subject to the provisions of the Contract and the Sub-Contract and for a period of three (3) years after the end of the maintenance period applicable to the Works and the Sub-Contract Works under the Contract and the Sub-Contract, no Party shall give or offer to give publicity about the Joint Venture, the Contract, the Sub-Contract, the Works or the Sub-Contract Works without first having obtained the approval of the other Parties (such approval not to be unreasonably withheld or delayed) of the details of the publicity being proposed, provided always that the publicity to be given of the foregoing in the respective annual reports of the Parties (or their respective holding companies) and associated information to shareholders (including any documents which are published under the rules of, or otherwise required by, the Stock Exchange of Hong Kong Limited and the Securities and Futures Commission of Hong Kong) shall not require the consent of the Parties if it makes due and proper acknowledgement of the participation and the role of the other Parties in the execution of the Works for the Project or otherwise to comply with any applicable laws or regulations, or the rules of the Stock Exchange of Hong Kong Limited, or any order of the court, the Government of Hong Kong or other regulatory body including the Securities and Futures Commission of Hong Kong.
- 21.2. Subject to the provisions of the Contract and the Sub-Contract, the JV Board may at any time during the execution of the Works and the Sub-Contract Works give out and promote any publicity about the Works and the Sub-Contract Works, the Joint Venture, the Contract and/or the Sub-Contract, provided that the Parties shall be given reasonable time to review and comment on the contents of the materials to be published for consideration by the JV Board. The JV Board shall not publish any information which any Party has informed the JV Board could result in a breach of laws or rules (including the rules of The Stock Exchange of Hong Kong Limited) by that Party. The associated costs for publication of any publicity materials shall be borne by the Joint Venture.



22. EXCLUSIVITY

- 22.1. Until the termination of this Agreement and for a period of one (1) year thereafter no Party (including any Affiliate) shall enter into any agreements or collaborations with any other Third Parties in any form individually or jointly or through any Third Parties which compete with the interests of the Parties in the Tender, the Works, the Contract and this Agreement.
- 22.2. Affiliates of the Parties may either assist the Parties, or take part directly under an agreement with the Joint Venture in the preparation of the Tender. The Joint Venture is not obliged to engage such Affiliates to perform the Contract unless the JV Board is of the opinion that it will be more advantageous to the Joint Venture to engage such Affiliates.

23. ASSIGNMENT AND SUBLETTING

- 23.1. Save for the expressed provisions of this Agreement, no Party shall assign, sell, transfer, charge, mortgage or otherwise encumber in any way the whole or any part of its rights or benefits or of its obligations and liabilities under the Contract, the Sub-Contract and/or this Agreement to any Third Parties without obtaining the prior written approval of the other Parties. Any attempt to make such assignment, sale, transfer, charge, mortgage or encumbrance without the requisite consent shall be null and void.
- 23.2. The Works and/or the Sub-Contract Works shall not be wholly sublet or awarded to any Third Party.
- 23.3. Notwithstanding its Participation Share and to the extent permissible by the provisions of the Contract and the Sub-Contract, any Party may submit, either at the Tender stage or post Contract stage, proposals on behalf of its Affiliate to the Joint Venture for the execution of any section or portion of the Works and/or the Sub-Contract Works. The Joint Venture may enter into a subcontract with a Party's Affiliate where the JV Board has determined that such Party's Affiliate has submitted the most competitive proposal subject to the provisions of the Contract and the Sub-Contract.
- 23.4. If the Party's Affiliate has been awarded the subcontract ("**Awarded Works**") by the Joint Venture but does not possess the relevant licence(s) required by the Contract to carry out the Awarded Works, the Parties shall work together and use their reasonable endeavours to seek a Third Party suitably qualified and holding the appropriate licence(s) to join the Party's Affiliate and work in collaboration to complete the Awarded Works.
- 23.5. Where the Joint Venture decides to directly execute any specialist works by utilizing its own resources, any Party may, subject to the JV Board's approval second either its own or its Affiliate's specialists to the Joint Venture to assist in executing and completing the specialist works. If any Party who draws on its Affiliate's specialist expertise but its Affiliate does not possess prerequisite licence(s) required by the Employer or the relevant statutory bodies for the execution of such specialist works, all Parties shall work together and use their reasonable endeavours to seek another Third Party suitably qualified and holding the prerequisite licence(s) willing to work in collaboration with the Party's Affiliate and form an entity in a new name to second specialists to assist the Joint Venture in execution and completion the specialist works. The Parties shall use their reasonable endeavours and act in good faith towards the new entity in facilitating its gaining of job experience.



