

CONDITIONS OF CONTRACT

1. INTERPRETATION

1.1 In this Contract (including the Recitals), unless the context requires otherwise, the following expressions have the following meanings:

“**associate**” in relation to any person means:

- (a) a relative or partner of that person; or
- (b) a company one or more of whose directors is in common with one or more of the directors of that person;

“**associated person**” in relation to another person means:

- (a) any person who has control, directly or indirectly, over the other; or
- (b) any person who is controlled, directly or indirectly, by another; or
- (c) any person who is controlled by, or has control over, a person at (a) or (b) above;

“**Certificate Course**” means the course described in the Service Specification which shall be organized and conducted by the contractor in accordance with the terms and conditions of the Contract;

“**Closing Date**” means the latest date and time by which quotes must be lodged as prescribed in the Terms of Quotation;

“**Commencement Date**” means the date specified in Part 2 of the Undertaking at Annex II;

“**Completion of the Services**” means completion of all the tasks set out herein to the satisfaction of the Government;

“**Contract**” means the contract hereunder (including these Conditions of Contract and the Service Specifications) and reference to the terms thereof shall include the Terms of Quotation unless inconsistent with the context of such reference;

“**Contractor**” means the person whose offer to provide the services is accepted by the Government;

“**control**” in relation to another person means the power of a person to secure:

- (a) by means of the holding of shares or interests or the possession of voting power in or in relation to that or any other person; or
- (b) by virtue of powers conferred by any constitution, memorandum or articles of association, partnership, agreement or arrangement (whether legally enforceable or not) affecting that or any other person; or
- (c) by virtue of holding office as a director in that or any other person,

that the affairs of the first-mentioned person are conducted in accordance with the wishes of that other person;

“**Course Commencement Date**” means the date on which the Certificate Course begins;

“**Deliverables**” means all papers, documents, works of authorship, documents and materials in whatever medium or format (including those in electronic format), developed, written, prepared, produced or created by the Contractor, its employees, agents or sub-contractor (whether individually or jointly with the Government) in the course of performing the Services, including but without limitation, all advice, summary notes, reports, (including draft and final reports and executive summaries), studies, plans, recommendations, work programme, information papers, research findings, data, diagrams, charts, photographs, drawings and specifications;

“**director**” means any person occupying the position of a director by whatever name called and includes without limitation a de facto or shadow director;

“**Government**” means the Government of the Hong Kong Special Administrative Region;

“**Government Representative**” means the Commissioner for Narcotics or any other person that the Commissioner for Narcotics authorizes to act on his/her behalf for the purposes of this Contract;

“**Hong Kong**” means the Hong Kong Special Administrative Region of the People’s Republic of China;

“**Intellectual Property Rights**” means patents, trade marks, service marks, trade names, design rights, copyright, domain names, database rights, rights in know-how, new inventions, designs or processes and other intellectual property rights of whatever nature and wheresoever arising, whether now known or hereafter created, and in each case whether registered and including applications for the grant of any such rights);

“**person**” means any individual, corporation, firm or any unincorporated body;

“**Procurement Documents**” means the documents set out in Clause 3 of the Terms of Quotation;

“**relative**” means the spouse, parent, child, brother or sister of the relevant person, and, in deducing such a relationship, an adopted child shall be deemed to be a child both of the natural parent and the adopting parent and a step child to be a child of both the natural parent and the step parent;

“**Services**” means those services, tasks and objectives to be performed, achieved or provided by the Contractor in accordance with this Contract including but without limitation to those set out in the Service Specifications;

“Service Fee” means the consideration payable to the Contractor for the performance of the Services hereunder, being the sum specified in the second column of the table in Appendix to this Conditions of Contract; and

- 1.2 Unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing a gender include all other genders.
- 1.3 References herein to Clauses, Schedules, Appendixes and Annexes are to clauses in and schedules, appendixes and annexes to this Contract unless the context requires otherwise and the Schedules, Appendixes and Annexes to this Contract shall form part of this Contract.
- 1.4 Section or clause headings to any provision, schedule, appendix and annex of this Contract are inserted for convenience of reference only and shall not in any way vary, limit or extend the interpretation of this Contract.

