

RESTRICTED

Tender for the Supply Services of
Information Technology Contract Staff
to the Government of the
Hong Kong Special Administrative Region

Tender Ref: GCIO 5/2 (T25)

PART I

TERMS OF TENDER

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1. Interpretation

1.1 In this set of Tender Documents, unless the context otherwise requires, the following terms shall have the following meaning:

“Associate” in relation to any persons 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;

“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 being or 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;

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

“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 parents and the adopting parent and a step child to be a child of both the natural parent and of any step parent;

“Commencement Date”

means 1 February 2019 or such other date as specified by the Government, whichever is the later;

“Confidential Information”

means information contained in the Materials and all materials and data furnished by or on behalf of the Government which is received by the Contractor or comes to the Contractor’s knowledge in connection with this Contract including but not limited to the terms and conditions of this Contract;

“Contract”

means the contract made hereunder between the Contractor and the Government including the Standing Offer Deed, Conditions of Contract, Specifications, Contract Schedules and other documents which are incorporated by reference herein;

“Contract Ceiling Rate”

means the upper limit of the daily rate per staff category that the Contractor may charge for the Service, subject to adjustment as stipulated in clauses 3.2 and 3.3 in Part IV;

“Contractor”

means the person whose name appears in Part V of this Contract;

“Currency”

means Hong Kong Dollars;

“Day”

means calendar day;

“Employer”

means the employer of the Relevant Employee who is under an employment contract to provide the Service under this Contract;

“Government”

means the Government of Hong Kong;

“Government Representative”

means the Government Chief Information Officer or any other officer duly authorized to act for and on behalf

of the Government for the purposes of the Contract;

“Guangdong Province”

means the Guangdong Province of the People’s Republic of China;

“Hong Kong”

means the Hong Kong Special Administrative Region of the People’s Republic of China, including the Hong Kong Port Area as defined in section 2 of the Shenzhen Bay Port Hong Kong Port Area Ordinance (Cap. 591);

“Hong Kong Time”

means local time which is GMT+8;

“Individual Rate”

means the daily rate of providing individual Relevant Employee to the Government, as quoted by the Contractor in proposing the Relevant Employee for selection by the Government and accepted by the Government and, subject to adjustment as stipulated in clause 3 in Part IV;

“Intellectual Property Rights”

means patents, copyrights, design rights, trademarks, service marks, trade names, domain names, database rights, rights in know-how, new inventions, designs or processes and other intellectual property rights (of whatever nature and wherever arising), whether now known or hereafter created and in each case whether registered or unregistered and including applications for the grant of any such rights;

“Invitation to Tender”

means this invitation to tender for the provision of the Service to the Government on the terms and conditions set out in the Tender Documents;

“Law”

means any constitutional provisions, treaties conventions, ordinances, subsidiary legislation, orders, rules and regulations having the force of law and rules of civil and common law and equity;

“Materials”

includes but is not limited to all the programmes, data, information or materials collected, compiled, developed, produced or created by or on

behalf of the Contractor, its sub-contractors, Relevant Employees, and their directors, officers, employees, agents or sub-contractors (whether individually or jointly with the Government) in relation to and/or in the course of the performance of the Service or for the purpose of the Contract, which are recorded or stored by whatever means in whatever form or media, any material relating to programming documentation including source and object code listings originated and first prepared for the Government by the Relevant Employee, the pre-contractual and contractual documents and all the drafts, uncompleted versions and working papers of any of the above items;

“Month”	means calendar month;
“Notice”	means notices as set out in clause 32 in Part IV;
“Notice of Service (RE)”	means the written notice from the Government to the Contractor specifying the name of Relevant Employee, the Period of Service (RE) of the Relevant Employee, the Service (RE) to be performed, the Individual Rate and other information as may be necessary from time to time;
“Original Tender Closing Date”	means 13 April 2018;
“Partnership”	means the relation which subsists between persons carrying on a business in common with a view of profit, whether or not the Partnership Ordinance (Cap. 38) applies to the partnership;
“Period of Service (RE)”	means the period during which the Relevant Employee performs the Service (RE) under the Contract;
“Person”	includes any individual, corporation, firm and unincorporated body;

“Public Sector”	comprises the Government, statutory bodies in Hong Kong and aided schools as defined under the Education Ordinance (Cap. 279);
“Relevant Employee” and “Relevant Employees”	means any one employee or more than one employees employed by the Contractor under an employment contract or employment contracts to provide the Service (RE) under the Contract;
“Service”	means all duties, obligations and services to be performed and provided by the Contractor as specified in the Contract;
“Service (RE)”	means the services to be performed by the Relevant Employee as provided by the Contractor to the Government under this Contract pursuant to the Specifications in Part VI;
“Shenzhen”	means the Shenzhen Special Economic Zone of the People’s Republic of China;
“Standing Offer Agreement for Quality Professional Services”	means the agreements made between the contractors and the Government for the supply of information technology professional services under tender references of GCIO 5/10-R, GCIO 5/11-R or GCIO 5/12-R;
“Standing Offer Deed”	means the document to be executed between the Government and any Tenderer in accordance with the terms, conditions and other matters referred to in Part III, IV and VI of the Tender Documents;
“Supervisor”	means the person nominated by the Contractor to be responsible for supervising the Relevant Employees for the purpose of this Contract;
“Tender”	means an offer to provide the Service as submitted by a Tenderer in response to the Invitation to Tender;

“Tender Closing Date”	means the latest date (Hong Kong Time) by which Tenders must be lodged including the Original Tender Closing Date, and as such date may be extended in accordance with clause 5.14 of the Terms of Tender in Part I;
“Tender Documents”	has the meaning given to it in clause 3 of the Terms of Tender in Part I;
“Tenderer”	means the person or the firm or the company referred to in the “Offer to be Bound” in Part II;
“Term”	means the period of forty-eight (48) months starting from the Commencement Date of this Contract unless extended under clauses 1.2 or 1.3 in Part IV;
“Time”	means a time of day as a reference to Hong Kong Time;
“Working Day”	means Monday to Friday other than a day which is public holiday or a day from Monday to Friday on which Tropical Cyclone Warning Signal No. 8 or above is hoisted or a Black Rainstorm Warning Signal is in force for any duration between 0900 and 1200 hours in Hong Kong.

1.2 The following rules of interpretation shall apply:

- (a) references to statutes or statutory provisions means references to those statutes or statutory provisions as replaced, amended, modified or re-enacted from time to time, and includes all subordinate legislation made under those statutes;
- (b) words importing the singular includes the plural and vice versa; words importing a gender includes all other genders; references to any person includes any individual, firm, body corporate or unincorporate (wherever established or incorporated);
- (c) headings are inserted for ease of reference only and do not affect the construction of the Tender Documents or the Contract;

- (d) references to a document:
 - (i) include all schedules, appendices, annexures and other materials attached to such document; and
 - (ii) mean the same as from time to time amended or supplemented in accordance with the terms of the Tender Documents or the Contract;
- (e) references to “Tenderer” or “Contractor” include its permitted assigns, successors, or any persons deriving title under them;
- (f) references to “Government” include its assigns, successors-in-title and persons deriving title under them, regardless of whether or not any of these persons are mentioned separately in the relevant provisions;
- (g) references to “law” and “regulation” include any constitutional provisions, treaties, conventions, ordinances, subsidiary legislation, orders, rules and regulations having the force of law and rules of civil and common law and equity;
- (h) any word or expression to which a specific meaning has been attached in any part of the Tender Documents bear such meaning whenever it appears in the same and other parts of the Tender Documents;
- (i) a time of a day means a reference to Hong Kong time;
- (j) references to “normal business hours” mean 0900 to 1800 hours;
- (k) references to a day mean a calendar day;
- (l) references to a month or a monthly period mean a calendar month;
- (m) any negative obligation imposed on any party means if it were also an obligation not to permit or suffer the act or thing in question, and any positive obligation imposed on any party means if it were also an obligation to procure that the act or thing in question be done;
- (n) any act, default, neglect or omission of any employee, licensee, agent or sub-contractor of the Contractor is deemed to be the act, default, neglect or omission of the Contractor;
- (o) words importing the whole are treated as including a reference to any part of the whole;
- (p) references to “writing” include typewriting, printing, photography, facsimile and the printed out version of a communication by electronic mail and other modes of representing and reproducing words in a legible form; and

- (q) where a general obligation in the Tender Documents or the Contract is followed by more specific obligations, the general obligation is not construed restrictively by reference to the specific obligations or deemed to be fully performed by reason only that the specific obligations have been performed.

- 1.3 Nothing in the Contract shall be taken to restrict, derogate from or otherwise interfere with any power or duty, or the exercise or performance of any power or duty conferred or imposed by or under any law upon the Government or any person in the service of the Government.
- 1.4 All rights and powers of the Government under the Contract may be exercised by the Government Representative. If any provision of the Contract provides for a determination of any matter by the Government or the Government Representative, the determination made by the Government or the Government Representative (as the case may be) shall, in the absence of manifest error, be final and conclusive.
- 1.5 Unless otherwise provided for in the Tender Documents, all quotations and payments shall be made in Hong Kong currency.

2. Invitation to Tender

- 2.1 Tenderers are invited to bid for the supply services of information technology contract staff to the Government as specified in the Specifications in Part VI subject to and in accordance with these Terms of Tender in Part I and the Conditions of Contract in Part IV.
- 2.2 The Contractor is required to provide the supply services of information technology contract staff (“Relevant Employees”) to the Government. The Relevant Employees are employees of the Contractor and they will perform the Service (RE) at Government bureaux/departments under the instruction of Government Representative. Upon request by the Government in accordance with the procedure set out in clause 4 of the Specifications in Part VI, the Contractor is required:
 - (a) to ***propose*** eligible candidates fulfilling the essential qualification requirements as set out in clause 2.1.1 of the Specifications in Part VI, as well as any other essential requirements specified by the Government in the respective service requests, for selection by the Government as Relevant Employees; and
 - (b) if the Government makes the selection, the Contractor, as the employer of the Relevant Employees, is required to ***supervise and manage*** the Relevant Employees to ensure that they perform the Service (RE) at the relevant Government bureaux/departments to the satisfaction of the Government.

2.3 The estimated requirements are:

Staff Category Number	Staff Category	Estimated Requirements Per Annum (in man-years)
6	Senior Project Manager	10
5	Project Manager	170
4	Senior Systems Analyst	230
3	Systems Analyst	1 080
2	Analyst/Programmer	870
1	Programmer	160
0	Junior Programmer	60
A	Senior Information Technology Assistant	130
B1	Information Technology Assistant (shift duty)	60
B2	Information Technology Assistant (non-shift duty)	170
	Total:	2 940

2.4 The Government intends to enter into Standing Offer Deed with no more than fifteen (15) Tenderers who have made, in the opinion of the Government, the most advantageous and conforming offers to the Government in response to this Invitation to Tender.

2.5 A Contractor who executes the Standing Offer Deed agrees to provide the Service **as and when required** by the Government on the terms and conditions of this set of Tender Documents. Tenderers may wish to read clauses 4.3 and 4.4 of the Specifications in Part VI to have a general understanding on the procedure on selecting Relevant Employees. The Government may select **any or none** of the eligible candidates referred to in clause 2.2(a) above as Relevant Employees.

2.6 Only those eligible candidates who are selected by the Government will perform Service (RE) under the Contract as Relevant Employees. Service fee payable by the Government to the Contractor will be on a time charged basis for **the Period of Service (RE) performed by the Relevant Employees** being engaged to perform the Contract.

- 2.7 The estimated requirements in clause 2.3 herein are indicative only and the Government shall not in any way be bound thereby. Tenderers should note that the Government's actual requirements throughout the Term of the Contract might or might not exceed the said estimated requirements.
- 2.8 The Term of the Contract is a period of forty-eight (48) months unless extended in accordance with clauses 1.2 or 1.3 of the Conditions of Contract in Part IV. The Contract will commence on the Commencement Date.
- 2.9 The Period of Service (RE) of the Relevant Employee shall be of varying duration but generally shall not be less than one month. Nevertheless, this estimated Period of Service (RE) is for reference only and the Government shall not be bound by a minimum period of one month.

3. Tender Documents

- 3.1 The full set of Invitation to Tender, identified as GCIO 5/2 (T25), comprises the following documents (collectively "Tender Documents"):
- (a) Part I - Terms of Tender (Pages 1 to 45)
 - (b) Part II - Offer to be Bound (Pages 1 to 2)
 - (c) Part III - Contract Schedules (Pages 1 to 20)
 - (d) Part IV - Conditions of Contract (Pages 1 to 35)
 - (e) Part V - Standing Offer Deed (Pages 1 to 2)
 - (f) Part VI - Specifications (Pages 1 to 23)
- 3.2 A Tenderer should read the Tender Documents carefully prior to submitting a Tender and ensure that it understands all requirements of the Tender Documents.
- 3.3 A Tenderer should check the numbers of pages of the Tender Documents. If it finds any missing or indistinct pages, it should inform the Government Representative immediately so that the same can be rectified.
- 3.4 A Tenderer will be regarded to be thoroughly conversant with all aspects of the Tender Documents (including the Contract) and in general to have obtained all necessary information of any circumstances which may influence or affect its Tender or its performance of the Contract. The Government does not assume any liability in respect of any errors or mistakes made by a Tenderer or any neglect or failure of the Tenderer to obtain any information or clarification relating to the provision of the Service to the Government in accordance with the Contract.
- 3.5 No error, mistake, neglect or failure by a Tenderer shall affect any provision of the Tender Documents (including the Contract) or relieve the Tenderer from any of its obligations or liabilities under the Tender Documents (including the Contract). For the avoidance of doubt, a successful Tenderer shall not be entitled to any additional payment, compensation or allowance by reason of any such error, mistake, neglect or failure. If a Tenderer is awarded the Contract, it shall not be excused from any liability under the Contract as a consequence of any misinterpretation by it of any matter or fact relating to the Tender Documents or the Contract.

- 3.6 By submitting a Tender, a Tenderer will be regarded to have agreed to all terms and conditions set out in the Tender Documents.

4. Supplementary Information/Tender Addenda

- 4.1 All supplementary information or tender addenda to the Invitation to Tender will be provided by the Government in writing and forwarded to all prospective Tenderers who have registered with the Government when obtaining a copy of the Tender Documents. The supplementary information or tender addenda, if any, will also be posted on the website of the Office of the Government Chief Information Officer at https://www.ogcio.gov.hk/en/our_work/business/tender_eoi_rfp/. Tenderers are advised to check the said website from time to time for the contents thereof.