24. DEFAULT

- 24.1. A Defaulting Party shall be a Party in default if the Party:
- 24.1.1. is dissolved, becomes bankrupt or insolvent or goes into liquidation or has a winding up order made or has a resolution passed for voluntary winding up (except for the purposes of a solvent reconstruction or amalgamation) or has a liquidator, receiver or manager or administrative receiver or administrator appointed; or
 - 24.1.2. fails to provide any Security as may be required by the JV Board for or in connection with the Works and/or the Sub-Contract Works, the Contract, the Sub-Contract or this Agreement, within fourteen (14) Working Days of receipt of a notice from the JV Board or any other Party requesting the same; or
 - 24.1.3. fails to provide such working capital as may be required in accordance with Clause 11.1; or
 - 24.1.4. contrary to Clause 23, assigns the whole or part of its rights or benefits or obligations under this Agreement or sublet the whole of its obligations to a Third Party without the written consent of the other Parties; or
 - 24.1.5. is in breach of any of its other duties and obligations under this Agreement and the breach is not remedied by the Party within twenty eight (28) Working Days after having been requested by the other Parties or the JV Board in writing to remedy such breach.
- 24.2. If an event occurs in accordance with Clause 24.1 and without prejudice to any other rights or remedies available to the Party or Parties, the Continuing Party, that Party or Parties not in default, shall have the right to exclude immediately the Defaulting Party from further participation in the Joint Venture by serving on the Defaulting Party an Exclusion Notice stating the reasons and the date from which the Defaulting Party is excluded (the "**Exclusion Date**").
- 24.2.1. On and from the Exclusion Date, the Defaulting Party shall immediately cease to participate in the management and control of the Joint Venture and the Contract and the Sub-Contract and all acts, consents and decisions with respect to or in connection with the Joint Venture and the Contract and the Sub-Contract, and its business activities and affairs shall thereafter be conducted and performed solely by the Continuing Party.
 - 24.2.2. The Continuing Party shall have the right to retain for the completion of the Works and the Sub-Contract Works the assets including all plant, equipment and materials provided by the Defaulting Party, whether the assets are owned, hired, purchased or acquired by the Joint Venture or by the Defaulting Party at the time of the exclusion, until the completion and handing over of the Works and the Sub-Contract Works to the Employer.
 - 24.2.3. Within seven (7) Working Days after the date of service of the Exclusion Notice on the Defaulting Party, or as the case may be, its successors, receivers or other legal representatives, the Defaulting Party shall execute all deeds and documents and do all things necessary or expedient to facilitate the exercise of such right of exclusion and allow the Continuing Party to proceed with the performance of the Contract, the Sub-Contract and this Agreement in accordance with the provision of this Clause 24.2.
 - 24.2.4. Upon the service of the Exclusion Notice, all references made in this Agreement for the administration and direction of the Joint Venture by the Parties, whether through the JV Board or directly by the Parties, shall be deemed to exclude the Defaulting Party.