2. APPOINTMENT, DURATION AND SCOPE OF SERVICES

- 2.1 The Government hereby appoints the Contractor and the Contractor agrees to perform the Services in accordance with the terms and conditions of this Contract.
- 2.2 The Contractor shall commence the Services on the Commencement Date.
- 2.3 The Contractor shall not be regarded as having completed the Services until all the tasks set out herein have been completed to the satisfaction of the Government, including without limitation the submission of all the Deliverables required hereunder.
- 2.4 The Contractor undertakes that the Certificate Course shall be completed within 6 months after the Course Commencement Date and in any event not later than 31 July 2006.

3. PARTICIPANTS

3.1 The Contractor shall ensure that all participants of the Certificate Course are serving staff of and are nominated by a supervisor of a drug treatment and rehabilitation agency or centre or a welfare agency. The Contractor shall conduct enrolment to the Certificate Course in accordance with the following priorities :

- (a) First priority: Social workers and peer counsellors working in residential drug treatment and rehabilitation agencies;
- (b) Second priority: Other executive/management staff and anti-drug workers working in drug treatment and rehabilitation agencies;
- (c) Third priority: Other social workers and staff in the social service sector.

3.2 In this clause, “peer counsellors” means those rehabilitated ex-drug abusers who have completed drug treatment programmes.

4. WARRANTIES AND UNDERTAKINGS

4.1 The Contractor warrants and undertakes to the Government that:

- (a) the Services shall be performed and completed in an impartial, timely and diligent manner and that the Contractor and every person employed, used or engaged by the Contractor shall use all the experience, skills, care and diligence in the performance of the Services and the discharge of all its duties and obligations under this Contract as may be expected from a person who is an expert in providing services of a kind similar to the Services;
- (b) the Contractor and the Contractor’s permitted sub-contractors, if any, have the necessary skills and experience to provide the Services hereunder;

- (c) the Contractor shall devote to its obligations hereunder such of its time, attention and skill as may be necessary for the proper performance of those obligations;
- (d) the Contractor shall comply with the reasonable requests of the Government and shall use its best endeavours to promote the interests of the Government;
- (e) the provision of the Services and the use and/or possession by the Government and/or by any other person authorized by the Government of any documents, things or material whatsoever to be supplied by or on behalf of the Contractor under this Contract (including the Deliverables) for any purpose contemplated by this Contract do not and will not infringe any Intellectual Property Rights of any third party;
- (f) the Deliverables will, so far as they do not comprise material originating from the Government, its employees, agents or contractors, be original works of authorship and the use or possession thereof by the Government or the Contractor will not subject the Government or the Contractor to any claim for infringement of any proprietary rights of any third party; and
- (g) all information supplied and statements and representations made by or on behalf of the Contractor in relation to the Services are true and accurate.

5. MEETINGS

The Contractor shall attend meetings convened by the Government Representative at such intervals and at such places and times as may be determined by the Government Representative.

6. DIRECTION GIVEN BY THE GOVERNMENT REPRESENTATIVE

Save to the extent inconsistent with or going beyond the Contractor's obligations under this Contract, the Government Representative may give general directions to the Contractor in relation to the performance of the Contractor's duties under this Contract.

7. PAYMENT

- 7.1 Subject to the provisions of this Contract, Government shall pay to the Contractor in consideration for its due and proper performance of the Services a fixed lump sum fee specified in the second column of the table in the Appendix to this Conditions of Contract in accordance with the following payment schedule:

PAYMENT SCHEDULE

<u>Due date for payment</u>	<u>%</u>
One week after the Course Commencement Date	50 *
One week after the completion of the Certificate Course	50 *

(* net course fee from successful applicants)

PROVIDED that the payment schedule is subject to adjustment at any time by mutual agreement of the parties if the progress of the performance of the Services and the benefit therefrom obtained by the course participants or the Government so warrant.