5. Requirements on Submission of Tender Proposals

- 5.1 Save in accordance with the terms of the Tender Documents, a Tenderer must not alter any provision of the Tender Documents.
- 5.2 The Tenders and all accompanying documents must be submitted in either Chinese or English in black ink or typescript.
- 5.3 A Tenderer shall submit a duly signed “Offer to be Bound” in Part II and the completed Contract Schedules 1, 2, 8 and 9 of Part III. **Failure to submit the above-mentioned documents before the time and date specified in clause 5.5 below will render the Tender not to be considered further.**
- 5.4 A Tenderer should submit its Tender, **in triplicate**, in one (1) envelope clearly marked with the tender reference “GCIO 5/2 (T25)” and the words, “Technical Submission” and in another envelope clearly marked with the tender reference “GCIO 5/2 (T25)” and the words, “Price Submission”. Both envelopes should be placed inside another sealed envelope marked with the tender reference “GCIO 5/2 (T25)” and “Tender for the Supply Services of Information Technology Contract Staff to the Government of the Hong Kong Special Administrative Region” and addressed to the Chairman, Central Tender Board. Failure to comply with the above submission requirements may render the Tender invalid.
- 5.5 All Tenders shall be deposited in the **Government Logistics Department Tender Box** situated on Ground Floor, North Point Government Offices, 333 Java Road, North Point, Hong Kong **before 12:00 noon (Hong Kong Time) on the Tender Closing Date. Late Tenders will not be considered.**

- 5.6 The envelop marked “Technical Submission” should contain **one original** of each of the following:
- (a) the duly signed “Offer to be Bound” in Part II; and
 - (b) the completed Contract Schedule 2 of Part III – “Tenderer’s Experience”, Contract Schedule 8 of Part III – “Service Assurance Plan and Staff Management Plan” and Contract Schedule 9 of Part III – “Minimum Monthly Wage Rate committed for Relevant Employees of Staff Category 1”.
- 5.7 The envelope marked “Price Submission” should contain **one original** of Contract Schedule 1 of Part III – “Schedule of Contract Ceiling Rates”.
- 5.8 The prices (i.e. Contract Ceiling Rates) to be quoted by a Tenderer shall only be shown in Contract Schedule 1 of Part III. Such prices as well as any other prices including the subsisting Contract Ceiling Rates and Individual Rates to be quoted throughout the Term of the Contract shall be net where applicable, include trade and cash discounts and all expenses incidental to the due and proper performance of the Contract by the Contractor.
- 5.9 Prices quoted in the Tender are not subject to change after submission. Prices shall be quoted for all staff categories of Relevant Employees in Contract Schedule 1 of Part III. Only one single price is allowed for each staff category. A Tenderer shall quote the prices in Hong Kong currency. Under no circumstances will a Tenderer be allowed to alter the information provided in the Contract Schedule 1 of Part III after the submission of its Tender. Under no circumstances will the Government accept any request for price amendment on the grounds that a mistake has been made in the prices quoted.
- 5.10 Without prejudice to the generality of these Terms of Tender in Part I, the Government may require a Tenderer who in the opinion of the Government has submitted an unreasonably low price to justify and demonstrate that such a Tenderer is capable of carrying out the Contract. The Government may reject the Tender if the Tenderer fails to so justify and demonstrate to the Government’s satisfaction.
- 5.11 Tenders submitted otherwise in the manner described in clauses 5.2, 5.3, 5.5, 5.8 and 5.9 above will not be considered. A checklist on the information, forms, schedules, documents, etc. to be submitted by Tenderers is provided at **Annex A** for reference.
- 5.12 When completing the Tender Documents (including Part II – “Offer to be Bound”), a Tenderer shall ensure that the name of the Tenderer is the same as the name shown in:
- (a) if the Tenderer is a company incorporated in Hong Kong:
 - (i) the Certificate of Incorporation of the Tenderer; or
 - (ii) if there is a change of name of the Tenderer since the date of its Certificate of Incorporation, the latest Certificate of Change of Name of the Tenderer;

- (b) if the Tenderer is a sole proprietorship or a Partnership, the latest business registration certificate of the Tenderer; or
- (c) if the Tenderer is formed, established or incorporated outside Hong Kong, a document equivalent to clause 5.12 (a)(i), (a)(ii) or (b) above (as the case may be) issued by a governmental or competent authority of the place where the Tenderer is formed, established or incorporated.

5.13 Execution of Tenders

- (a) Part II - "Offer to be Bound" shall be duly signed by:
 - (i) if the Tenderer is a sole proprietorship, the Tenderer;
 - (ii) if the Tenderer is a Partnership, a partner of the Tenderer; or
 - (iii) if the Tenderer is a body corporate, one or more persons who are duly authorised by the Tenderer to sign and submit the Tender for and on behalf of the Tenderer.
- (b) a Tender will not be further considered if Part II - "Offer to be Bound" is not signed in the manner described in clause 5.13(a) above.

5.14 In the event that a Tropical Cyclone Warning Signal No. 8 or above is hoisted or a Black Rainstorm Warning Signal is in force for any duration between 9:00 a.m. (Hong Kong Time) and 12:00 noon (Hong Kong Time) on the Original Tender Closing Date, the tender closing time will be extended to 12:00 noon (Hong Kong Time) on the next Working Day.

6. Essential Requirements on Experience of Tenderers

- 6.1 A Tenderer must have **at least** three (3) years of experience in aggregate within the five (5) years immediately before the Original Tender Closing Date in the supply services of information technology contract staff.
- 6.1.1 The aggregate years of experience will be counted in calendar days and converted to years by dividing by 365. For experience of the Tenderer gained from performing two (2) or more relevant contracts at the same time, the overlapping period of such experience gained will only be counted once. For example, if a Tenderer has performed two (2) relevant contracts, the first contract being from 1.1.2014 to 31.12.2015 and the second contract being from 1.7.2015 to 30.6.2017, the Tenderer will be considered as having 3.5 years of experience in total (i.e. 1 277 days of experience divided by 365). Figures with the values at the third decimal place larger than or equal to 0.005 will be rounded up by adding 0.01 to the figures and curtailing the third decimal place onward whereas figures with the values at the third decimal place below 0.005 will be rounded down by curtailing the third decimal place onward without changing the values at the second decimal place.

- 6.2 A Tenderer must have supplied **at least** fifty (50) information technology contract staff to one or more clients in a continuous period of twelve (12) months within the three (3) years immediately before the Original Tender Closing Date.

or

A Tenderer must have supplied **at least** fifty (50) information technology contract staff to one or more clients on average per year in the three (3) years immediately before the Original Tender Closing Date.

- 6.2.1 For the avoidance of doubt, the information technology contract staff referred to in clause 6.2 above must be different individuals. The information technology contract staff supplied to the client(s) during the 12-month period will be counted irrespective of the duration of service provided by the information technology contract staff to the client(s).

- 6.3 A Tenderer must have provided the supply services of information technology contract staff to **at least** five (5) clients in the three (3) years immediately before the Original Tender Closing Date.

- 6.3.1 For the purpose of determining the number of clients, only one (1) client will be counted under each contract for the supply services of information technology contract staff where there is more than one (1) contractual party in one (1) contract. The contractual party can be an entity in the Public Sector or private sector. If a Tenderer has entered into contracts with different Government bureaux/departments for providing the supply services of information technology contract staff, it will be considered as having provided the said services to one (1) client only. Where a Tenderer has entered into a contract with the Government for providing the supply services of information technology contract staff as and when required to the Government, irrespective of the number of Government bureaux/departments to which services are being provided in relation to the contract, the number of client will be one (1). For the avoidance of doubt, a client will be counted irrespective of whether the relevant contract(s) has/have been completed or not immediately before the Original Tender Closing Date.

- 6.4 For the purpose of determining whether or not a Tenderer meets the essential requirements as set out in clauses 6.1, 6.2 and 6.3 above, the following rules shall apply:

- (a) only the Tenderer's experience gained in the same name of the Tenderer will be counted;
- (b) for the avoidance of doubt, in case where a Tenderer had its name changed by means of a Certificate of Change of Name issued under Section 107(3)(b) of the Companies Ordinance (Cap. 622) before the Original Tender Closing Date, the relevant experience gained in the Tenderer's former name will be counted if a copy of the relevant Certificate of Change of Name issued before the Original Tender Closing Date is submitted by the Tenderer to prove the said change;
- (c) experience gained by the Tenderer as a sub-contractor will not be counted;

- (d) experience of a sub-contractor of the Tenderer will not be counted;
- (e) experience of the Tenderer in contracts solely on the supply services of information technology contract staff will be counted. Experience of the Tenderer in contracts on the supply services of contract staff (including information technology contract staff) will also be counted;
- (f) for the avoidance of doubt, a Tenderer may, incidental to its performance of service contracts that are not contracts on the supply services of information technology contract staff nor contracts on the supply services of contract staff (including information technology contract staff), hire information technology contract staff to perform the service for clients. The experience of the Tenderer and the number of information technology contract staff supplied in this type of service contracts will not be counted;
- (g) experience in providing information technology professional services, such as planning, development, maintenance and/or operation of information technology systems/projects, will not be counted. For example, experience in providing information technology professional services by a Tenderer to the Government under the Standing Offer Agreement for Quality Professional Services will not be counted;
- (h) a Tenderer's experience gained by providing the supply services of information technology contract staff to the Tenderer itself will not be counted;
- (i) both local and non-local experience of the Tenderer will be counted;
- (j) for on-going contracts as at the Original Tender Closing Date, only the experience gained by the Tenderer up to the date immediately before the Original Tender Closing Date will be counted; and
- (k) a Tenderer is required to submit to the satisfaction of the Government the documentary evidence to prove its experience claimed in Contract Schedule 2 of Part III. Any claimed experience not substantiated by documentary evidence will not be counted.

6.5 A Tenderer that fails to comply with **any one of the essential requirements under clauses 6.1, 6.2 and 6.3 above will not be further considered.**

7. Tenders to Remain Open

- 7.1 A Tender once submitted by a Tenderer will be binding on the Tenderer.
- 7.2 Tenders shall remain open and valid for acceptance for not less than two hundred and seventy (270) days (the "tender validity period") after the Tender Closing Date.
- 7.3 If a Tenderer does not state in its Tender the period for which the Tender is to remain valid and open for acceptance, the tender validity period of that Tender will be two hundred and seventy (270) days after the Tender Closing Date.

- 7.4 If a Tenderer offers in its Tender a period that is shorter than two hundred and seventy (270) days, the Government will clarify with the Tenderer concerned, in which case the Tenderer must confirm compliance with clause 7.2 within five (5) working days or such other period as specified by the Government without any other change to the Tender (except any change made in response to any clarification by the Government pursuant to clause 10 of Part I). If the Tenderer fails to confirm compliance with clause 7.2 within the specified deadline or, despite confirming compliance therewith, introduces any change to the Tender not in response to any clarification by the Government pursuant to clause 10 of Part I, its Tender will not be considered further.

8. Company/Business Organisation Status

- 8.1 A Tenderer bidding for the Service may be a/an:
- (a) sole proprietor;
 - (b) Partnership; or
 - (c) limited company incorporated under the Companies Ordinance (Cap. 622).
- 8.2 A Tenderer is required to provide the following details relating to itself in Contract Schedule 3 of Part III:
- (a) name and organisation structure of the Tenderer;
 - (b) business status of the Tenderer: sole proprietor/Partnership/limited company incorporated under the Companies Ordinance (Cap. 622);
 - (c) names of shareholders/partners/proprietor of the company/business organisation and their percentage of ownership;
 - (d) names and residential addresses of the following:
 - (i) managing directors/partners;
 - (ii) other directors;
 - (iii) sole proprietor;
 - (e) a copy of a valid Business Registration Certificate and copies of other documents evidencing its business status;
 - (f) if the Tenderer is a company or body corporate, its Memorandum (if any) and Articles of Association, a copy of the agreement made between its shareholders (if any), Certificate of Incorporation, Certificate of Change of Name (if any), and other corporate documents;
 - (g) if the Tenderer, being an incorporated entity, is a company incorporated in Hong Kong or has a principal place of business in Hong Kong, a copy of the latest annual return filed with the Companies Registry;

- (h) place and date of its incorporation or formation;
- (i) company profile information of the Tenderer including the number and location of full time/contract employees, core business strategies and strength, and industry expertise;
- (j) a copy of the relevant document (e.g. board resolutions of the Tenderer if it is a company) showing that the authorised person(s) who sign(s) the Offer to be Bound has/have the authority to sign it for and on behalf of the Tenderer; and
- (k) names and addresses of banks which are prepared to provide references or other relevant financial data which indicate the financial viability of the Tenderer.

8.3 If a Tenderer is incorporated, formed or established outside Hong Kong, a legal opinion in form and substance satisfactory to the Government and issued by a lawyer duly qualified to practise the laws of the place of incorporation, formation or establishment (as the case may be) of the Tenderer and acceptable to the Government shall be provided upon request by the Government on the following issues and any other issues as may be required by the Government:

- (a) the Tenderer is duly incorporated, formed or established and validly existing under the laws of the place of the Tenderer's incorporation, formation or establishment and that the Tenderer has full power, capacity and authority to carry on the business as it is now conducting and to provide the Service to the Government on the terms and conditions of the proposed Contract;
- (b) the Tenderer has the full power, authority and legal capacity to:
 - (i) execute and submit its Tender and to incur the liabilities and perform the obligations under the Tender Documents; and
 - (ii) enter into and execute the Contract and to incur the liabilities and perform the obligations thereunder;
- (c) the proposed Contract with the Government will, upon its formation pursuant to clause 20.1 of Part I, constitute the legal, valid and binding obligations of the Tenderer in the place of its incorporation, formation or establishment and is enforceable against the Tenderer in accordance with its terms;
- (d) the execution, delivery and performance of its Tender and the proposed mode of execution, delivery and performance of the Contract (if awarded to the Tenderer) have been duly authorised by all necessary corporate action of the Tenderer, and does not violate any provision of any applicable law, regulation or decree of the Tenderer's place of incorporation, formation or establishment, or the Memorandum and Articles of Association or similar constitutional documents of the Tenderer;

- (e) no authorisations, consents, approvals are required from any governmental authorities or agencies or other official bodies in the place of incorporation, formation or establishment in connection with the execution and delivery of the Tenderer's Tender, or the performance by the Tenderer of its obligations under the Tender Documents and the Contract;
- (f) the Tenderer's Tender and the Contract need not be registered or filed in the place of incorporation, formation or establishment in order to secure their validity and/or priority;
- (g) there is no restriction under the laws of the place of the Tenderer's incorporation, formation or establishment affecting the Tenderer's obligations under the Tender Documents and the Contract;
- (h) the choice of the laws of Hong Kong to govern the Tender Documents and the Contract is a valid choice of laws and would be recognised and given effect to by the courts of the place of incorporation, formation or establishment of the Tenderer; and
- (i) it is not necessary under the laws of the place of incorporation, formation or establishment of the Tenderer that the Government be licensed, qualified or otherwise registered in such place of incorporation, formation or establishment in order to enable it to enforce its rights under the Tender Documents and the Contract.

8.4 The Government may require a Tenderer to provide, at its own expense, additional legal opinion satisfactory to the Government in all respects issued by a lawyer duly qualified to practise the laws of the place of incorporation, formation or establishment of the Tenderer and acceptable to the Government on any other matters arising from its Tender.