- 24.2.5. The Defaulting Party shall be prohibited, acting solely on its own accord or jointly with any person other than the Continuing Party, from pursuing or otherwise participating, in any capacity, in the Project.
- 24.3. A copy of the Exclusion Notice served in accordance with Clause 24.2 shall be the conclusive document served for the purpose and of sufficient authorization of the Defaulting Party to the Continuing Party, to banks and other Third Parties to revoke all right of instructions and any standing instructions of the Defaulting Party on the Joint Venture Bank Account and thereafter all such right of instructions shall be replaced by the Continuing Party who shall thereafter be authorized to act and operate the Joint Venture Bank Account in the same manner as provided in Clause 10 without the Defaulting Party.
- 24.4. Upon the completion or termination of the Contract and the Sub-Contract and the receipt by the Joint Venture of all amounts due to the Joint Venture in accordance with the Contract, the Sub-Contract and this Agreement, the Continuing Party shall notify the Defaulting Party of the balance of the account in the Joint Venture Final Account (prepared in accordance with Clause 14.8 except as otherwise provided in this Clause 24.4, and approved by the JV Board (but without the participation and vote of the Defaulting Party)) which the Defaulting Party is entitled to be paid by the Joint Venture or the Continuing Party, or which the Defaulting Party owes the Joint Venture or the Continuing Party as hereinafter provided.
- 24.4.1. The working capital paid and deposited into the Joint Venture Bank Account by the Defaulting Party, together with its share of any profits after tax in respect of the Contract, the Sub-Contract and this Agreement earned and apportioned prior to the Exclusion Date. For the avoidance of doubt, the working capital mentioned in this Clause 24.4.1 shall be the net amount of working capital paid and deposited by the Defaulting Party after deduction of any distribution of profit or cash surplus already received by the Defaulting Party prior to the Exclusion Date.
- 24.4.2. The losses, liabilities, costs and expenses, if any, arising from and in connection with the execution and completion of the Works and the Sub-Contract Works and the performance of the Contract, the Sub-Contract and this Agreement until the date on which the Contract and/or the Sub-Contract is fully performed and the obligations and liabilities of the Parties and the Joint Venture are fully discharged and fulfilled, and, all costs and expenses incurred by the Continuing Party directly or indirectly as a result of the default of the Defaulting Party.
- 24.4.3. In the event that the resulting difference of the sums between Clause 24.4.1 and Clause 24.4.2 demonstrates that there is a balance which the Defaulting Party is entitled to be paid by the Joint Venture, the Joint Venture shall pay the Defaulting Party within seven (7) Working Days from the date of the notice given in accordance with Clause 24.4.
- 24.4.4. In the event that the resulting difference of the sums between Clause 24.4.1 and Clause 24.4.2 demonstrates that there is a balance which the Defaulting Party owes the Joint Venture or the Continuing Party, the JV Board (without the participation and vote of the Defaulting Party) shall issue a Demand Notice to the Defaulting Party calling for the settlement of the balance which the Defaulting Party owes the Joint Venture or the Continuing Party. The Defaulting Party shall pay to the Joint Venture or the Continuing Party the sum as stipulated in the Demand Notice within seven (7) Working Days from the date of the Demand Notice. The sum stated in the Demand Notice shall be recoverable from the Defaulting Party by the Joint Venture or the Continuing Party as an independent debt which falls due on the date of the



Demand Notice, or shall be set off or deducted from any amount becoming due to the Defaulting Party by the Joint Venture in accordance with this Agreement at the sole discretion of the JV Board (without the participation and vote of the Defaulting Party).