- 7.2 The Service Fee shall be inclusive of all fees, costs, charges and disbursements incurred by the Contractor in the performance of the Services including without limitation all out-of-pocket expenses, all travelling expenses, air passages, local subsistence allowances for expatriates and others, postage, international telephone calls, facsimile, telex, e-mail expenses, office and hotel accommodation, secretarial support, computer facilities, production of Deliverables and any other

out-of-pocket expenses incurred in carrying out the Services. The Service Fee shall further be inclusive of all fees, costs, charges and disbursements incurred by the Contractor in appointing or engaging any sub-contractors, advisers, external experts or others to perform any part of the Services under this Contract, or to advise or assist in relation thereto.

8. DISCLOSURE OF FEES PAYABLE TO THE CONTRACTOR

8.1 The Contractor hereby acknowledges and agrees that the Government may, whenever it considers appropriate or upon request by any person (written or otherwise) and without any further reference to the Contractor, disclose to any person in such form and manner as the Government deems fit:

- (a) the Service Fee and any other fees, costs and expenses payable to the Contractor pursuant to this Contract; and
- (b) the fee proposal submitted prior to the date of this Contract by the Contractor to the Government in relation to the Services.

8.2 The Contractor hereby waives its rights, if any, to make any claims against the Government for any loss or liability suffered by the Contractor as a result of or in connection with any disclosure made by the Government under Clause 8.1.

9. TERMINATION

9.1 The Government may terminate this Contract forthwith upon giving written notice to the Contractor if –

- (a) the Contractor is in breach of any term of this Contract which –
 - (i) in the case of a breach of a term capable of being remedied, is not remedied by the Contractor within 7 days of receipt of a notice to remedy from the Government; or

- (ii) is fundamental to this Contract;
- (b) the Contractor goes into liquidation (other than a voluntary liquidation for the purpose of amalgamation or reconstruction) or if the Contractor is a partnership, is dissolved or is put into receivership or a bankruptcy order is made against it or it makes an arrangement with or assignment in favour of its creditors;
- (c) a receiver is appointed over any of the Contractor's assets or a distress or execution is levied or enforced upon or sued out against any of the Contractor's chattels, properties or assets and is not discharged or stayed or in good faith contested by action within 30 days thereafter; or
- (d) the Contractor stops payment to creditors generally or is unable to pay its respective debts within the meaning of any applicable legislation relating to insolvency, bankruptcy, liquidation or winding up, or ceases or threatens to cease to carry on its business (except for the purposes of amalgamation, merger or reconstruction).

9.2 Without prejudice to Clause 9.1, the Government may at any time prior to the Completion of the Services at its option suspend or terminate the Contract by giving the Contractor 14 days' written notice of such suspension or termination.

10. PUBLICITY

The Contractor shall submit to the Government Representative all advertising or other publicity material relating to the Contract or the products supplied or other work done in connection with the Contract wherein the Government's name is mentioned or language used from which a connection with the Government can reasonably be inferred or implied. The Contractor shall not publish or use any advertising or other publicity material without the prior written consent of the Government Representative.

11. GOVERNING LAW

The Contract shall be governed by and construed in accordance with the laws of Hong Kong and the parties hereby agree to submit to the jurisdiction of the courts of Hong Kong in relation to any matters arising out of the Contract.

12. RIGHTS ON ACQUIRED PROPERTY

- 12.1 The Contractor hereby grants to the Government, its authorised users, assigns and successor-in-title a perpetual, worldwide, freely transferable, irrevocable and non-exclusive licence, free of royalty, licence fee or other charge and together with a right to grant sub-license, to use the Deliverables in any way whatsoever, including without limitation the right to make copies of the Deliverables and to make any adaptation of the Deliverables.
- 12.2 At the request of the Government, the Contractor shall within the period specified in the request and free of any charge to the Government, do all such things and sign all documents or instruments reasonably necessary in the opinion of the Government to enable the Government to obtain, defend and enforce its rights in the Deliverables.
- 12.3 The provisions of this Clause shall survive the expiration or termination of this Contract.

13. POLICY OF INSURANCE AND COMPENSATION

- (a) The Contractor shall within 5 days from the Commencement Date effect a policy of insurance against all claims, demands or liability that may be incurred by the Contractor under this Contract with an insurance company and on such terms approved by Government (which approval shall not be unreasonably withheld) and shall maintain such insurance during the continuance of the Contract. The Contractor shall when required, deposit with the Government

Representative for safe keeping such policy of insurance together with the receipt of payment of the current premium.