9 Financial Vetting

9.1 A Tenderer is required to demonstrate its financial capability before it could be considered for the award of the Contract. For this purpose, the Tenderer, upon the written request of the Government, is required to provide without limitation the following documents specified under this clause 9.1 and such other information as may be required by the Government within five (5) working days of such request, or the period specified in the request for information, for such financial vetting:

- (a) audited financial statements of the Tenderer for the past three (3) financial years prior to its tender submission date are required:
 - (i) the audited financial statements must contain the Directors' Report, Auditors' Report, Statement of Financial Position (also referred to as Balance Sheet), Statement of Profit or Loss and Other Comprehensive Income (also referred to as Income Statement), Statement of Changes in Equity, Statement of Cash Flows and Notes to the Accounts. The financial statements shall be prepared on the same basis for each year in accordance with accounting

principles generally accepted in Hong Kong and the disclosure requirements of the Companies Ordinance (Cap. 622);

- (ii) the audited financial statements must be originals or copies certified by its auditors;
 - (iii) the latest financial statements must be for a period ending no more than eighteen (18) months before its tender submission date;
 - (iv) if the Tenderer is a Partnership, audited financial statements for each of the partners of the Partnership are also required if the partners are incorporated bodies;
 - (v) if the Tenderer is a subsidiary of another company, both the audited consolidated group financial statements and the company-only financial statements reflecting the financial position and results of the Tenderer itself are required;
 - (vi) un-audited financial statements are acceptable only if a Tenderer is an unincorporated business where audited financial statements are not mandatorily required, or the Tenderer is a newly established company where the first set of financial statements is not yet available. The un-audited financial statements are required to be certified by the sole proprietor, partners, directors of the Tenderer or certified public accountants.
- (b) management accounts up to a period of not more than three (3) months before the date of submitting the tender (if that has not been covered by the latest audited financial statements) are also required. Such management accounts are required to be certified by the sole proprietor, partners, directors of the Tenderer or certified public accountants;
- (c) projected statement of profit or loss and other comprehensive income and statement of cash flows of the contract for each contract year and pre-operating period (if applicable) are required. The projected financial statements should present the overall financial position incorporating the existing and other new businesses of the Tenderer and also the Contract under this tender. The statements should be prepared in the format at **Contract Schedule 4 of Part III**. The assumptions used in preparing the projections should be reasonable and clearly stated. All supporting schedules and detailed calculations should also be provided. The projection should at least include the projected revenue, details of operating expenses, capital expenditure, sources of finance, and other particulars showing how the Tenderer will deal with the Contract. The projected statements are required to be certified by the sole proprietor, partners, directors of the Tenderer or certified public accountants. For a Partnership, separate certification from each partner of the Partnership is required;

- (d) The Tenderer is required to provide documentary evidence showing available financial resources or backing to fulfill the obligations under the Contract. Such documents may include:
- (i) original letters from bankers confirming lines of credit facilities available and the current undrawn/unutilized balances on or shortly before the Tender Closing Date;
 - (ii) original letters from bankers confirming balances of the Tenderer's bank accounts and deposits on or shortly before the Tender Closing Date;
 - (iii) agreements confirming long-term loans obtained or to be obtained from parent company, directors, shareholders, partners and/or proprietors;
 - (iv) copies (certified by the Tenderer's directors, company secretary or sole proprietor/partners) of letters of undertaking, minutes of board meetings and/or returns of allotment of shares, etc. to support injections of capital or share capital; and
 - (v) for unincorporated businesses/newly established businesses, originals or certified true copies of tax records such as profits tax assessments issued by the Inland Revenue Department for the past three (3) financial years (if available).

- 9.2 In the case where the Tenderer is unable to provide adequate financial information for a meaningful financial vetting or the Tenderer fails in the financial vetting to demonstrate the financial capability for taking up the Contract, a performance bond, by way of a banker's guarantee issued by a bank which holds a valid banking licence granted under the Banking Ordinance (Cap. 155) in Hong Kong, to guarantee the fulfillment of the contractual obligation will be required in accordance with clause 24.1 of Part I.
- 9.3 In addition to the details specified above, the Tenderer should provide a summary of financial information submitted according to the format at **Contract Schedule 5 of Part III**.
- 9.4 A Tenderer is requested to submit **one** original, **two** hardcopies and **one** softcopy of the documents as required by the Government in clauses 9.1 and 9.3 above.
- 9.5 A Tender which fails to comply with clauses 9.1, 9.3 and 9.4 above may not be considered.

10. Request for Information

10.1 In the event that the Government determines that:

- (a) clarification in relation to any Tender is necessary; or
- (b) a document or a piece of information, other than the documents or information set out in clause 10.2 below is missing from any Tender,

it may, but is not obliged to, request the Tenderer concerned to make the necessary clarification, or submit the requested document or information. Each Tenderer shall thereafter within five (5) working days, or such other period as specified in the request submit such clarification, information or document in the form required by the Government. A Tender will not be considered further if complete information or document is not provided as required by the deadline as specified in the request, or in the case of clarification, such clarification is not provided by such deadline or is not acceptable to the Government. As an alternative to seeking clarification or further information or document, the Government may not consider the Tender further or may proceed to evaluate the Tender on an “as is” basis.

10.2 The documents and information not covered by clause 10.1 above are:

- (a) price information in Contract Schedule 1 of Part III in the Tender Documents;
- (b) a signed “Offer to be Bound” in Part II of the Tender Documents; and
- (c) any other document or information in respect of which it is specified in the Tender Documents that a failure to provide to the Government in a Tender before the time and date specified in clause 5.5 of Part I will result in the Tender not being considered.

10.3 The Government will not consider any clarification or information submitted by a Tenderer after the Tender Closing Date irrespective of whether or not the clarification or information is submitted at the invitation of the Government if the Government considers that such clarification or information would alter the Tenderer’s Tender in substance or give the Tenderer an advantage over the other Tenderers.

11. Counter-Proposals

11.1 A Tenderer must not submit any proposal that has the effect of varying or modifying any essential requirements specified in the Tender Documents.

11.2 If a Tenderer fails to comply with clause 11.1 above, its Tender will be disqualified and will not be further considered by the Government.

- 11.3 Subject to clause 11.1 above, if a Tenderer still wishes to submit a counter-proposal (“Counter-Proposal”), the Counter-Proposal must be submitted in the following manner:
- (a) the Counter-Proposal shall be attached to the “Offer to be Bound” in Part II;
 - (b) the original provision which the Counter-Proposal relates to should be fully recited before the proposed alteration or deletion;
 - (c) the proposed alteration to the original provision should be underlined and should bear the corresponding clause number of the original provision unless it is an addition;
 - (d) if it is an addition, the additional provision should be underlined;
 - (e) words to be deleted should be crossed out by a single line only; and
 - (f) an explanation should be given below the alteration or deletion and put in square brackets “[]”.
- 11.4 Any Counter-Proposal that is not submitted in accordance with clause 11.3 above will not be considered by the Government and will not be regarded to form part of the Tender submitted by a Tenderer. In such event, the Tenderer shall be deemed to have agreed to the original term to which the Counter-Proposal relates and the Government will continue to consider the Tenderer’s Tender on this basis.
- 11.5 Notwithstanding and without prejudice to the aforesaid, the Government may negotiate with the Tenderer any Counter-Proposal but is not obliged to do so. The Government may at its absolute discretion reject any Counter-Proposal. If negotiation is conducted but fails, the Government may reject or exclude the Counter-Proposal and assess the Tender as it is without the Counter-Proposal.

12. Authenticity of Documents Submitted

- 12.1 All documents submitted by a Tenderer to the Government in relation to its Tender shall be original documents or certified true copies of the original documents. If a Tenderer fails to comply with this requirement or fails to provide such verification as the Government may require to prove the authenticity of a document submitted to the Government, the Government may not further consider the Tender.

13. Assessment of Tender Proposals

- 13.1 Without prejudice to other rights and powers of the Government not to consider a Tender under other applicable provisions in the Tender Documents, the evaluation of a Tender will be conducted in accordance with the tender assessment procedures, criteria and marking scheme as set out in **Annex B**.

14. Communication with the Government

- 14.1 All communications given or made by the Government or a Tenderer in relation to the Invitation to Tender shall be in writing and sent or delivered to the other party in the manner provided in clause 32 of the Conditions of Contract in Part IV, save that the Government may, by prior notice to a Tenderer, require the Tenderer to send or deliver a written communication by post or facsimile only. A Tenderer should note that the Government will not accept the use of a postal box as the Tenderer's correspondence address for any purpose whether before or after the award of the Contract.

15. Basis of Acceptance

- 15.1 In anticipation of the demand for Service during the Term of Contract, the Government intends to enter into Standing Offer Deed with no more than fifteen (15) Tenderers who have made, in the opinion of the Government, the most advantageous and conforming offers determined in accordance with these Terms of Tender in Part I. It is at the sole discretion of the Government to decide the number of conforming Tenders to be accepted.

16. Tenderer's Commitment

- 16.1 All Tenders, information and responses from a Tenderer must be submitted in writing. Each of them is the representation of the Tenderer and will, if accepted by the Government, be incorporated into and made part of the Contract in such a manner as the Government considers appropriate.
- 16.2 The Government reserves the right not to consider a Tender that directly or indirectly attempts to preclude or limit the effect of the requirement stated in clause 16.1 above.
- 16.3 The Tenderer must submit its Tender on the basis that it accepts and agrees to all the terms and conditions of the Contract.

17. Tenderer's Liability

- 17.1 The Tenderer is expected to insure itself against all liabilities whether contractual or otherwise. The Government will not accept any limitation or exclusion of liability by the Tenderer. All terms and conditions in the Tender Documents are requirements of the Government and must not be altered by the Tenderer.

18. New Information

- 18.1 A Tenderer should inform the Government in writing immediately of any factor that might affect its ability to meet any requirements of the Tender Documents. The Government reserves the right not to consider a Tenderer's Tender further if the Tenderer's continued ability to meet such requirements is in doubt.

19. Terms to be Incorporated in the Employment Contracts of Relevant Employees

- 19.1 Tenderers should note that the Government is determined to apply the same principles of clean Government, and with equal force, to the selected Contractors and to the Relevant Employees of the selected Contractors engaged to provide the Service under the Contract, and to detect and deter contravention of these principles. Relevant Employees will be required to observe the same terms and conditions applicable to government employees in this respect, for example, over acceptance of advantages and conflicts of interest. The selected Contractors will be required to incorporate in the contracts of employment of such Relevant Employees those terms specified in Contract Schedule 6 of Part III.

20. Formation of Contract

- 20.1 Unless and until the Standing Offer Deed in Part V of the Tender Documents has been executed by a Tenderer and the Government, there is to be no contract between the Government and the Tenderer concerned.

21. Cost of Tender

- 21.1 A Tenderer shall submit its Tender at its own costs and expenses. The Government shall not be liable for any costs and expenses whatsoever incurred by a Tenderer in connection with the preparation or submission of its Tender, including all costs and expenses relating to communication and negotiations with the Government, whether before or after the Tender Closing Date.

22. Government's Right

- 22.1 A Tenderer acknowledges that:
- (a) the Government is not bound to accept the Tender with the lowest tender price or the Tender with the highest combined score or any Tender and reserves the rights to accept all or any part of any Tender at any time within the tender validity period specified in clause 7 of Part I;
 - (b) the Government may elect at its sole option to reject any Tender, if in its opinion, the Tenderer is incapable of undertaking or fulfilling the Contract;
 - (c) with the adoption of the marking scheme, the conforming Tenders with the highest combined scores obtained from the technical and the price assessments should normally be recommended. It is the right of the Government to decide the number of conforming Tenders to be recommended and accepted;
 - (d) without prejudice to other provisions of the Tender Documents, the Government reserves the right to exclude a Tenderer for further consideration of the Tender on grounds including: (i) bankruptcy; or (ii) false declaration.

23. Negotiation

- 23.1 The Government reserves the right to negotiate with any Tenderer the terms of the Tenderer's Tender and conditions of the Contract.

24. Performance Bond

- 24.1 The successful Tenderer who is required to submit a performance bond to the Government according to clause 9.2 of Part I shall submit the bond as set out in clause 14 of Part IV at an amount equal to five (5) percent of the estimated total value of this Contract equally divided by the number of successful Tenderers. If the successful Tenderer has passed the financial vetting, it shall submit a performance bond to the Government at an amount equal to two (2) percent of the estimated total value of this Contract equally divided by the number of successful Tenderers. The estimated total value of this Contract will be calculated using the following formula:

$$\begin{aligned} \text{Estimated total value of this Contract} &= \text{Estimated requirements of respective staff categories as set out in clause 2.3 of Part I of the Tender Documents} \times \\ &\quad \text{Average of the Contract Ceiling Rates of respective staff categories of the successful Tenderers} \times \\ &\quad 22 \text{ work days (i.e. estimated work days per month)} \times \\ &\quad 48 \text{ months (i.e. the Term of Contract)} \end{aligned}$$

- 24.2 The successful Tenderer must pay the performance bond by first demand banker's guarantee. The banker's guarantee must comply with the following:
- (a) it must be issued by a bank that holds a valid banking licence granted under the Banking Ordinance (Cap. 155) and acceptable to the Government;
 - (b) the bank undertakes to meet the liability immediately upon the first written demand from the Government. The terms of the banker's guarantee must be satisfactory to the Government;
 - (c) the banker's guarantee must come into effect on the date of commencement of the Term unless another date is specified by the Government.
- 24.3 The performance bond will be returned to the Contractor or released in accordance with clause 14.4 of Part IV.

25. Documents of Unsuccessful Tenderers

- 25.1 The Government may destroy all documents submitted by unsuccessful Tenderers three (3) months after the Contract has been constituted under clause 20.1 of Part I.

26. Environmental Protection

26.1 The following environmental friendly measures are recommended to be adopted in the preparation of documents relating to a Tender and the future performance of the Contract:

- (a) all documents should be printed on both sides and on recycled paper. Papers that exceeds eighty (80) gsm should not be used for the text;
- (b) use of plastic laminates, glossy covers or double covers should be avoided as far as possible. If art board paper has to be used as document covers, recyclable non-glossy paper should be used; and
- (c) single line spacing should be used and excessive space in the margins and in between paragraphs should be avoided.

27. Complaints about Tendering Process or Contract Award

27.1 The tendering process is subject to internal monitoring to ensure that the Contract is awarded properly and fairly. Any Tenderer who feels that its Tender has not been fairly evaluated may write to the Government Chief Information Officer who will personally examine the complaint and refer it to the approving authority/relevant tender boards for consideration if the complaint relates to the tendering system or procedures followed. The Tenderer should lodge the complaint within three (3) months after the award of the Contract.

28. Provision of Personal Data

28.1 All personal data provided in a Tender will be used by the Government for the purposes of the Invitation to Tender and all other purposes arising from or incidental to it (including for the purposes of tender evaluation, the award of the Contract and resolution of any dispute arising from the Invitation to Tender).

28.2 By submitting a Tender, a Tenderer is regarded to have agreed to, and to have obtained from each individual whose personal data is provided in the Tender, his consent for the disclosure, use and further disclosure by the Government of the personal data for the purposes set out in clause 28.1 above.

28.3 An individual to whom personal data belongs and a person authorised by him in writing has the right of access and correction with respect to the individual's personal data as provided for in sections 18 and 22 and Principle 6 of Schedule 1 to the Personal Data (Privacy) Ordinance (Cap. 486). The right of access includes the right to obtain a copy of the individual's personal data provided in the Tender.

28.4 Enquiries concerning the personal data collected by means of the Invitation to Tender, including the making of access and corrections, should be addressed to the Personal Data Privacy Officer of the Office of the Government Chief Information Officer.

29. Consequence of Breaches of Statutory and Contractual Obligations

- 29.1 If a Tenderer is awarded the Contract, its consequent performance will be monitored and may be taken into account when its future tender offers for other tenders / quotations exercises are evaluated. A Tender may be rejected if, during the twelve (12) months immediately before the Tender Closing Date or between the Tender Closing Date and the award of the Contract, the Tenderer is in default in respect of any Office of the Government Chief Information Officer's contract which is of the same or substantially similar nature.
- 29.2 A Contractor found to be in breach of its statutory or contractual obligations may be disqualified from participation in future tenders, depending upon the seriousness and/or the number of breaches. In addition, a Contractor may have criminal and/or civil liability for these breaches including an obligation to compensate the Government in damages.