- 24.5. In the absence of fraud, the Joint Venture Final Account shall be the conclusive evidence for the purpose of establishing the amount of any profits realized or loss sustained by the Joint Venture for the execution of the Project and performance of the Contract, the Sub-Contract and this Agreement.
- 24.6. The provisions of Clause 24 are without prejudice to and shall not limit any other rights or remedies available to the Continuing Party to take any actions to claim and set off any sums against any payable amounts due to the Defaulting Party for any losses and expenses due to the default of the Defaulting Party in accordance with this Agreement and/or any other agreements between the Parties and/or at law.
- 24.7. Without prejudice to any other terms and conditions of this Agreement or other rights and remedies which are available to the Parties, if a Party acting individually and in its own capacity without due authority from the JV Board in any course of actions in the name of the Joint Venture is in default of this Agreement, and any actions of such Defaulting Party causes any losses and/or damages to the Joint Venture and/or the Continuing Party, or causes an obligation or liability incurred by the Joint Venture and/or Continuing Party in favour of any Third Parties, such Defaulting Party shall, subject to the terms and conditions of this Agreement and the applicable laws, indemnify and keep indemnified the Joint Venture and/or the Continuing Party from and against all such losses, expenses and/or damages and any other costs and expenses ancillary thereto.
- 24.8. The action or omission to act of any employee assigned or seconded by the Parties to the Joint Venture shall be deemed to be the action or omission to act of the Joint Venture and shall not constitute any actions or omissions to act of the respective Parties or individually in the personally capacity of the seconded employee.

25. EXTENT OF AGREEMENT

- 25.1. This Agreement is entered into for the sole purpose of preparing and submitting the Tender and, if successful, executing the Contract with the Employer, executing and completing the Works and the Sub-Contract Works in accordance with the Contract and the Sub-Contract and any extra works undertaken in accordance with the Contract and the Sub-Contract and performing this Agreement by the Parties.
- 25.2. This Agreement shall in no event extend to or cover any other tasks for any other projects, contracts or works other than the Project, the Contract, the Sub-Contract, the Works or the Sub-Contract Works.

26. RIGHTS OF THIRD PARTIES

- 26.1. Notwithstanding any other provision of this Agreement, nothing in this Agreement confers or purports to confer any right to enforce any of its terms on any person or entity who is not a party to this Agreement, pursuant to the *Contracts (Rights of Third Parties) Ordinance* (Cap. 623) or otherwise.



27. LIMITATION OF LIABILITY

- 27.1. No Party shall be liable to the other Parties for loss of opportunity, loss of revenue, loss of profit, loss of any contract or for any indirect or consequential loss or damage which may be suffered by any other Party in connection with this Agreement.
- 27.2. Notwithstanding Clause 27.1, in connection with any Party's material breach of the provisions of Clauses 11, 12, 20, 22 or 38, the other Parties shall be entitled to exercise any and all remedies as may be available at law or in equity.

28. ILLEGALITY AND INVALIDITY

- 28.1. If any provisions of this Agreement shall in whole or in part be or become to any extent illegal, invalid or unenforceable in any respects according to the applicable laws, the effectiveness and the applicability of such provisions of this Agreement shall be severable, and then this Agreement shall be construed as if such illegal, invalid or unenforceable provisions had never formed a part of this Agreement and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provisions or by their severance from this Agreement.
- 28.2. If the severance of any provisions under Clause 28.1 materially impairs the ability of the Joint Venture and/or any Party to perform its obligations, or to obtain the benefits to which the Joint Venture and/or that Party is entitled, under this Agreement, then any Party and/or such Party may require that this Agreement be forthwith amended by unanimous agreement of the Parties in accordance with Clause 37 so that its abilities and benefits as aforesaid are restored as originally intended by the Parties and to the extent permitted by law.

29. WAIVER

- 29.1. No exercise nor failure to exercise nor delay in exercising any rights, power or remedies vested in each Party in accordance with this Agreement shall be construed as or shall constitute a waiver by such Party of that or any other rights, powers or remedies or the relinquishment of that or any other rights, power or remedies, and that or any other rights, powers or remedies shall continue in full force and effect.
- 29.2. Each Party may require strict compliance with any provisions of this Agreement and may exercise any rights or remedies provided by law or under this Agreement, notwithstanding any prior failure to do so or delay in doing so.
- 29.3. Any waivers by a Party of any provisions of this Agreement, or of any rights or remedies provided by law or under this Agreement, shall not be effective unless it is in writing executed by that Party, and contains an express statement that it is a waiver pursuant to this Clause 29. No waiver shall be deemed to be a continuing waiver unless so stated in writing.
- 29.4. No single or partial exercise of any rights or remedies provided by law or under this Agreement by a Party shall preclude any other or further exercises of such rights or remedies or any other rights or remedies.