- (b) If the Contractor fails to effect and keep in force the insurance referred to in this clause or any other insurance which he may be required to effect under the terms of the Contract then and in any such cases Government may effect and keep in force any such insurance and pay such premium or premiums as may be necessary for that purpose and from time to time deduct the amount so paid by Government as aforesaid from any moneys due or which may become due to the Contractor or recover the same as a debt due from the Contractor.
- (c) In the event of any of the Contractor's employees or agents suffering any injury or death in the course of or arising out of the performance of the Contract and whether there be a claim for compensation or not, the Contractor shall within 7 clear working days give notice in writing of such injury or death to the Government Representative.

14. CONFIDENTIALITY

14.1 All information, materials and data furnished by or on behalf of the Government in connection with this Contract, and all Deliverables, data and information shall be treated by the Contractor as confidential information. The Contractor shall not, during the continuance of this Contract or at any time thereafter, disclose to any person the terms and conditions of this Contract, or any confidential information, PROVIDED that the restrictions on disclosure contained in this Clause shall not apply:

- (a) to the disclosure of any information to any person in circumstances where such disclosure is necessary for the proper performance of the Contractor's duties and obligations under this Contract, provided that the Contractor shall, prior to such disclosure, inform the Government the content of the information to be disclosed and to whom the disclosure is to be made;
- (b) to the disclosure of any information already known to the recipient other than as a result of disclosure by the Contractor, its associates

or associated persons;

- (c) to the disclosure of any information which is or becomes public knowledge other than as a result of disclosure by the Contractor, its associates or associated persons;
- (d) to the disclosure of any information in circumstances where such disclosure is required pursuant to any law or order of a Court of competent jurisdiction; and
- (e) to the disclosure of any information with the prior written consent of the Government.

The Government shall have the right to determine in good faith at any time whether any information is within that described in (b) or (c) above and the Contractor shall comply with that determination.

- 14.2 Any disclosure permitted under Clause 14.1 shall be in strict confidence and shall extend only so far as may be necessary for the purposes specified in Clause 14.1 and the Contractor shall use its best endeavours to ensure the confidentiality of any such disclosure.
- 14.3 The Contractor shall not make use of or reproduce any information, report, chart, document, plan, software, data or other particulars or information whatsoever relating to this Contract furnished by or on behalf of the Government other than in the performance of its obligations under this Contract and shall not make use of the Deliverables or computer models produced or created in relation to the performance of its obligations under this Contract other than in the performance of its obligations under this Contract or with the prior written consent of the Government.
- 14.4 The Contractor shall not without the prior written consent of the Government publish, either alone or in conjunction with any other person, in any newspaper, magazine, periodical, film, video, or other medium, any confidential information relating to the Services.
- 14.5 The Contractor shall inform every person to whom any information,

report, chart, document, plan, software, data or other particulars or information relating to this Contract is disclosed pursuant to this Clause of the restrictions on reproduction and disclosure attaching to such information and the Contractor shall require such a person to notify the same restrictions to any other person to whom it makes any such disclosure.

14.6 The provisions of this Clause shall survive the expiration or termination of this Contract.

15. INDEMNITY

15.1 The Contractor undertakes with the Government that it will indemnify and hold harmless the Government and its employees, officers and agents from and against any and all losses, liabilities, costs, charges, claims, damages, expenses or demands or actions in respect thereof which the Government may incur or which may be made against it as a result of any act, omission, neglect, recklessness, misconduct, fraud, defamation, breach of statutory duty or a breach of this Contract by the Contractor or any act, omission, neglect, recklessness, misconduct, fraud, defamation, breach of statutory duty by any officers, employees, agents or sub-contractors of the Contractor.

15.2 Without prejudice to any rights or remedies that the Government may have, where the Contractor has incurred any liability to the Government, whether at law or in equity and whether such liability is liquidated or unliquidated, the Government may set off, whether at law or in equity, the amount of such liability against any sum then due or which at any time thereafter may become due from the Government to the Contractor under this Contract or any other contracts.