30. Cancellation of Tender

- 30.1 Without prejudice to the Government's right to cancel the tender at its absolute discretion or for public interest reasons, where there are changes of requirement after the Tender Closing Date for operational or whatever reasons, the Government is not bound to accept any conforming Tender and reserves the right to cancel the tender.

31. Warning against Bribery

- 31.1 The offer of an advantage to any Government officer with a view to influencing the award of the Contract is an offence under the Prevention of Bribery Ordinance (Cap. 201). Any such offence committed by a Tenderer or any of its officers (including directors), employees or agents will render its Tender null and void.
- 31.2 The successful Tenderer shall inform its officers, employees (whether permanent or temporary), agents and sub-contractors who are connected with the provision of the Service that the soliciting or accepting of advantages, as defined in the Prevention of Bribery Ordinance (Cap. 201) is not permitted. The successful Tenderer shall also caution its officers (including directors), employees and agents and sub-contractors against soliciting or accepting any excessive hospitality, entertainment or inducement which may impair their impartiality in relation to the selection of its sub-contractors, if any, or the supervision of the work of the sub-contractors once selected.

32. Warranty against Collusion

- 32.1 By submitting a Tender, the Tenderer is regarded to have represented and warranted to the Government that in relation to the Invitation to Tender:
- (a) save with the prior written consent of the Government, it has not communicated and will not communicate to any person other than the Government the amount of any price submitted in its Tender;

- (b) it has not fixed and will not fix the amount of any price submitted in its Tender by arrangement with any person;
 - (c) it has not made and will not make any arrangement with any person as to whether it or that other person will or will not submit a Tender; and
 - (d) it has not otherwise colluded and will not otherwise collude with any person in any manner whatsoever in the tendering process.
- 32.2 In the event that a Tenderer is in breach of any of the representations and/or warranties in clause 32.1 above, the Government shall be entitled to, without compensation to any person or liability on the part of the Government:
 - (a) reject the Tenderer's Tender;
 - (b) if the Government has accepted the Tender, withdraw its acceptance of the Tender; and
 - (c) if the Government has entered into the Contract with the Tenderer, terminate the Contract.
- 32.3 By submitting a Tender, a Tenderer is regarded to have undertaken to indemnify and keep indemnified the Government against all losses, damages, costs or expenses arising out of or in relation to any breach of any of the representations and/or warranties in clause 32.1 above.
- 32.4 A breach of a Tenderer of any of the representations and/or warranties in clause 32.1 above may prejudice its future standing as a Government contractor or service provider.
- 32.5 Clause 32.1 above shall have no application to a Tenderer's communications in strict confidence with its own insurers or brokers to obtain an insurance quotation for computation of the prices quoted in its Tender, or with its professional advisers, consultants or sub-contractors to solicit their assistance in preparation of its Tender.
- 32.6 The rights of the Government under clauses 32.2 to 32.4 above are in addition to and without prejudice to any other rights or remedies available to it against the Tenderer.

33. Consent to Disclosure

- 33.1 The Government may disclose, whenever it considers appropriate, to the public or upon request by any member of the public (which may have been a Tenderer) without any further reference to or consent from the successful Tenderer or any other Tenderer, particulars of the Service to be provided by the successful Tenderer, the date of the award, the name and address of the successful Tenderer and the estimated value of this Contract.

33.2 Nothing in clause 33.1 above shall prejudice the Government's power to disclose whenever it considers appropriate information of any nature whatsoever (whether or not specified in clause 33.1 above) if the disclosure is made under any one of the following circumstances:

- (a) the disclosure of any information to any public officer or public body, as defined in the Interpretation and General Clauses Ordinance (Cap. 1) or any other person employed, used or engaged by the Government (including agents, advisers, contractors and consultants);
- (b) the disclosure of any information already known to the recipient;
- (c) the disclosure of any information which is public knowledge;
- (d) the disclosure of any information in circumstances where such disclosure is required pursuant to any law of Hong Kong, or an order of a court of Hong Kong or a court or tribunal with competent jurisdiction; or
- (e) without prejudice to the power of the Government under clause 33.1 above, to the extent the information relates to a Tenderer, with the prior written consent of that Tenderer.

34. Government Discretion

34.1 Notwithstanding anything to the contrary in this Tender Documents, the Government reserves the right to disqualify a Tenderer on grounds including any one of the following:

- (a) a petition is presented or a proceeding is commenced which has not been withdrawn as at the Tender Closing Date or an order is made or a resolution is passed for the winding up or bankruptcy of the Tenderer;
- (b) the Tenderer has made or submitted a false, inaccurate or incomplete statement or representation or a forged document in the Tender or in any subsequent submission by the Tenderer or communication between the Government and the Tenderer since submission of that Tender;
- (c) in the event of a claim alleging or the Government having grounds to believe that any thing(s), service(s) or material(s) to be supplied or recommended by the Tenderer in its Tender infringe or will infringe any Intellectual Property Rights of any person;
- (d) the Tenderer has made significant or persistent breaches or deficiencies in performance of any substantive requirement or obligation under any Government or other contracts;
- (e) the Tenderer has been convicted by the final judgement in respect of serious crimes or other serious offences;
- (f) in the event of the professional misconduct or acts or omissions that adversely reflect on the commercial integrity of the Tenderer;

- (g) any failure of the Tenderer to pay taxes to the Government; or
- (h) the Tenderer has made any restrictions or limitations which seek to limit or avoid the responsibility of the Tenderer in contract, tort or otherwise for failing to exercise the skill and care required by the Contract, or reasonably expected of the Tenderer/Contractor under the Contract in the Tender or in any subsequent submission by the Tenderer or communication between the Government and the Tenderer since submission of the Tender.

The grounds specified in clauses 34.1(a) to 34.1(h) above are separate and independent, and shall not be limited by reference to or inference from the other of them.

34.2 For the purposes of clause 34.1 above, each Tenderer is required to provide at the time of submission of its Tender (and thereafter up to the time of award in relation to any event occurring between the time of submission and the time of award) all information at least in relation to itself that is reasonably relevant to facilitate the Government's determination as to whether to exercise its right of disqualification, including but not limited to following:

- (a) details of any petition or proceeding mentioned in clause 34.1(a) above;
- (b) details of conviction of the Tenderer in Hong Kong or any overseas jurisdictions in respect of (i) serious offences; and (ii) other offences involving bribery, false accounting, corruption, dishonesty or employment handed down any time during a period of five (5) years immediately before the Tender Closing Date and thereafter up to the time of award;
- (c) details of all infringement claims as mentioned in clause 34.1(c) above; and
- (d) details of all breaches or performance deficiencies of the Tenderer or a related person as mentioned in clause 34.1(d) above.

If none of the events as mentioned in clauses 34.2(a) to 34.2(d) above has ever occurred within the applicable period as mentioned above, the Tenderer shall provide a statement to that effect by completing the relevant part of Contract Schedule 7 of Part III of the Tender Documents at the time of submission of its Tender. If found missing, the Government reserves the right to seek clarification pursuant to clause 34.3 below.

34.3 In addition to the information mentioned in clause 34.2 above, the Government reserves the right to request from a Tenderer and take into account information about:

- (a) the Tenderer itself;
- (b) any of the directors or management staff of the Tenderer who conduct similar business as the Tenderer or whose businesses any of which is similar to the business of the Tenderer; and

- (c) any of the related persons of the Tenderer and of any directors and management staff of the related persons who conduct similar business as the Tenderer or whose businesses any of which is similar to the business of the Tenderer,

and such information is reasonably relevant to facilitate the Government's determination as to whether to exercise its right of disqualification under clause 34.1 above.

Such information relating to any of the aforesaid persons may include, without limitation, details of any conviction in respect of offences referred to in clause 34.2(b) above or details of any breaches or performance deficiencies referred to in clause 34.1(d) above, details of any serious crimes or serious offences referred to in clause 34.1(e) above, of any professional misconduct, acts or omissions referred to in clause 34.1(f) above and of any failure to pay taxes to the Government referred to in clause 34.1(g) above.

- 34.4 If the Tenderer fails to comply with the request made by the Government pursuant to clause 34.3 above within such time as required by the Government or has otherwise submitted false, inaccurate or incomplete information, the Government may disqualify the Tenderer pursuant to clause 34.1(b) above.
- 34.5 In providing the information required under clauses 34.2 and 34.3 above, the Tenderer may show cause to satisfy the Government that the petition, proceedings, conviction record, infringement claim, breach or performance deficiency, or professional misconduct, as the case may be, does not cast doubt on the fitness, propriety or capability of the Tenderer to perform the Contract to be awarded in this Invitation to Tender.
- 34.6 If the Tenderer is a company, the expression "related person" of the Tenderer includes any one of the following:
 - (a) a shareholder (corporate or individual) which directly or indirectly beneficially owns fifty (50) percent or more of the issued share capital of the Tenderer ("majority shareholder");
 - (b) a holding company or a subsidiary of the Tenderer;
 - (c) a holding company or a subsidiary of a majority shareholder of the Tenderer;
 - (d) a company in which a majority shareholder (being an individual) of the Tenderer directly or indirectly beneficially owns fifty (50) percent or more of its issued share capital or controls the composition of its board of directors.

The expressions "holding company" and "subsidiary" have the meanings given to them in the Companies Ordinance (Cap. 622).

- 34.7 If the Tenderer is a sole proprietor or Partnership, the expression “related person” includes any one of the following:
- (a) any partner of the Tenderer (if it is a Partnership);
 - (b) the spouse, parent, child, brother or sister of the Tenderer, and, in deducing such a relationship, an adopted child shall be deemed to be a child both of the natural parents and the adopting parent, and a step child to be a child of both the natural parent and of any step parent;
 - (c) a company in which the Tenderer or any partner of the Tenderer beneficially directly or indirectly owns fifty (50) percent or more of its issued share capital or controls the composition of its board of directors.
- 34.8 References to related persons, directors and management staff of the Tenderer or of a related person include persons who were in such capacity at such time of the incident referred to in clauses 34.1(d), 34.1(e), 34.1(f), 34.1(g) or clause 34.2(b) above.

35. Tenderers’ Enquiries

- 35.1 Any enquiries from a Tenderer concerning the Tender Documents shall be made in writing at least five (5) working days before the date of lodging its Tender to:

Government Chief Information Officer
Office of the Government Chief Information Officer
15/F., Wanchai Tower
12 Harbour Road, Wanchai
Hong Kong
(Attn: Senior Executive Officer (Administration)2)
E-mail: t25@ogcio.gov.hk
Facsimile: (852) 2573 7076

- 35.2 After lodging a Tender with the Government, the Tenderer shall not attempt to initiate any further contact, whether direct or indirect, with the Government on its Tender or this set of Tender Documents. The Government shall have the sole right to initiate any such further contact and all such contacts and any replies of the Tenderer thereto shall be in writing or formally documented in writing.
- 35.3 Unless otherwise expressly stated by the Government in writing, a statement made by the Government (whether oral or written) in response to any enquiry made by a prospective Tenderer shall be for information only. No such statement shall constitute a representation or warranty by the Government of any nature whatsoever (whether express or implied), and no invitation is made by the Government to any Tenderer or potential Tenderer to rely on such statement. No such statement shall form part of the Tender Documents or alter, negate or constitute a waiver of any provision of the Tender Documents.

Annex A

Checklist for items to be submitted by Tenderers

The following is a summary of items that a Tenderer is required to submit. The summary table below is **for reference only** and Tenderers are advised to refer to the relevant clauses of this Invitation to Tender for details of the requirements for compliance and provide supporting and documentary evidence where appropriate.

Clause in Part I	Item ^{Note 1}
5.3 and 5.6	One original of each of the following: the duly signed “Offer to be Bound” in Part II, and the completed Contract Schedule 2 of Part III – “Tenderer’s Experience”, Contract Schedule 8 of Part III – “Service Assurance Plan and Staff Management Plan” and Contract Schedule 9 of Part III – “Minimum Monthly Wage Rate committed for Relevant Employees of Staff Category 1”
5.3 and 5.7	One original of Contract Schedule 1 of Part III - “Schedule of Contract Ceiling Rates”
8.2	The completed Contract Schedule 3 of Part III – “Company/Business Organisation Status of the Tenderer”
8.3	Legal opinion on the issues, including but not limited to, those listed in clauses 8.3(a) to (i) of Part I <i>(applicable to a Tenderer which is incorporated, formed or established outside Hong Kong)</i> <i>(to be submitted upon request by the Government)</i>
9	Financial Vetting <i>(to be submitted upon request by the Government)</i>
9.1 (a)	Audited financial statements for the past three (3) financial years prior to the tender submission date
9.1 (b)	Management accounts up to a period of not more than three (3) months before the tender submission date
9.1 (c)	Projected statement of profit or loss and other comprehensive income and statement of cash flows of the contract for each contract year and pre-operating period (if applicable), provided in the format at Contract Schedule 4 in Part III.
9.1 (d)	Documentary evidence showing financial resources

Clause in Part I	Item ^{Note 1}
9.3	Summary of financial information submitted, provided in the format at Contract Schedule 5 of Part III
9.4	One original, two hardcopies and one softcopy of the documents stipulated in clauses 9.1 and 9.3 of Part I
34.2	The completed Contract Schedule 7 of Part III - "Information Schedule"

Note 1: Tenderers' attention is drawn to the following clauses of Part I of the Tender Documents:

- (i) clause 5 "Requirements on Submission of Tender Proposals";
- (ii) clause 6 "Essential Requirements on Experience of Tenderers";
- (iii) clause 8 "Company/Business Organisation Status";
- (iv) clause 9 "Financial Vetting";
- (v) clause 12 "Authenticity of Documents Submitted";
- (vi) clause 28 "Provision of Personal Data"; and
- (vii) clause 34 "Government Discretion".

Note 2: Tenderers are reminded to submit their Tenders in triplicate, i.e. to provide one original and two hardcopies, in accordance with clause 5.4 of Part I of the Tender Documents. Failure to do so may render the Tender invalid.

Annex B

Tender Assessment Procedures and Marking Scheme

Part A – Tender Assessment Procedures

1. A two-envelope approach with a technical to price weighting of 40:60 will be adopted for tender assessment. All calculations of the weighted technical score, the weighted price score and the combined score in Stages 3 to 5 respectively as detailed below will be rounded to the nearest two decimal places ^{Note 1}.
2. A tender assessment panel (TAP) will be formed for tender evaluation. The TAP will evaluate the Tenders based on the tender requirements in five (5) stages, as set out below:

Stage 1 – Completeness Checking

3. A completeness check will be conducted by checking whether the Tender has been submitted in accordance with the procedural requirements stipulated in the Tender Documents. **If a Tenderer fails to submit any of the following information/documents before 12:00 noon (Hong Kong Time) on the Tender Closing Date, its Tender will not be considered further:**
 - (a) the duly signed Part II of the Tender Documents – “Offer to be Bound”; and
 - (b) the completed Contract Schedule 2 of Part III of the Tender Documents – “Tenderer’s Experience”, Contract Schedule 8 of Part III – “Service Assurance Plan and Staff Management Plan”, and Contract Schedule 9 of Part III – “Minimum Monthly Wage Rate committed for Relevant Employees of Staff Category 1”

Stage 2 – Assessment of Compliance with Essential Requirements

4. A Tender which has passed Stage 1 assessment will be checked for its compliance with the essential requirements as set out under clauses 6.1, 6.2 and 6.3 of Part I of the Tender Documents. Any Tender which fails to meet any of the essential requirements will not be considered further.

