

Sample Probity Clauses for Inclusion in Service Agreements

Ethical Commitment

Prevention of Bribery (for use in service agreements with Managers)

- (A) The Contractor shall not, and shall procure that his directors, employees, agents and sub-contractors who are involved in this Contract shall not, except with permission of the **[name of the Owners' Corporation]** (hereafter referred to as the Corporation), solicit or accept any advantage as defined in the Prevention of Bribery Ordinance (Cap 201) in relation to the business of the Corporation (e.g. prohibiting acceptance of commission or free service from suppliers and service providers serving the Corporation). The Contractor shall also caution his directors, employees, agents and sub-contractors against soliciting or accepting any hospitality, entertainment or inducements which would impair their impartiality in relation to the business of the Corporation. The Contractor shall take all necessary measures (including by way of internal guidelines or contractual provisions where appropriate) to ensure that his directors, employees, agents and sub-contractors are aware of the aforesaid prohibition and will not solicit or accept any advantage, hospitality which would impair their impartiality, etc. in relation to the business of the Corporation.
- (B) The Contractor shall not, and shall procure that his directors, employees, agents and sub-contractors who are involved in this Contract shall not, offer any advantage to any member of the Management Committee or staff in relation to the business of the Corporation.

Prevention of Bribery (for use in service agreements with cleaning and security contractors, or other service providers)

- (C) The Contractor shall not, and shall procure that his directors, employees, agents and sub-contractors who are involved in this Contract shall not, except with permission of **[name of the Owners' Corporation]** (hereafter referred to as the Corporation) solicit or accept any advantage as defined in the Prevention of Bribery Ordinance (Cap 201) in relation to the business of the Corporation. The Contractor shall also caution his directors, employees, agents and sub-contractors against soliciting or accepting any excessive hospitality, entertainment or inducements which would impair their impartiality in relation to the business of the Corporation. The Contractor shall take all necessary measures (including by way of internal guidelines or contractual provisions where appropriate) to ensure that his directors, employees, agents and sub-contractors are aware of the aforesaid prohibition and will not solicit or accept any advantage, hospitality which would impair their impartiality, etc. in relation to the business of the Corporation.
- (D) The Contractor shall not, and shall procure that his directors, employees, agents and sub-contractors who are involved in this Contract shall not, solicit or accept extra charges for additional services (e.g. in the case of the cleaning contractor, additional cleaning work and in the case of the security contractor, escorting people to inspect flats for letting) in connection with this Contract required by individual owners, unless with the prior approval of the Management Committee or the Manager (if one is employed for building management).
- (E) The Contractor shall not, and shall procure that his directors, employees, agents and sub-contractors who are involved in this Contract shall not, offer any advantage to any member or any of his/her family members or relatives of the Management Committee, the Manager (if one is employed for building management) or staff in relation to the business of the Corporation.

The following sample probity clauses should be used in service agreements with Managers and all service providers.

Declaration of Conflict of Interest

(F) The Contractor shall declare to the Corporation in writing and require his directors and employees to declare in writing to the Contractor any conflict or potential conflict between their personal / financial interests and their duties in connection with this Contract, **including any personal relationship with the suppliers and service providers serving the Corporation*. In the event that such conflict or potential conflict is disclosed in a declaration, the Contractor shall forthwith take such reasonable measures as are necessary to mitigate as far as possible or remove the conflict or potential conflict so disclosed. The Contractor shall require his agents and sub-contractors to impose similar restriction on their directors and employees by way of a contractual provision.

*(*delete when used in service agreements with cleaning and security contractors, or other service providers)*

(G) The Contractor shall prohibit his directors and employees who are involved in this Contract from engaging in any work or employment other than in the performance of this Contract, with or without remuneration, which could create or potentially give rise to a conflict between their personal / financial interests and their duties in connection with this Contract. The Contractor shall require his agents and sub-contractors to impose similar restriction on their directors and employees by way of a contractual provision.

(H) The Contractor shall take all necessary measures (including by way of internal guidelines or contractual provisions where appropriate) to ensure that his directors, employees, agents and sub-contractors who are involved in this Contract are aware of the provisions under the aforesaid sub-clauses (A) to (G).

Handling of Confidential Information

(I) The Contractor shall not use or divulge, except for the purpose of this Contract, any information provided by the Corporation in the Contract or in any subsequent correspondence or documentation, or any information (e.g. owners' and residents' data) obtained when conducting business under this Contract. Any disclosure to any person or agent or sub-contractor for the purpose of the Contract shall be in strict confidence and shall be on a "need to know" basis and extend only so far as may be necessary for the purpose of this Contract. The Contractor shall take all necessary measures (by way of internal guidelines or contractual provisions where appropriate) to ensure that information is not divulged for purposes other than that of this Contract by such person, agent or sub-contractor. The Contractor shall indemnify and keep indemnify the Corporation against all loss, liabilities, damages, costs, legal costs, professional and other expenses of any nature whatsoever the Corporation may suffer, sustain or incur, whether direct or consequential, arising out of or in connection with any breach of the aforesaid non-disclosure provision by the Contractor or his directors, employees, agents or sub-contractors.

Declaration of Ethical Commitment

- (J) The Contractor shall submit a signed declaration in a form (see *Appendix*) prescribed or approved by the Corporation to confirm compliance with the provisions in aforesaid sub-clauses (A), (B), (C), (D), (E), (F), (G) and (I) on prevention of bribery, declaration of conflict of interest and confidentiality. If the Contractor fails to submit the declaration as required, the Corporation shall be entitled to withhold payment until such declaration is submitted and the Contractor shall not be entitled to interest in that period. To demonstrate compliance with the aforesaid sub-clauses (A), (B), (C), (D), (E), (F), (G) and (I) on prevention of bribery, declaration of conflict of interest and handling of confidential information, the Contractor and the sub-contractors employed for the performance of duties under this Contract are required to deposit with the Corporation a copy of the internal guidelines issued to their staff.

Annex 4 - Appendix

**Declaration Form by Service Providers
on their Compliance with the Ethical Commitment Requirements**

To: Owners' Corporation

Contract No.:

Title:

In accordance with the Ethical Commitment clauses in the Contract:

- (1) We confirm that we have complied with the following provisions and have ensured that our directors, employees, agents and sub-contractors are aware of the following provisions:
 - (a) prohibiting our directors, employees, agents and sub-contractors who are involved in this Contract from offering, soliciting or accepting any advantage as defined in section 2 of the Prevention of Bribery Ordinance (Cap 201) in relation to the business of the Owners' Corporation except with the permission of the Owners' Corporation;
 - (b) requiring our directors, employees, agents and sub-contractors who are involved in this Contract to declare in writing to their respective company management any conflict or potential conflict between their personal / financial interests and their duties in connection with this Contract, and in the event that a conflict or potential conflict is disclosed, take such reasonable measures as are necessary to mitigate as far as possible or remove the conflict or potential conflict so disclosed;
 - (c) prohibiting our directors and employees who are involved in this Contract from engaging in any work or employment (other than in the performance of this Contract), with or without remuneration, which could create or potentially give rise to a conflict between their personal / financial interests and their duties in connection with this Contract and requiring our agents and sub-contractors to do the same; and
 - (d) taking all measures as necessary to protect any confidential / privileged information or data entrusted to us by or on behalf of the Owners' Corporation from being divulged to a third party other than those allowed in this Contract.

Signature

(Name of the Service Provider)

(Name of the Signatory)

(Position of the Signatory)

(Date)