16. EFFECT OF TERMINATION

On the expiry or earlier termination of this Contract:

(a) all rights and obligations of the parties under this Contract shall

automatically terminate except for such rights of action as shall have accrued prior thereto and any obligations which expressly or by implication are intended to come into or continue to be in force on or after such expiration or termination;

- (b) subject to any right of set-off or counter-claim which the Government may have, the Contractor shall be entitled to payment for the Deliverables that are completed and submitted to the Government;
- (c) if this Contract is terminated by the Government prior to completion of the Services, the Government may itself complete the Services or (at the option of the Government) may engage, use or employ any other contractor to complete the said services and the Government or such other contractor may use the Deliverables or any part thereof for such completion;
- (d) the Contractor shall forthwith deliver up to the Government all copies of any information, document, material, software and data supplied to the Contractor by the Government for the purposes of this Contract; and
- (e) the Contractor shall give the Government, at its request, all reasonable co-operation in transferring all sub-contracts made by the Contractor hereunder to the extent that the sub-contractors approve and provided that the Contractor is fully released from its obligations in relation thereto.

17. ASSIGNMENT AND SUB-CONTRACTING

- 17.1 The Contractor shall not assign, sub-contract or otherwise dispose of this Contract or any interest, right, benefit or obligation under this Contract, whether in whole or in part, without the Government's prior written consent.
- 17.2 Without prejudice to Clause 17.1, the Contractor shall not engage, deploy or permit any guest speaker or instructor to conduct or assist in conducting the Certificate Course of the Services without the

Government Representative's prior written consent.

18. WAIVER

No failure or delay by either party to exercise or in exercising any right, power or remedy available to it under this Contract or in law or equity shall operate as a waiver thereof, nor shall any single or partial exercise of the same preclude any other or further exercise thereof or the exercise of any other right, power or remedy, and the rights and remedies of each party herein provided are cumulative and not exhaustive of any rights and remedies provided by law or in equity. Without limiting the foregoing, no waiver by either party of any breach by the other party of any provision hereof shall be deemed to be a waiver of any subsequent breach of that or any other provision hereof.

19. VARIATION

Subject to the provisions of this Contract, no waiver, cancellation, alteration or amendment of or to the provisions of this Contract shall be valid unless made in writing and duly signed by both parties.

20. NOTICES

20.1 Each notice, demand or other communication given or made under this Contract shall be in writing and delivered or sent to the relevant party at its address or facsimile number set out below (or such other address or facsimile number as the addressee has by 5 days' prior written notice specified to the other party):

To the Government: Narcotics Division, Security Bureau
Government Secretariat
30/F., High Block, Queensway Government Offices
66 Queensway
Hong Kong
[Attention: Ms Jennie Wong]
Facsimile Number: 2810 1790

To the Contractor: **[the Interested Party named in the Appendix to this Annex]**

- 20.2 Such notices shall be deemed to have been properly given hereunder and shall be effective (a) on the date of delivery if hand-delivered; (b) on the date of transmission if sent by facsimile; and (c) if dispatched by mail (whether registered or not), on the day on which the same shall have been tendered for delivery by the postal authority in Hong Kong.

21. RELATIONSHIP OF THE PARTIES

The Contractor enters into this Contract with the Government as an independent contractor on a principal-to-principal basis only and shall not represent itself as an employee, servant, agent or partner of the Government.

22. SEVERABILITY

Any provision of this Contract that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Contract nor affect the validity or enforceability of that provision in any other jurisdiction.

23. COSTS

Save as otherwise provided for in this Contract, the Contractor shall perform and discharge all its duties and obligations under this Contract at its own costs and expenses.

Appendix to Conditions of Contract

Quotation Ref.: NDC 6/83(05)

PRICE QUOTATION

Description of Services	Amount (HK\$)
Provision of Certificate Course in Drug Treatment and Rehabilitation for Social Workers / Peer Counsellors as detailed in the Service Specification	

Name of Interested Party : _____

Name and Title of Person _____

Authorised to sign on behalf _____

of the Interested Party _____

(in Block Letters) : _____

Telephone No. : _____

Fax No. : _____

Signature of Person Authorized
to sign the Contract (with chop or seal)

Date : _____