^{Note 1} Figures with the values at the third decimal place larger than or equals to 0.005 will be rounded up by adding 0.01 to the figures and curtailing the third decimal place onward whereas figures with the values at the third decimal place below 0.005 will be rounded down by curtailing the third decimal place onward without changing the values at the second decimal place.

Stage 3 – Technical Assessment (maximum weighted technical score : 40)

5. A Tender which has passed Stages 1 and 2 assessment will be evaluated according to the marking scheme at Part B of this Annex. **A Tenderer shall score a passing mark of at least twelve (12) for each of Assessment Criterion 1 (Service Assurance Plan) and Assessment Criterion 2 (Staff Management Plan) respectively, or else its Tender will not be considered further.**
6. A Tenderer's proposals in Contract Schedule 8 of Part III of the Tender Documents for Assessment Criteria 1 and 2 should not be more than ten (10) pages in total in A4 size paper for texts (with character font size not less than 12) and should be numbered from page 1 to page 10. **Page(s) starting from page 11 will not be considered in the tender assessment.** Other information, including the related annexes and documentary proof, if any, will not be included in counting of pages for this purpose.
7. The Tender which attains the highest overall mark among all Tenders which fulfill the passing mark requirements will be given the highest weighted technical score of 40 and the remaining Tenders which fulfill the passing mark requirements will be given a **weighted technical score** in accordance with the following formula:

$$\text{Weighted technical score} = 40 \times \frac{\text{The overall mark of the Tender which has passed Stage 3 being assessed}}{\text{The highest overall mark among all Tenders which have passed Stage 3}}$$

Stage 4 – Price Assessment (maximum weighted price score : 60)

8. Tenders which have passed Stage 3 assessment will be evaluated under Stage 4. A Tenderer who has not submitted Contract Schedule 1 of Part III of the Tender Documents, or has not specified any one of the Contract Ceiling Rates in Contract Schedule 1 of Part III of the Tender Documents will not be considered further.
9. The “tender price” will be calculated based on the Contract Ceiling Rates as specified in Contract Schedule 1 of Part III of the Tender Documents using the following formula:

$$\begin{aligned} \text{Tender price} = & \text{Estimated requirements of respective staff categories as set out in} \\ & \text{clause 2.3 of Part I of the Tender Documents} \times \\ & \text{Respective Contract Ceiling Rates quoted by the Tenderer in} \\ & \text{Contract Schedule 1 of Part III of the Tender Documents} \times \\ & 22 \text{ work days (i.e. estimated work days per month)} \times \\ & 48 \text{ months (i.e. the Term of Contract)} \end{aligned}$$

10. The lowest tender price among all Tenders which have passed Stage 3 assessment will be given the highest weighted price score of 60 and the remaining Tenders that have passed Stage 3 will be given a **weighted price score** in accordance with the following formula:

$$\text{Weighted price score} = 60 \times \frac{\text{The lowest tender price among all Tenders which have passed Stage 3}}{\text{The tender price of the Tender which has passed Stage 3 being assessed}}$$

11. Prompt payment price discount, if any, will not be considered in the price assessment.

Stage 5 – Acceptance and Award of Contract

12. The calculation of the **combined score** of a Tender is as follows:

$$\text{Combined score} = \text{Weighted technical score} + \text{Weighted price score}$$

13. Not more than fifteen (15) Tenders, starting from the one with the highest combined score, will normally be recommended for acceptance. For Tenders with the same combined scores, the one having the higher weighted price score will normally be accorded a higher priority.

Part B – Marking Scheme

Nature of Service : Supply Services of Information Technology Contract Staff to the Government of the Hong Kong Special Administrative Region

Tender Reference : GCIO 5/2 (T25)

Assessment Criteria	Maximum Marks	Unit Marks (M)	Weighting (W) (See Note 1)						Marks Scored (M x W)	Remarks / Basis of Assessment
			5	4	3	2	1	0		
1 Service Assurance Plan (Passing Mark : 12)	30	6								See Note 2
2 Staff Management Plan (Passing Mark: 12)	30	6								See Note 2
3 Tenderer's experience in the supply services of information technology contract staff provided to the Government, statutory bodies in Hong Kong or aided schools in Hong Kong in the five (5) years immediately before the Original Tender Closing Date	6	1.5								See Note 3
4 Minimum monthly wage rate committed for Relevant Employees of Staff Category 1	25	NA								See Note 4
(Maximum Overall Mark: 91)										See Note 5

Explanatory Notes for Marking Scheme

Tenderers shall note that they must meet all the essential requirements in clauses 6.1, 6.2 and 6.3 in Part I of the Tender Documents or their Tenders will not be further considered under the marking scheme.

Note 1 Weighting

Tenderer's proposals in respect of Assessment Criteria 1 to 4 will be rated as:

For Assessment Criteria 1 and 2

Weighting of 5, 4, 3, 2, 1 or 0 will be awarded.

For Assessment Criterion 3

Weighting of 4, 3, 2, 1 or 0 will be awarded.

For Assessment Criterion 4

In accordance with the rules set out in Note 4 below.

Assessment Criteria 1 and 2: Service Assurance Plan and Staff Management Plan

Note 2 Weighting

- 5 – Proposed plan is **practicable** and provides **detailed information** on **all** items as well as **good suggestion** on **items (i) and (ii)** of the respective Assessment Criterion as listed in **Appendix I**.
- 4 – Proposed plan is **practicable** and provides **detailed information** on **more than two (2)** items as well as **good suggestion** on **either item (i) or (ii)** of the respective Assessment Criterion as listed in **Appendix I**.
- 3 – Proposed plan is **practicable** and provides **detailed information** on **more than two (2)** items of the respective Assessment Criterion as listed in **Appendix I**.
- 2 – Proposed plan is **practicable** and provides **detailed information** on **not more than any two (2)** items of the respective Assessment Criterion as listed in **Appendix I**.
- 1 – Proposed plan is **practicable** and provides **brief information** on **all** items of the respective Assessment Criterion as listed in **Appendix I**.
- 0 – Proposed plan is **impracticable or fails to provide** information on **any** item of the respective Assessment Criterion as listed in **Appendix I**.

- Remarks:**
- (i) Information submitted by a Tenderer for each item of the respective Assessment Criterion listed in Appendix I will be assessed as a whole.
 - (ii) Tenderer's plans submitted in Contract Schedule 8 of Part III of the Tender Documents for Assessment Criteria 1 and 2 should not be more than ten (10) pages in total in A4 size paper for texts (with character font size not less than 12) and should be numbered from page 1 to page 10. Page(s) starting from page 11 will not be considered in the tender assessment. Other information, including the related annexes and documentary proof, will not be included in the counting of pages for this purpose.
 - (iii) Tenderers shall score a passing mark of at least twelve (12) for each of Assessment Criteria 1 and 2 or their Tenders will not be considered further.

Assessment Criterion 3: Experience in the supply services of information technology contract staff provided to the Government, statutory bodies in Hong Kong or aided schools in Hong Kong in the five (5) years immediately before the Original Tender Closing Date

Note 3 Weighting

- 4 – **More than three hundred and sixty (360) days** of experience in aggregate in the supply services of information technology contract staff to client(s) in the Government, statutory bodies in Hong Kong or aided schools in Hong Kong as defined under Section 3 in Part I of the Education Ordinance (Cap. 279) in the five (5) years immediately before the Original Tender Closing Date.
- 3 – **More than two hundred and seventy (270) days but not more than three hundred and sixty (360) days** of experience in aggregate in the supply services of information technology contract staff to client(s) in the Government, statutory bodies in Hong Kong or aided schools in Hong Kong as defined under Section 3 in Part I of the Education Ordinance (Cap. 279) in the five (5) years immediately before the Original Tender Closing Date.
- 2 – **More than one hundred and eighty (180) days but not more than two hundred and seventy (270) days** of experience in aggregate in the supply services of information technology contract staff to client(s) in the Government, statutory bodies in Hong Kong or aided schools in Hong Kong as defined under Section 3 in Part I of the Education Ordinance (Cap. 279) in the five (5) years immediately before the Original Tender Closing Date.
- 1 – **More than ninety (90) days but not more than one hundred and eighty (180) days** of experience in aggregate in the supply services of information technology contract staff to client(s) in the Government, statutory bodies in Hong Kong or aided schools in Hong Kong as defined under Section 3 in Part I of the Education Ordinance (Cap. 279) in the five (5) years immediately before the Original Tender Closing Date.
- 0 – **Not more than ninety (90) days** of experience in aggregate in the supply services of information technology contract staff to client(s) in the Government, statutory bodies in Hong Kong or aided schools in Hong Kong as defined under Section 3 in Part I of the Education Ordinance (Cap. 279) in the five (5) years immediately before the Original Tender Closing Date.

Remarks:

- (i) Tenderers shall provide the information in respect of their experience in the supply services of information technology contract staff in Contract Schedule 2 of Part III of the Tender Documents and submit valid documentary proof to substantiate their claims of experience. Any claimed experience not substantiated by documentary proof to the satisfaction of the Government will not be taken into account.
- (ii) The experience of the Tenderer will be counted in calendar days in aggregate. For the experience of the Tenderer gained from performing two (2) or more relevant contracts at the same time, the overlapping period of such experience gained will only be counted once. For example, if a Tenderer has experience gained from two (2) contracts in the supply services of information technology contract staff to the aided schools, the first contract being from 1.1.2016 to 20.7.2016 (i.e. 202 calendar days) and the second contract being from 1.7.2016 to 31.1.2017 (i.e. 215 calendar days), the Tenderer will be considered as having 397 days of experience in aggregate (excluding the overlapping period) for Assessment Criterion 3.
- (iii) The rules set out in clause 6.4 (except clause 6.4(i)) in Part I of the Tender Documents are equally applicable in counting Tenderer's experience for Assessment Criterion 3.

Assessment Criterion 4: Minimum Monthly Wage Rate committed for Relevant Employees of Staff Category 1

Note 4 – The mark scored by each Tender will be determined by the following formula:

$$25 \times \frac{P - C}{H - C}$$

P = Minimum monthly wage rate committed for Relevant Employees of Staff Category 1 of the Tender which has passed Stage 2 assessment being considered

H = Highest minimum monthly wage rate committed for Relevant Employees of Staff Category 1 among all Tenders which have passed Stage 2 assessment

C = “Median monthly wage by industry section (HK\$): All employees” for “Information and communications” of the latest year set out in the latest edition of the “Report on Annual Earnings and Hours Survey” published by the Census and Statistics Department (referred hereunder as the “median monthly wage”) available on the Original Tender Closing Date.

Illustrative example	Marks scored
<p>P = HK\$21,000</p> <p>H = HK\$22,000</p> <p>C * = HK\$20,500</p>	<p>Marks scored =</p> $25 \times \frac{21,000 - 20,500}{22,000 - 20,500}$ <p>= 8.33</p>

*The figure quoted under “C” above is fictitious for illustrative purpose only.

Remarks :

- (i) For “Relevant Employees”, please refer to clause 1.1 of Part VI – Specifications of the Tender Documents. For “Staff Category 1”, please refer to clause 2.3 of Part I of the Tender Documents.
- (ii) Tenderers shall specify in Contract Schedule 9 of Part III of the Tender Documents the minimum monthly wage rate committed for Relevant Employees of Staff Category 1.
- (iii) No mark will be given if the minimum monthly wage rate committed by a Tenderer for Relevant Employees of Staff Category 1 is not higher than the “median monthly wage” available on the Original Tender Closing Date.
- (iv) If the minimum monthly wage rate committed by a Tenderer for Relevant Employees of Staff Category 1 is lower than the “median monthly wage” available on the Original Tender Closing Date, the minimum monthly wage rate committed by the Tenderer for Relevant Employees of Staff Category 1 will be deemed to be equal to the “median monthly wage” available on the Original Tender Closing Date for the purpose of tender evaluation.
- (v) Figures with the values at the third decimal place larger than or equals to 0.005 will be rounded up by adding 0.01 to the figures and curtailing the third decimal place onward whereas figures with the values at the third decimal place below 0.005 will be rounded down by curtailing the third decimal place onward without changing the values at the second decimal place.

Passing Marks

Note 5 Tenderers shall score the individual passing marks for each of Assessment Criteria 1 and 2 or their Tenders will not be considered further.

Service Assurance Plan and Staff Management Plan

Note : Information provided by a Tenderer for each item of the Service Assurance Plan and Staff Management Plan should be for the Contract to be awarded under the Tender.

	Items covered in the Assessment Criterion
Service Assurance Plan (<i>Assessment Criterion 1 of Marking Scheme</i>)	(i) Measures to make known to the public the professional human resources/value-added services provided to the Government and Relevant Employees to help foster a positive image of the Contractor in providing the supply services of information technology contract staff (referred hereunder as the “supply services”) to the Government
	(ii) Measures to cast a wider net of potential candidates for the Government to select as Relevant Employees
	(iii) Measures to enhance communications with the Government in ensuring the quality of the supply services to the Government
	(iv) Measures to review the quality of services provided by Relevant Employees to the Government
Staff Management Plan (<i>Assessment Criterion 2 of Marking Scheme</i>)	(i) Measures to reduce turnover and boost morale of Relevant Employees (e.g. providing Relevant Employees with fringe benefits more favourable than the provisions under the Employment Ordinance (Cap. 57))
	(ii) Measures to update and upgrade the information technology knowledge and skills of Relevant Employees (e.g. training, online resources, etc.)
	(iii) Channels and procedures for handling complaints and enquiries raised by Relevant Employees
	(iv) Measures to enhance Relevant Employees’ awareness of labour protection and benefits they are entitled to under the laws and contract

PART II

OFFER TO BE BOUND

(Failure to duly sign and return this Offer to be Bound with the Tender before 12:00 noon (Hong Kong Time) on the Tender Closing Date will render the Tender invalid)

1. Having read the Tender Documents, I/we agree to be bound by the terms and conditions as stipulated therein.
2. I/We do hereby agree to make a standing offer to perform as and when required by the Government the Service as specified in the attached Contract which may, during the Term be required, by or on behalf of the Government Representative to be carried out, at rates not exceeding the Contract Ceiling Rates quoted by me/us in Contract Schedule I of Part III free of all other charges, subject to and in accordance with the terms and conditions as stipulated in the Tender Documents.
3. I/We also certify that the particulars given by me/us below are correct:
 - (a) Business Registration Certificate (No. _____)
which expires on _____
 - (b) Employee's Compensation Insurance Policy (No. _____)
which expires on _____
Name of Insurance Company _____
 - (c) Mandatory Provident Fund Scheme
(MPFA Certificate No. _____)
4. When considered necessary by the Government Representative, I am/We are prepared to pay the performance bond by _____
5. I am/We are duly authorized to bind the company hereinafter mentioned by my signature.

- or -

I am a partner/We are partners in the firm hereinafter mentioned and duly authorized to bind the said firm and the partners therein by my/our signature(s).

6. The name of the company/firm is

7. The registered office of the company is situated at

- or -

The names and residential addresses of the partners of the firm are as follows:

8. Name(s), post(s)/title(s) and address(es) of person(s) signing:

Authorised
Signature(s):

Dated this _____ day of _____ 2018

- Note: (i) Please complete all the particulars required above.
(ii) Please strike out clearly alternatives which are not applicable.