30. NOTICE

- 30.1. All notices under this Agreement shall be made in writing and delivered by hand or sent by post to the addresses or by facsimile to the facsimile numbers or sent by email to the email addresses set out below (or such other postal addresses or email addresses or facsimile numbers as each Party may notify to the other Parties in writing):

Vibro Construction Company Limited

11/F, Chevalier Commercial Centre,
8 Wang Hoi Road,
Kowloon Bay,
Hong Kong
Fax: +852 2137 5599
Email address : general@vibro.com.hk

Titan Foundation Limited

Units 601-605A, 6/F, Tower B,
Manulife Financial Centre,
223 Wai Yip Street, Kwun Tong, Kowloon,
Hong Kong
Fax: +852 3460 3380
Email address : info@buildking.hk

- 30.2. Notices shall be deemed to have been given and delivered to the Parties on the earliest occurrence of:
- 30.2.1. The seventh (7th) Working Day after posting in Hong Kong and evidenced by the date stamp of the Post Office of Hong Kong; or
- 30.2.2. The date of transmission as shown on the confirmation report / acknowledgement of the facsimile or auto-stamp of email transmittals; or
- 30.2.3. The date of personal delivery and as acknowledged in the receipts / records of the messenger, postman or courier companies.

31. DISPUTE

- 31.1. A Dispute shall be brought to the attention of the Parties by the issue of a Notice of Dispute served by a Party on the other Parties. The Parties shall attempt to resolve any Dispute amicably by discussions and negotiations between the authorized representatives or the Director of the respective Parties in a meeting of the JV Board and/or in any other occasions and meetings of the Parties for the mutual interests and benefits of the Joint Venture.
- 31.2. If the Dispute fails to be resolved amicably by discussions and negotiations between the authorized representatives or the Director of the respective Parties in a meeting of the JV Board and/or in any other occasions and meetings of the Parties within thirty (30) Working Days (or any other varied or extended period which the Parties may have agreed in writing) from the date of the Notice of Dispute, any Party may refer the Dispute to mediation.



- 31.3. The mediation shall be conducted in accordance with The Government of the Hong Kong Special Administrative Region Construction Mediation Rules or any modification thereof being in force at the date of referral. If the Dispute cannot be resolved by mediation, or if any Party does not wish the Dispute to be referred to mediation then any Party may require that the Dispute shall be referred to arbitration in accordance with the Arbitration Ordinance (Cap. 609) as may be amended from time to time.
- 31.4. Any reference to arbitration shall be made within 90 calendar days of (a) no response to a mediation request within 30 calendar days of such request, or (b) a stated refusal to mediation, or (c) the failure of the mediation to produce a settlement, or (d) the abandonment of the mediation. The arbitration shall be conducted at the Hong Kong International Arbitration Centre in accordance with the Hong Kong International Arbitration Centre Domestic Arbitration Rules in force when the notice of arbitration is served upon the other Parties. The reference to arbitration shall be a domestic arbitration for the purpose of the Arbitration Ordinance (Cap. 609) and Schedule 2 of the Arbitration Ordinance shall apply to any arbitration instituted under this Clause.
- 31.4.1. There shall be one (1) arbitrator for the arbitral tribunal.
- 31.4.2. The seat and place of arbitration shall be Hong Kong.
- 31.4.3. The language of the arbitration shall be in English.
- 31.4.4. Notwithstanding the issues of the usual places of business, origins, domicile, nationality, tax countries, place of incorporation and registration of the Parties, the Parties shall be deemed to have waived their rights to invoke the jurisdiction of any other courts and regimes other than the arbitration as aforementioned in this Clause 31 to resolve any Dispute between the Parties.
- 31.5. The Parties shall be obliged to continue to execute and complete the Works and the Sub-Contract Works and to perform in accordance with this Agreement to the extent allowed by law, regardless of whether there is any mediation or arbitration in place between the Parties. The execution and completion of the Works and the Sub-Contract Works and the performance of this Agreement shall not be suspended or terminated by reason of the presence of such mediation or arbitration proceedings.
- 31.6. Without prejudice to the rights of the Parties to refer, proceed with and settle the Dispute to or by arbitration in accordance with Clause 31.4, nothing herein shall prohibit the Parties from agreeing to mediation at any time.