PART III

CONTRACT SCHEDULES

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PART III

Contract Schedule 1

Schedule of Contract Ceiling Rates

(Failure to complete and return this Schedule with the Tender before 12:00 noon (Hong Kong Time) on the Tender Closing Date will render the Tender invalid)

Name of Tenderer : _____

Staff Category Number	Staff Category	Contract Ceiling Rate [daily rate in HK\$]
6	Senior Project Manager	
5	Project Manager	
4	Senior Systems Analyst	
3	Systems Analyst	
2	Analyst/Programmer	
1	Programmer	
0	Junior Programmer	
A	Senior Information Technology Assistant	
B1	Information Technology Assistant (shift duty)	
B2	Information Technology Assistant (non-shift duty)	

Notes for Contract Schedule 1

Note 1: The “tender price” will be calculated and assessed according to paragraphs 9 to 11 at Annex B of Part I.

Note 2: The prices (i.e. Contract Ceiling Rates) to be quoted by a Tenderer shall only be shown in this Contract Schedule 1. Such prices as well as any other prices including the subsisting Contract Ceiling Rates and Individual Rates to be quoted throughout the Term of the Contract shall be net where applicable, include trade and cash discounts and all expenses incidental to the due and proper performance of the Contract by the Contractor.

Note 3: Prices quoted in this Contract Schedule 1 are not subject to change after submission. Prices shall be quoted for all staff categories of Relevant Employees in this Contract Schedule 1. Only one single price is allowed for each staff category. A Tenderer shall quote the prices in Hong Kong currency. Under no circumstances will a Tenderer be allowed to alter the information provided in this Contract Schedule 1 after the submission of its Tender. Under no circumstances will the Government accept any request for price amendment on the grounds that a mistake has been made in the prices quoted.

Note 4: Without prejudice to the generality of the Terms of Tender in Part I, the Government may require a Tenderer who in the opinion of the Government has submitted an unreasonably low price to justify and demonstrate that such a Tenderer is capable of carrying out the Contract. The Government may reject the Tender if the Tenderer fails to so justify and demonstrate to the Government’s satisfaction.

PART III

Contract Schedule 2

Tenderer's Experience

(Failure to complete and return this Schedule with the Tender before 12:00 noon (Hong Kong Time) on the Tender Closing Date will render the Tender invalid)

Name of Tenderer : _____

Please provide the details of **Tenderer's experience** in this Contract Schedule 2 for “Stage 2 - Assessment of Compliance with the Essential Requirements” and “Stage 3 - Technical Assessment” as set out in the tender assessment procedures at Annex B of Part I of the Tender Documents.

A Tenderer is required to submit to the satisfaction of the Government the documentary evidence to prove its experience claimed in this Contract Schedule 2. **Any claimed experience not substantiated by documentary evidence will not be counted.**

Table A

Experience gained by the Tenderer in the supply services of information technology contract staff within the five (5) years immediately before the Original Tender Closing Date

[illegible]

Table B

Information technology contract staff supplied to clients in the three (3) years immediately before the Original Tender Closing Date

[illegible]

Notes for Contract Schedule 2

- Note 1: Please fill in one contract for each row in Table A. Please add additional rows to Table A to fill in the required information if necessary.
- Note 2: The unique code or reference used by the Tenderer to identify individual staff. For example, the identifier may be a specific staff number or code, or name of the staff.
- Note 3: Please only include in Table B the information technology contract staff supplied but not contract staff supplied for other types of services to clients. Please add additional rows to Table B to fill in the required information if necessary.
- Note 4: When completing this Contract Schedule 2, please refer to clause 6 and Annex B of Part I of the Tender Documents.
- Note 5: Please fill in Table A and Table B in chronological order based on the contract start date or the commencement date of service of individual staff respectively.

PART III

Contract Schedule 3

Company/Business Organisation Status of the Tenderer

1. Name of Tenderer: _____
2. Business Status: Sole proprietor/Partnership/Limited company*
3. Name(s) of shareholder(s)/partner(s)/proprietor of the company/business organisation* and their percentage of ownership:

4. Name(s) and residential address(es) of:
 - (a) Managing director(s)/partner(s)*

 - (b) Other director(s)

 - (c) Sole proprietor

5. Place and date of incorporation or formation:

6. Company profile information:
 - (a) Number and location of full time/contract employees:

 - (b) Core business strategies and strength:

 - (c) Industry expertise:

7. Name(s) and address(es) of bank(s) which is/are* prepared to provide references or other relevant financial data which indicate the financial viability of the Tenderer:

* Please delete whichever is not applicable.

Notes for Contract Schedule 3

Note 1: Please refer to clause 8.2 of Part I of the Tender Documents when completing this Contract Schedule 3.

Note 2: Together with this Contract Schedule 3, a Tenderer is also required to provide the following documents:

- (i) organisation structure of the Tenderer;
- (ii) a copy of a valid Business Registration Certificate and copies of other documents evidencing the Tenderer's business status;
- (iii) Memorandum (if any) and Articles of Association, a copy of the agreement made between the Tenderer's shareholders (if any), Certificate of Incorporation, Certificate of Change of Name (if any), and other corporate documents, if applicable;
- (iv) a copy of the latest annual return filed with the Companies Registry, if applicable; and
- (v) a copy of the relevant document showing that the authorised person(s) who sign(s) the Offer to be Bound has/have the authority to sign it for and on behalf of the Tenderer.

PART III**Contract Schedule 4****Projected Statement of Profit or Loss and Other Comprehensive Income
and Statement of Cash Flows***Name of Tenderer :* _____**(I) Projected Statement of Profit or Loss and Other Comprehensive Income (Basic
elements that need to be included) ^{Note 1} for the period 1 April 2017 to 31 March
2023 (6-Year Budget)**

	(Plan)	(Plan)	(Plan)	(Plan)	(Plan)	(Plan)	(Actual)
	2022-23	2021-22	2020-21	2019-20	2018-19	2017-18	2016-17
(Expressed in HK\$'000)							
Revenue	xxx	xxx	xxx	xxx	xxx	xxx	xxx
Cost of sales	xxx	xxx	xxx	xxx	xxx	xxx	xxx
Gross profit	xxx	xxx	xxx	xxx	xxx	xxx	xxx
Other income:	x	x	x	x	x	x	x
Administrative expenses	x	x	x	x	x	x	x
Finance costs	x	x	x	x	x	x	x
Other expenses:	x	x	x	x	x	x	x
Profit before tax	xx	xx	xx	xx	xx	xx	xx
Income tax expense	(x)	(x)	(x)	(x)	(x)	(x)	(x)
Profit for the year	x	x	x	x	x	x	x
Other comprehensive income	x	x	x	x	x	x	x
Gain on property evaluation	x	x	x	x	x	x	x
Other comprehensive income for the year	x	x	x	x	x	x	x
Total comprehensive income for the year	x	x	x	x	x	x	x

(II) Projected Statement of Cash Flows ^{Note 2} from April 2017 to March 2023 (6-Year Budget)

	(← By year →)						
	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23	Total
(Expressed in HK\$'000)							
Cash flows from operating activities							
Cash generated from operations	xxx	xxx	xxx	xxx	xxx	xxx	xxxx
Cash used in operations	(xx)	(xx)	(xx)	(xx)	(xx)	(xx)	(xxx)
Net cash from operating activities	xx	xx	xx	xx	xx	xx	xx
Cash flows from investing activities							
Interest received	x	x	x	x	x	x	x
Receipt from investment	x	x	x	x	x	x	x
Payment for investment activities	(x)	(x)	(x)	(x)	(x)	(x)	(x)
Net cash from investing activities	x	x	x	x	x	x	x
Cash flows from financing activities							
Proceeds from loans and borrowings	x	x	x	x	x	x	x
Repayment of loans and borrowings	(x)	(x)	(x)	(x)	(x)	(x)	(x)
Net cash used in financing activities	x	x	x	x	x	x	x
Cash and cash equivalents at beginning of the month/1 st April	x	x	x	x	x	x	x
Cash and cash equivalents at the end of the month/ 31st March	x	x	x	x	x	x	x

Notes for Contract Schedule 4

Note 1: Please provide assumptions used in deriving the projected statement of profit or loss and other comprehensive income.

Note 2: Please provide assumptions used in deriving the projected statement of cash flows.

PART III

Contract Schedule 5

Summary of Financial Information Submitted

1. Company Information

- (a) Company Name of Tenderer : _____
- (b) Place of Incorporation : _____
- (c) Date of Incorporation (dd/mm/yyyy) : _____

2. Financial Information

- (a) Financial Statements for the past three (3) financial years provided? [✓] **Yes** ☐ **No** ☐

- (i) Are Financial Statement with Auditors' Report and Directors' Report included? [✓] **Yes** ☐ **No** ☐

**Please state
the period end dates of the accounts**
(dd/mm/yyyy) (dd/mm/yyyy) (dd/mm/yyyy)

- | | | | |
|---|--|--|--|
| (ii) Statement of Financial Position (as at) | | | |
| (iii) Statement of Profit or Loss and Other Comprehensive Income (for the period ended) | | | |
| (iv) Statement of Changes in Equity (for the period ended) | | | |
| (v) Statement of Cash Flows (for the period ended) | | | |
| (vi) Notes to the Accounts | | | |

- (b) Management accounts up to a period not earlier than three (3) months before the date of submitting the tender (if that has not been covered by the latest audited financial statements) provided? [✓] **Yes** ☐ **No** ☐

(c) Projected Financial Statement for each contract year provided? [☒] **Yes** ☐ **No** ☐

Please state

the period end dates of the accounts

(dd/mm/yyyy) (dd/mm/yyyy) (dd/mm/yyyy) (dd/mm/yyyy) (dd/mm/yyyy) (dd/mm/yyyy)

- | | | | | | | |
|--|-------|-------|-------|-------|-------|-------|
| (i) Income Statement of the contract
(for the period April 2017 to
March 2023) | _____ | _____ | _____ | _____ | _____ | _____ |
| (ii) Statement of Cash Flows of the
contract (for the period April
2017 to March 2023) | _____ | _____ | _____ | _____ | _____ | _____ |
| (iii) Income Statement of the
company (for the period April
2017 to March 2023) | _____ | _____ | _____ | _____ | _____ | _____ |
| (iv) Statement of Cash Flows of the
company (for the period April
2017 to March 2023) | _____ | _____ | _____ | _____ | _____ | _____ |

(d) Assumptions in preparing the projected financial statement provided? [☒] **Yes** ☐ **No** ☐

(e) Please list the documentary evidence provided for the purpose of financial vetting set out in clause 9 of Part I:
(e.g. *original letters from bankers confirming lines of credit facilities, long-term loan agreements, etc.*)

- | | |
|-------|-------|
| (i) | _____ |
| (ii) | _____ |
| (iii) | _____ |
| (iv) | _____ |

PART III

Contract Schedule 6

Terms and Conditions to be Incorporated in the Contracts of Employment of the Relevant Employees

1. Prevention of Bribery

- (a) The Relevant Employee must be fully aware that soliciting or accepting of advantages, as defined in the Prevention of Bribery Ordinance (Cap. 201) is a serious crime and may also result in substantial civil liability. Without limitation, the Relevant Employees must be aware that:
 - (i) offering any advantage to a public servant, as defined in Cap. 201, as an inducement to or reward for or otherwise on account of that public servant's performing or abstaining from performing any act in his capacity as a public servant, or expediting, delaying, hindering or preventing the performance of an act, or assisting, favouring, hindering or delaying any person in the transaction of any business with a public body, is an offence under section 4 of Cap. 201;
 - (ii) without the permission from the Employer, soliciting or accepting any advantage as an inducement to or reward for or otherwise on account of their doing or forbearing to do any act in relation to the Employer's affairs or business, or showing or forbearing to show favour or disfavour to any person in relation to the Employer's affairs or business is an offence under section 9 of Cap. 201; and
 - (iii) any person who, without lawful authority or reasonable excuse, while having dealings of any kind with the Government through any department, office or establishment of the Government, offers any advantage to any prescribed officer employed in that department, office or establishment of the Government, shall be guilty of an offence under section 8 of Cap. 201.
- (b) The Relevant Employee is prohibited from soliciting or accepting any advantage, as defined in the Prevention of Bribery Ordinance (Cap. 201).
- (c) The Relevant Employee shall observe all Government rules and regulations on "acceptance of advantages" and related matters as applied to civil servants. It is the responsibility of the Relevant Employee to acquaint himself with all Government rules and regulations including Civil Service Regulations, memo and circulars issued and updated by the Government in respect of "acceptance of advantages" and related matters from time to time.

2. Outside Work

The Relevant Employee must obtain the consent of the Supervisor before taking up any paid or unpaid outside work. For the purpose of this clause, “outside work” refers to any work outside the scope of the Service or Service (RE) as appropriate.

3. Insolvency and Bankruptcy

The Relevant Employee is required to immediately notify the Supervisor if proceedings are taken against him with a view to bankruptcy. A Relevant Employee who becomes insolvent or bankrupt, even though no proceedings have been taken against him, is required to submit a complete statement of the facts of his case to the Supervisor at the earliest possible moment.

4. Conflict of Interest

- (a) The Relevant Employee must at all times avoid or declare, as appropriate, any conflict that may arise or may have arisen, and which could have led to an actual or apparent conflict between his private interests and his official duties or position. Without limitation, the Relevant Employee must in particular:
 - (i) refrain from acquiring any investment or any financial or other interest which may lead to a conflict of interest with his official duties;
 - (ii) refrain from taking part in the deliberation, decision-making, investigation or enforcement process in connection with any matter in which he has a private interest;
 - (iii) avoid putting himself in a position of obligation to anyone who has or may have official dealing with the Government, including his own subordinate staff;
 - (iv) decline to provide assistance, advice or information to relations, friends, etc. in connection with his work where this would give the recipient an unfair advantage over other people, and refer all legitimate requests to the proper subject officer to be dealt with in normal way; and
 - (v) report to the Supervisor any private interest that might influence, or appear to influence, his judgment in the performance of his duties.
- (b) The Relevant Employee shall observe **all** Government rules and regulations on “conflict of interest” and related matters as applied to civil servants. It is the responsibility of the Relevant Employee to acquaint himself with all Government rules and regulations including Civil Service Regulations, memo and circulars issued and updated by the Government in respect of “conflict of interest” and related matters from time to time.

5. Obligation not to Disclose Confidential and Official Information

The Relevant Employee must be fully aware of his obligations under the provision on “Confidential and Official Information” in clause 22 of Part IV of the Contract between the Employer and the Government and the provisions of the Official Secrets Ordinance (Cap. 521). Without limitation, the Relevant Employee must not disclose any information which is sensitive to the operation of the Government or designated as confidential by the Employer and the Government Representative or, without lawful authority, as defined in Official Secrets Ordinance (Cap. 521), disclose any information the disclosure of which results in the commission of an offence, facilitates an escape from legal custody or the doing of any other act prejudicial to the safekeeping of persons in legal custody, or impedes the prevention or detection of offences or the apprehension or prosecution of suspected offenders, and which is or has been in his possession by virtue of his position as a Relevant Employee. This provision shall survive the termination of the contract of employment between the Employer and the Relevant Employee.

6. Obligation to Inform the Employer of Relevant Facts

Without prejudice to his other obligations to notify the Employer under the contract of employment, the Relevant Employee must keep himself informed and immediately inform in writing the Employer of any or all facts and matters incidental to and related to his obligations under clauses 1 to 5 stated above.

7. Obligation to Apply Professional Ethics at Work

The Relevant Employee must be fully aware of his obligation to apply the professional ethics, which the Office of the Government Chief Information Officer has adopted for its provision of information technology services throughout the Government by personnel of the Analyst/Programmer and the Computer Operator Grades and equivalent.

PART III

Contract Schedule 7

Information Schedule

1. Information required under clause 34 (Government Discretion) of the Terms of Tender

- * (a) I / We confirm that none of the events as mentioned in clauses 34.2(a) to 34.2(d) of the Terms of Tender has ever occurred.
- * (b) I / We confirm that the following event(s) as mentioned in clauses 34.2(a) to 34.2(d) of the Terms of Tender has occurred:

Date	Details of the Event

Note: * Please delete whichever is not applicable.

Name of
Tenderer:

Signature of Person
Authorised to Sign
Tender:

Date:

Name in Block
Letters:

PART III

Contract Schedule 8

Service Assurance Plan and Staff Management Plan

(Failure to complete and return this Schedule with the Tender before 12:00 noon (Hong Kong Time) on the Tender Closing Date will render the Tender invalid)

Name of Tenderer : _____

A Tenderer shall submit the following plans for evaluation under Assessment Criteria 1 and 2 of the marking scheme at Part B of Annex B of Part I of the Tender Documents.

(A) Service Assurance Plan

- (i) Measures to make known to the public the professional human resources/value-added services provided to the Government and Relevant Employees to help foster a positive image of the Contractor in providing the supply services of information technology contract staff (referred hereunder as the “supply services”) to the Government

- (ii) Measures to cast a wider net of potential candidates for the Government to select as Relevant Employees

- (iii) Measures to enhance communications with the Government in ensuring the quality of the supply services to the Government

- (iv) Measures to review the quality of services provided by Relevant Employees to the Government

(B) Staff Management Plan

- (i) Measures to reduce turnover and boost morale of Relevant Employees (e.g. providing Relevant Employees with fringe benefits more favourable than the provisions under the Employment Ordinance (Cap. 57))

- (ii) Measures to update and upgrade the information technology knowledge and skills of Relevant Employees (e.g. training, online resources, etc.)

- (iii) Channels and procedures for handling complaints and enquiries raised by Relevant Employees

- (iv) Measures to enhance Relevant Employees' awareness of labour protection and benefits they are entitled to under the laws and contract

Notes for Contract Schedule 8

- Note 1: Information submitted by a Tenderer for each item of the respective Assessment Criterion listed in Appendix I to the marking scheme at Part B of Annex B of Part I of the Tender Documents will be assessed as a whole.
- Note 2: Tenderer's plans submitted in this Contract Schedule should not be more than ten (10) pages in total in A4 size paper for texts (with character font size not less than 12) and should be numbered from page 1 to page 10. Page(s) starting from page 11 will not be considered in the tender assessment. Other information, including the related annexes and documentary proof, will not be included in the counting of pages for this purpose.
- Note 3: A Tenderer shall score a passing mark of at least twelve (12) for each of Service Assurance Plan and Staff Management Plan under Assessment Criteria 1 and 2 of the marking scheme or its Tender will not be considered further.

PART III

Contract Schedule 9

Minimum Monthly Wage Rate committed for Relevant Employees of Staff Category 1

(Failure to complete and return this Schedule with the Tender before 12:00 noon (Hong Kong Time) on the Tender Closing Date will render the Tender invalid)

Name of Tenderer : _____

A Tenderer shall commit the minimum monthly wage rate for Relevant Employees of Staff Category 1, i.e. Programmer, referred to in clause 2.3 of Part I of the Tender Documents.

Committed minimum monthly wage rate (HK\$)	
---	--

Notes for Contract Schedule 9

- Note 1: This Contract Schedule as completed by the successful Tenderer shall be incorporated into the Contract, and become binding on the successful Tenderer. The successful Tenderer shall pay the monthly wage to its Relevant Employees in accordance with clause 9 of Part IV of the Tender Documents.
- Note 2: No mark will be given under Assessment Criterion 4 of the marking scheme at Annex B of Part I of the Tender Documents if the minimum monthly wage rate committed by a Tenderer for Relevant Employees of Staff Category 1 is not higher than the “Median monthly wage by industry section (HK\$): All employees” for “Information and communications” of the latest year set out in the latest edition of the “Report on Annual Earnings and Hours Survey” published by the Census and Statistics Department (referred hereunder as the “median monthly wage”) available on the Original Tender Closing Date.
- Note 3: If the minimum monthly wage rate committed by a Tenderer for Relevant Employees of Staff Category 1 is lower than the “median monthly wage” available on the Original Tender Closing Date, the minimum monthly wage rate committed by the Tenderer for Relevant Employees of Staff Category 1 will be deemed to be equal to the “median monthly wage” available on the Original Tender Closing Date for the purpose of tender evaluation, and such presumption will be revoked if the Tenderer concerned fails to confirm the correctness of this presumption upon being clarified by the Government Representative at any time before the tender exercise is completed. If upon clarification, the concerned Tenderer confirms that its committed minimum monthly wage rate for Relevant Employees of Staff Category 1 is in fact higher than the “median monthly wage” available on the Original Tender Closing Date, for tender assessment purpose, the concerned Tender will still be assessed on the basis that the Tenderer’s committed minimum monthly wage rate for Relevant Employees of Staff Category 1 is equal to the “median monthly wage” available on the Original Tender Closing Date. However, the higher minimum monthly wage rate committed by the Tenderer for Relevant Employee of Staff Category 1 shall become binding if the Contract is awarded to the Tenderer concerned subsequently.

PART III

Contract Schedule 10

Statement of Minimum Information Technology Facilities/Resources to be Committed for Interfacing Electronically with the Government

Item	Minimum Number of Item required throughout the Term of the Contract ^{Note 1}
<u>Dedicated Server with the following configurations:</u> <ul style="list-style-type: none"> ◆ Processor: Processor with 2 Cores, 2MB Cache, 2.5GHz, 64bit; equivalent or above ◆ Memory: at least 4GB RAM ◆ Hard Drive: at least 80GB free space after the installation of operating system and database software ◆ Ethernet LAN adaptor x 1 ◆ Operating System: <ul style="list-style-type: none"> ➤ Windows Server 2012 R2 Standard Edition ◆ Database: <ul style="list-style-type: none"> ➤ SQL Server 2014 R2 Standard Edition ◆ Others: <ul style="list-style-type: none"> ➤ Anti-virus tools that are able to offer protection against viruses, adware, spyware and malware and updated with latest signature file; system patches shall be regularly downloaded and applied 	1
<u>Dedicated Personal Computer with the following configurations:</u> <ul style="list-style-type: none"> ◆ Processor: Processor with 2 Cores, 2MB Cache, 3GHz; equivalent or above ◆ Memory: at least 4GB RAM ◆ Hard Drive: 80GB or more ◆ Ethernet LAN adaptor x 1 ◆ Operating System: Windows 7/8.1/10 Professional Edition ◆ Others: <ul style="list-style-type: none"> ➤ Anti-virus tools that are able to offer protection against viruses, adware, spyware and malware and updated with latest signature file; system patches shall be regularly downloaded and applied ➤ The dedicated Personal Computer will act as the messaging gateway and shall be placed in the demilitarized zone (DMZ) of the Contractor's network 	1

Item	Minimum Number of Item required throughout the Term of the Contract ^{Note 1}
<u>Personal Computer with the following configurations:</u> <ul style="list-style-type: none"> ◆ Processor: Processor with 2 Cores, 2MB Cache, 3GHz; equivalent or above ◆ Memory: at least 4GB RAM ◆ Hard Drive: 80GB or more ◆ Ethernet LAN adaptor x 1 ◆ Operating System: Windows 7/8.1/10 Professional Edition ◆ Others: <ul style="list-style-type: none"> ➢ Anti-virus tools that are able to offer protection against viruses, adware, spyware and malware and updated with latest signature file; system patches shall be regularly downloaded and applied ➢ Client access licenses required are listed at below: <ul style="list-style-type: none"> - SQL Server 2014 R2 client access license - Windows Server 2012 R2 client access license 	1
<u>Other requirements:</u> <ul style="list-style-type: none"> ◆ Broadband Internet connection access ◆ Fixed Internet IP address (with NAT IP address) for message exchange with the Government ◆ Dedicated Internet e-mail account ◆ Mail client of any kind such as MS Outlook Express V6.0 or above, that can handle conventional SMTP mail protocol over the Internet ◆ Hongkong Post e-Cert (Organizational) Certificate ◆ On-site technical staff for setting up and maintaining the electronic interfaces with the Government 	1 1 1 1 1 1

Note for Contract Schedule 10

Note 1: Please refer to clause 9.1(a) of Part VI of the Tender Documents.

PART IV
CONDITIONS OF CONTRACT
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1. Term

- 1.1 The Term of the Contract is a period of forty-eight (48) months. During the Term, the Contractor agrees to provide the Service as and when required by the Government in accordance with the terms and conditions set out in this Contract.
- 1.2 The Government shall have the right to extend the Term of this Contract by giving a month's prior notice to the Contractor and the Contractor shall in that event provide the Service on the same terms and conditions (save for the right to further extension of the Contract) for a further period of not exceeding six (6) months.
- 1.3 Without prejudice to the Government's right to extend the Term of the Contract pursuant to clause 1.2 above, the Government shall, at its absolute discretion, extend the Term for the purpose of transitioning the Service from this Contract to any subsequent contracts to be entered into between the Government and any party (including the Contractor). For the Contractor's reference purpose, the period of extension of the Term of this Contract shall normally be no more than two (2) months. In the event that the Contractor has also entered into any subsequent contracts with the Government, the period of extension of the Term shall normally be no more than three (3) months.
- 1.4 The extension periods in clause 1.3 herein are subject to change and shall be determined by the Government at its absolute discretion. Contractor agrees and acknowledges that the actual extension periods might or might not exceed the said extension periods.

2. Contractor's Acknowledgement

- 2.1 The Contractor acknowledges and agrees that it has been supplied with sufficient information to enable it to provide to the Government the Service, which shall comply fully with the requirements set out in Part VI – Specifications and other provisions of the Contract. The Contractor shall not be entitled to any additional payment nor be excused from any liability under the Contract as a consequence of any misinterpretation by the Contractor of any matter nor fact relating to the Specifications or any other provisions of the Contract.
- 2.2 The Contractor acknowledges that the Government does not give any exclusive right to the Contractor to provide the Service to the Government and that the Government may enter into similar contracts with any third party before and during the Term (including any extended period), including but not limited to the following purposes:
- (a) the transition of similar services provided by any Government's contractor or agent to the Service under this Contract; and
 - (b) the transition of Service from this Contract to any subsequent contracts to be entered into between the Government and any party (including the Contractor).

3. Contract Rates

- 3.1 The Contractor is required to provide the Service as and when required. Service fee payable will be based on the period engaged of the Relevant Employees at rates not exceeding the Contract Ceiling Rates of the Relevant Employees. At the absolute discretion of the Government, the Contract Ceiling Rates may be adjusted downwards or upwards from time to time in accordance with clauses 3.2 and 3.3 below.
- 3.2 The Contract Ceiling Rates may be adjusted downwards under the following circumstances. No more than once in every three (3) months throughout the Term of the Contract, the Government may by written notice call upon the Contractor to propose reduced Contract Ceiling Rates. The notice may specify the date by which the Contractor has to submit its proposal and the date on which the reduced Contract Ceiling Rates will take effect. The Contractor must submit the proposal in writing to the Government Representative in accordance with the requirements stipulated in the relevant notice. The reduced Contract Ceiling Rates as proposed by the Contractor shall be less than the Contract Ceiling Rates subsisting at the time of submission of its proposal. The Government may require the Contractor to revise its proposal to the Government's satisfaction. The Government is under no obligation to accept any of the Contractor's proposals. Where the Government is not satisfied with the Contractor's proposal or revised proposal, it is at liberty to specify reduced Contract Ceiling Rates applicable to the Relevant Employees without taking into account the Contractor's proposals. If the Government accepts the Contractor's proposed reduced Contract Ceiling Rates or if the Government specifies reduced Contract Ceiling Rates, it may notify the Contractor a date or a revised date, as the case may be, on which the reduced Contract Ceiling Rates will take effect. The reduced Contract Ceiling Rate shall not take effect retrospectively. The reduced Contract Ceiling Rates shall take effect from that date until the date they are further adjusted under this clause.
- 3.3 The Contract Ceiling Rates may be adjusted upwards annually under the following circumstances. The Contractor agrees that there shall be no annual percentage adjustment to the Contract Ceiling Rates during the initial twelve (12) months period of the Term. Thereafter, the Government may by notice request the Contractor to propose an annual percentage adjustment against the Contract Ceiling Rates. The notice may specify the date by which the Contractor is required to submit its proposal ("submission date") and the date on which the revised Contract Ceiling Rates will take effect. The Contractor must submit the proposal in writing to the Government Representative in accordance with the requirements stipulated in the relevant notice. The adjustment proposed by the Contractor shall not be retrospective. When preparing the proposal, the Contractor may make reference to the Government Consumer Price Index (B) identified as "average for the 12 months ended [month] [year] compared with the average for the 12 months ended [month] [year]" on the latest main statistics of consumer price indices and which is published by the Census and Statistics Department and available on the submission date. The Government is under no obligation to accept any proposal and has the absolute right to determine any percentage adjustment applicable to the Contract Ceiling Rates by taking into

account all relevant factors, including but not limited to the proposal of the Contractor. Under no circumstance shall the percentage adjustment exceed the latest civil service pay adjustment applicable to civil servants in the middle salary band announced by the Government and available on the submission date. Once the Government has determined the percentage adjustment, the Contract Ceiling Rates shall be adjusted and the adjusted Contract Ceiling Rates will take effect on a date or a revised date, as the case may be (effective date), to be specified by the Government. The increased Contract Ceiling Rates shall take effect from the effective date until the date they are further adjusted under this clause.

- 3.4 A Contractor bidding for the Service should take into account the relevant Contract Ceiling Rates subsisting at the time of its bid when proposing the Individual Rates for Relevant Employees to the Government. The Individual Rate to be quoted by the Contractor in proposing the Relevant Employee for selection by the Government under clause 4.4 of Part VI shall not exceed the subsisting Contract Ceiling Rate applicable to the Relevant Employee.
- 3.5 When a Contractor bids for the Service, the Government may select the Relevant Employees and accept the Individual Rates for Relevant Employees proposed by a Contractor. The Contractor will be paid on a time basis based on the actual amount of work performed in accordance with the Individual Rates as accepted. Such Individual Rates may be adjusted upwards or downwards in accordance with clauses 3.6 and 3.7 below.
- 3.6 For upward adjustment of Contract Ceiling Rates, the Individual Rate of a Relevant Employee will be adjusted upwards by the same percentage that Contract Ceiling Rates may be adjusted upwards. The adjustment of the Individual Rate will take effect on the same date that the Contract Ceiling Rate applicable to the Relevant Employee is adjusted. The Contractor shall adjust the wages payable to the Relevant Employee upwards by a percentage no less than the percentage of upward adjustment to the Contract Ceiling Rates determined by the Government. The adjustment to the wages payable to the Relevant Employees shall take effect on the same date that the Contract Ceiling Rate applicable to the Relevant Employee is adjusted.
- 3.7 For downward adjustment of Contract Ceiling Rates, if the Individual Rate of the Relevant Employee is lower than or equal to the adjusted Contract Ceiling Rate of the Relevant Employee, there will not be any adjustment of the Relevant Employee's Individual Rate. If the Individual Rate of the Relevant Employee is higher than the Contract Ceiling Rate applicable to the Relevant Employee, the Relevant Employee's Individual Rate shall be revised downward to an amount equivalent to the adjusted Contract Ceiling Rate applicable to the Relevant Employee. The adjustment shall be effective only on the date of (i) commencement of the service engagement of; or (ii) where applicable, the extension of the Period of Service (RE) of the Relevant Employee.