32. LAW

- 32.1. This Agreement shall be governed by and construed in all respects in accordance with the laws of Hong Kong.
- 32.2. This Agreement shall be executed by the Parties in Hong Kong.

33. LANGUAGE

English shall be the official language to be used for and in connection with this Agreement in all notices, communications, statements and any technical or commercial documentation to be prepared and presented under this Agreement, unless agreed otherwise in writing by the Parties.

34. RELATION

- 34.1. This Agreement shall not in any event be construed to constitute or be deemed to constitute any employment, agency and/or partnership between the Parties.



- 34.2. Any purported employment, agency and/or partnership between the Parties which is claimed to have been created or existing as a result of executing this Agreement shall be void and shall not be enforceable contractually and at law.

35. CREDIT

- 35.1. No Party shall pledge the credit of any of the other Parties or of the Joint Venture without prior authorization in writing by the other Parties or the Joint Venture.
- 35.2. No Party shall employ any funds, properties or credits of the Joint Venture for any other purposes than the purpose and intent of the Parties in accordance with this Agreement.
- 35.3. No Party shall draw, accept, endorse or negotiate any bills of exchange, promissory notes or other instruments in the name of the Joint Venture to sell, assign, transfer or in any way encumber its interests in the Joint Venture or cause or suffer or permit any of the Joint Venture's properties or its interests therein to be seized, attached or taken in execution or levied upon or impaired or otherwise taken for its separate engagement, liabilities or debts.

36. ENTIRETY

- 36.1. This Agreement constitutes the whole and only agreement between the Parties in relation to the subject matter of this Agreement and voids and supersedes all previous representations, agreements, negotiations and understandings of and between the Parties, whether written or oral, in connection with the Works and the Sub-Contract Works, the Project, the Contract and the Sub-Contract and the intent and purpose of this Agreement.
- 36.2. Each Party acknowledges that in entering into this Agreement it has not relied on any other contracts, agreements, undertakings, made or given by or with the other Parties or any Third Parties, at any time prior to the date of this Agreement which are not expressly set out in this Agreement.

37. AMENDMENT

Any amendments, variations or modifications to the terms and conditions of this Agreement shall not be effective and valid unless and until the amendments, variations or modifications have been confirmed by unanimous agreement of the Parties in writing and signed by each and every Party of the Joint Venture.

38. REPRESENTATION AND WARRANTY

- 38.1. Each Party hereby represents and warrants for itself that it is duly incorporated and validly existing under the laws of its jurisdiction, and shall have full power and authority to enter into this Agreement and all other agreements necessary for the completion of the Works and that the execution of this Agreement is not in conflict with any laws in its jurisdiction or with its by-laws.
- 38.2. Each Party hereby represents and warrants for itself that all corporate actions required by that Party validly and duly to authorize the execution and delivery of, and to exercise its rights and perform its obligations under, this Agreement and all other documents which are to be executed in accordance with this Agreement have been duly taken, and this Agreement constitutes, and the documents which are to be



executed in accordance with it when executed will constitute, legally valid and binding agreements of that Party enforceable in accordance with their respective terms.

- 38.3. Each Party hereby represents and warrants for itself that it has, at all times, carried on business and conducted its affairs in all material respects in accordance with its by-laws or articles of association for the time being in force and any other documents to which it is, or has been, a Party.
- 38.4. Each Party hereby represents and warrants for itself that it is empowered and duly qualified to carry on business in the Hong Kong Special Administrative Region and has obtained all necessary licences and consents from any persons, authorities or bodies for the proper carrying on of its business all of which such licences and consents are valid and subsisting, and it is not in breach of any of the terms or conditions of any of the licences or consents, and there is no factor that may in anyway prejudice the continuation, or renewal of any of them.
- 38.5. Any liabilities and costs associated with such representations and warranties of the Parties shall be borne by the respective Parties to ensure that the same is complied with in accordance with the Contract, the Sub-Contract and this Agreement.

39. INTERPRETATION

No rule of construction will apply in the interpretation of this Agreement to the disadvantage of one Party on the basis that that Party drafted any provision of this Agreement.



IN WITNESS whereof, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as a DEED in two (2) originals in Hong Kong the date first above written.

SIGNED SEALED AND DELIVERED)

For and on behalf of)

VIBRO CONSTRUCTION COMPANY LIMITED)

By: YEUNG CHUNG LAI)

Director & General Manager)

In the presence of:)

Name: IAM PANG)

Position: Assistant General Manager (Commercial))




SIGNED SEALED AND DELIVERED)

For and on behalf of)

TITAN FOUNDATION LIMITED)

By: Liu Sing Pang and Chan Chak Kau)

Director / person duly authorized by the Board of Directors)

In the presence of:)

Name: *Wallace* WONG CHAM KIT, WALLACE)

Position: *Wallace* PROJECT COMMERCIAL MANAGER)





Appendix 1 – Organization Chart

The Organization Chart of the Joint Venture approved by the JV Board.



Appendix 2 – Reimbursement of Costs and Expenses for the Secondment of Staff

1. The Parties shall charge the costs and expenses for the secondment of staff to the Joint Venture for reimbursement at a rate specified on Appendix 2.1, which shall include the wages, MPF, bonus, paid leave and any benefits etc.
2. **Reimbursable Expenses**, for example telephone expenses, fuel card or fuel expenses, business travel and accommodation, etc. will be charged separately to the Joint Venture in accordance with protocols approved by the JV board.
3. **Specialist Personnel**
If a Party provides specialist services to the Joint Venture from time to time, that Party shall be entitled to reimbursement for the costs and expenses incurred resulting from providing specialists for such services at the same rates as that Party has charged to other projects for such seconded specialists.



Appendix 3 – Allocation of Works between Vibro H.K. Limited and the Joint Venture

1. Vibro HK enters into the Contract with the Employer for the construction of the Works for Excavation and Lateral Support Works (Stage 1 & 2) for the Integrated Basement and Underground Road in Zone 2A, 2B and 2C.
2. Vibro HK will sublet the Bored Piling Works and all related testing works for the Completion of Bored Piling Works in the Project to Vibro Construction Company Limited.
3. Beside the Bored Piling Works, all other works of the Works under the Contract (“the Sub-Contract Works”) will be sublet to the Joint Venture by Vibro HK.
4. The Joint Venture shall be responsible to carry out all other works of the Works under the Contract including subletting all Excavation and Lateral Support Works and all related testing works (“ELS works”) for the Completion of the ELS works to Titan.
5. Notwithstanding the above sub-contracting arrangement and allocation of Works, Vibro and Titan shall be jointly and severally responsible and liable for all obligations and liabilities of Vibro HK for the Works under the Contract.
6. All the above subcontracts shall prepared based upon Vibro HK’s latest version of the standard form of Sub-Contract Agreement by which the subcontractor shall execute the subcontract works in full compliance with the Contract’s conditions, specifications and requirements and as will be further particularized in the subcontract.