4. Relevant Employees

4.1 The Contractor must:

- (a) make available the Relevant Employees to the Government to perform the Service (RE) in accordance with the requirements stipulated in the Specifications in Part VI;
- (b) ensure that the Relevant Employees comply with the conditioned hours of work and other conditions specified in the Specifications in Part VI;
- (c) ensure that the Relevant Employees comply with the provisions of this Contract, in particular, the provisions on prevention of bribery, conflict of interest and obligation not to disclose confidential and official information, and their statutory obligations under the Prevention of Bribery Ordinance (Cap. 201) and the Official Secrets Ordinance (Cap. 521);
- (d) incorporate the terms specified in Contract Schedule 6 of Part III in the contract of employment of the Relevant Employees;
- (e) ensure and confirm that the terms of the contract of employment mentioned in clause 4.1(d) above fully comply with the provisions of the employment legislation including the Employment Ordinance (Cap. 57), the Minimum Wage Ordinance (Cap. 608) and the Employees' Compensation Ordinance (Cap 282);
- (f) ensure and confirm that the contract of employment mentioned in clause 4.1(d) above does not contain any terms contrary to the provisions of this Contract;
- (g) obtain the approval in writing from the Government Representative before giving any permission for any Relevant Employee to receive an advantage or to take up any outside work; and
- (h) immediately notify in writing the Government Representative of particulars of any breach of professional ethics, conflict of interest, acceptance of advantage, insolvency, bankruptcy or disclosure of confidential and official information affecting the Relevant Employees whenever any of these come to its notice.

4.2 Relevant Employees are not employees or agents of the Government. The appointment of any Relevant Employee to perform the Service (RE) shall not relieve the Contractor from any liability or obligation under this Contract. The Contractor shall be responsible for the acts, default, neglect or omission of any Relevant Employee or other employees, officers, agents and contractors of the Contractor in the performance or purported performance of the Service or Service (RE) as appropriate as if they were the acts, default, neglect or omission of the Contractor.

- 4.3 The Government has the absolute right to reject any of the Relevant Employees or require the Contractor to terminate the service of the Relevant Employee in situations including but not limited to the following:
- (a) the Relevant Employee refuses to make declaration on his previous criminal conviction record;
 - (b) the Relevant Employee refuses to give consent to the Government to conduct checking on his previous criminal conviction records if required by the Government; or
 - (c) the Relevant Employee is found to have previous criminal conviction records, and in the opinion of the Government Representative, he is not suitable to perform the Service (RE).

5. Period of Service (RE)

- 5.1 The Period of Service (RE) of the Relevant Employee shall be of varying duration but generally shall not be less than one (1) month.
- 5.2 The Government may issue to the Contractor Notice of Service (RE) more than seven (7) calendar days prior to the commencement day of service of the Relevant Employee (“commencement day of Service (RE)”). The Contractor is required to notify the Government at least seven (7) calendar days prior to the commencement day of Service (RE) if the Relevant Employee is not going to report for duty.
- 5.3 The Contractor is required to give notice to the Government if a Relevant Employee resigns before completion of his service. For all Relevant Employees, if no prior notice or less than one (1) month’s notice is given, the Contractor is liable to pay to the Government fourteen (14) days’ payment for service of such Relevant Employee. For Relevant Employees of Staff Categories 3, 4, 5 or 6 as defined in clause 2.3 of Part I, if no less than one (1) month’s notice but less than two (2) months’ notice is given, the Contractor is liable to pay to the Government seven (7) days’ payment for service of such Relevant Employee.
- 5.4 If the Government Representative is of the opinion that the Contractor has failed to ensure that the Relevant Employee has been providing the Service (RE) properly, or satisfactorily, or the Relevant Employee is found in the opinion of the Government Representative to be incompetent, inattentive or to conduct himself improperly (the Government’s decision shall be final in this matter), the Government Representative shall be entitled to request the Contractor to terminate the service of such Relevant Employee. The Contractor shall comply with such request without delay.

- 5.5 The Government shall be entitled, by giving prior notice to the Contractor, to:
- (a) cancel or earlier terminate the Period of Service (RE) of the Relevant Employee; or
 - (b) vary or extend the Period of Service (RE) of the Relevant Employee to any period as may be specified by the Government.
- 5.6 In the event that the Government exercises the right under clause 5.5 above, the Contractor shall not be entitled to claim for any additional payment.
- 5.7 In the event that the Government extends the Period of Service (RE) of the Relevant Employee by exercising the right under clause 5.5 above, the Contractor shall make available the Relevant Employee to continue and complete the Service (RE) after the Period of Service (RE) is extended. The Government may issue to the Contractor prior notice of more than seven (7) calendar days to confirm the extended Period of Service (RE). The Contractor is required to give the Government at least seven (7) calendar days' prior notice if the Relevant Employee is not available to continue and/or complete the Service (RE) for the extended Period of Service (RE).
- 5.8 A sum payable by the Contractor under this clause shall be made by deduction from any amount due to the Contractor by the Government or the delivery by the Contractor to the Government of a credit note issued for the same amount in favour of the Government. In the event that the Government decides that a credit note is required, the credit note must be issued and settled in full by the Contractor to the Government within the period as specified by the Government.
- 5.9 Unless otherwise specified by the Government from time to time during the Term of this Contract, a Relevant Employee may, after completion of his current Period of Service (RE), be engaged by any Contractor to provide Service (RE) to the Government.

6. Monitoring the Performance of Service

- 6.1 Prior to the commencement of the Service, the Contractor shall appoint, subject to the Government Representative's approval, a representative who shall have full authority to make all necessary decisions regarding performance of the Service under this Contract on behalf of the Contractor.
- 6.2 The representative shall be readily available throughout the Term to liaise with and take instructions from the Government Representative.
- 6.3 The representative shall attend all meetings convened by the Government Representative to discuss with the Government Representative and monitor the progress and performance of the Service.

- 6.4 The contracting parties shall arrange for their representatives to meet at regular intervals during the Term to monitor the progress in respect of the performance of the Service.
- 6.5 The Government Representative shall at any time be entitled to inspect the Service performed and check the Contractor's compliance with the terms and conditions of the Contract.
- 6.6 Subject to the Government's obligations of confidence, the Contractor shall on demand provide to the Government Representative with all reasonable co-operation and assistance in relation to the inspection and/or checking conducted in accordance with clause 6.5 above, including, but not limited to:
- (a) provision of all information requested by the Government;
 - (b) reasonable access to any premises controlled and used by the Contractor for the performance of this Contract and to any equipment used (whether exclusively or non-exclusively) in the performance of this Contract; and
 - (c) access to the Relevant Employees, staff, agents, consultants and sub-contractors, if approved by the Government Representative, of the Contractor involved in the performance of this Contract.
- 6.7 Where the Government Representative is satisfied that the Contractor has failed to perform the Service, or failed to comply with any warranty, undertaking, requirement or obligation of the Contract, it shall be entitled to instruct the Contractor in writing to remedy/rectify the failure within such period as specified by the Government Representative in its instruction to the Contractor. Upon being notified in writing of any of the Service being unsatisfactory, or any breach or non-compliance with the warranty, undertaking, requirement or obligation of the Contract, the Contractor shall be required to take immediate and necessary action to rectify such unsatisfactory Service, or the breach or non-compliance.
- 6.8 The Contractor shall bear its own costs and expenses incurred in compliance with its obligations specified in clauses 6.1 to 6.4, 6.6 and 6.7 above. If a Contractor fails to rectify any unsatisfactory Service, or any breach or non-compliance in accordance with clause 6.7 above, the Government Representative shall be entitled, without prejudice to any other rights and remedies or actions to be taken under the Contract, record in writing a Notice of Default, which shall be issued to the Contractor. The Notice(s) of Default issued by the Government Representative under the Contract may be taken into account when the Contractor's future tender offers for other tenders / quotations exercises are evaluated.
- 6.9 Clauses 6.5 to 6.8 above shall survive the termination of this Contract for a period of twelve (12) months.

7. Contractor's Undertaking

7.1 The Contractor warrants, represents and undertakes to the Government that:

- (a) the Relevant Employee shall possess the essential qualification and the necessary skill, experience and expertise set out in the Specifications in Part VI to provide the Service (RE) on the terms set out herein;
- (b) the Contractor shall manage the Relevant Employee as a responsible employer in similar trade so that the Service provided is of professional standard;
- (c) the Contractor shall provide Relevant Employees of all staff categories for selection by the Government when requested;
- (d) the Relevant Employee shall provide independent and unbiased advice to the Government in relation to the Service (RE);
- (e) the Service will be performed and completed in a professional, competent and diligent manner and that the Contractor and each and every Relevant Employee shall use all the experience, skill, care and diligence in the performance of the Service or Service (RE) as appropriate and the discharge of all its or their duties and obligations, as the case may be, under the Contract as may reasonably be expected from a person who is held out as an expert in providing or assisting in providing services of a kind similar to the Service;
- (f) the Contractor has full power, capacity and authority to enter into this Contract and to perform its obligations under this Contract;
- (g) the Contractor shall carry out the Service with all due diligence and in a proper, timely, safe, skilful and professional manner and shall perform the Service to the satisfaction of the Government Representative;
- (h) the Contractor shall comply with all laws, regulations, by-laws and code of practice which are from time to time applicable to the provision of the Service, including the obtaining and maintaining of all necessary licences or permits;
- (i) the Materials used by the Contractor in performance of the Service will not subject the Government or the Contractor to any claim for infringement of any proprietary rights or Intellectual Property Rights of any third party;
- (j) the Contractor shall enter into employment contracts with the Relevant Employees setting out the essential terms and conditions of the employment, including but not limited to, wages, allowances, conditioned hours of work, normal office hours and rest days. Subject to clause 9 below, the Contractor shall offer to its employees the pay

and conditions of employment which are not less favourable than the general level of wages and conditions observed by other employers in similar trade. The terms and conditions specified in the employment contracts shall be in compliance with the provisions of the Employment Ordinance (Cap. 57) and the Minimum Wage Ordinance (Cap. 608). No unreasonable terms and clauses shall be imposed in the employment contracts with the Relevant Employees. No terms and conditions of the employment contracts with the Relevant Employees shall contravene the provisions of the Contract. The Contractor shall incorporate in the employment contracts with the Relevant Employees those terms specified in Contract Schedule 6 of Part III;

- (k) the Contractor shall specify the wage adjustment mechanism of the Relevant Employees in the employment contracts. Such wage adjustment mechanism shall not contravene clauses 3.6, 9.1 and 9.2 of Part IV;
- (l) all information contained in the Contract shall remain the property of the Government and without prior written consent of the Government, the Contractor shall not make use of the information therein, or any other information acquired by virtue of its engagement in this Invitation to Tender, for purpose(s) other than that;
- (m) the Contract constitutes valid, legally binding obligations of the Contractor enforceable in accordance with its terms;
- (n) all information supplied, and statements and representations made by or on behalf of the Contractor in or in relation to its Tender and the Contract are true, accurate and complete;
- (o) no claim is being made and no litigation, arbitration or administrative proceeding is presently in progress, or to the best of the Contractor's knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;
- (p) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- (q) no proceedings or other steps have been taken and not discharged (nor to the best of its knowledge, are threatened) for the winding up or bankruptcy of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar office in relation to any of the Contractor's assets or revenue; and

- (r) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or on its ability to fulfil its obligations under the Contract.

- 7.2 The warranties, representations and undertakings, expressed or implied, contained in clause 7.1 and other provisions of the Contract (collectively, “Warranties” or “warranties” and each, a “Warranty” or “warranty”) shall be true without limitation in time, save that in case of any Warranty expressed to be effective during the Term, it shall be true on each day of the Term as if it is repeated on each such day.
- 7.3 Each of the Warranties shall be separate and independent and without prejudice to any other Warranty, and shall not be limited by reference to or inference from any other Warranty or any other provision of the Contract.
- 7.4 Unless otherwise expressly excluded from or provided to the contrary in the Contract, the rights, duties and liabilities imposed on a service provider and the rights conferred on the party contracting with the service provider under the Supply of Services (Implied Terms) Ordinance (Cap. 457) apply to bind the Contractor and the Government respectively.

8. Service Assurance and Staff Management Plans

- 8.1 The Contractor shall implement the Service Assurance Plan and Staff Management Plan in managing the Relevant Employees as proposed by the Contractor in Contract Schedule 8 of Part III (referred hereunder as “the Plans”). The Contractor shall not vary or amend the Plans which are currently in force without the prior written approval of the Government Representative.
- 8.2 The Government may require the Contractor, from time to time during the Term, to review and revise the Plans to the satisfaction of the Government.
- 8.3 The Government shall have full discretion to decide whether or not the Plans have been implemented to the satisfaction of the Government by the Contractor.

9. Wages

- 9.1 Where a Relevant Employee of Staff Category 1 has provided the Service (RE) under the instruction of the Government Representative during all normal office hours as specified in clause 5.1(d) of Part VI for a whole month, the wage payable by the Contractor to the said Relevant Employee for that month (referred hereunder as “the wage for the month”) shall not be lower than (i) “Median monthly wage by industry section (HK\$): All employees” for “Information and communications” of the latest year set out in the latest edition of the “Report on Annual Earnings and Hours Survey” published by the Census and Statistics Department (referred hereunder as the “Median Monthly Wage”) available on the Original Tender Closing Date; (ii) the minimum monthly wage rate committed by

the Contractor for Relevant Employees of Staff Category 1 in Contract Schedule 9 of Part III; or (iii) the Median Monthly Wage available on the date when the Contractor enters into an employment contract with the Relevant Employee of Staff Category 1, whichever is the higher.

- 9.2 Where any Relevant Employee of Staff Categories 2, 3, 4, 5 or 6 has provided the Service (RE) under the instruction of the Government Representative during all normal office hours for a whole month, the wage payable by the Contractor to that Relevant Employee shall not be the same or lower than the lowest wage payable by the Contractor to the Relevant Employees of Staff Category 1 engaged by the Contractor for that month who have provided the Service (RE) under the instruction of the Government Representative during all normal office hours for the whole month. Where there is no Relevant Employee of Staff Category 1 engaged by the Contractor or no Relevant Employee of Staff Category 1 engaged by the Contractor has provided the Service (RE) under the instruction of the Government Representative during all normal office hours for a whole month, the wage payable by the Contractor to its engaged Relevant Employees of Staff Categories 2 to 6 who have provided the Service (RE) under the instruction of the Government Representative during all normal office hours for that month shall not be the same or lower than “the wage for the month” as determined in accordance with clause 9.1 above.
- 9.3 For clauses 9.1 and 9.2 above, Staff Categories 1 to 6 are defined in clause 2.3 of Part I.
- 9.4 The Contractor shall maintain the wage records of all Relevant Employees under the Contract for inspection by the Government Representative.
- 9.5 Any breach of clause 9.1, 9.2 or 9.4 above may be construed as a breach of the obligation under the Contract and the Government shall be entitled to take actions in accordance with clauses 6.7 and 6.8 of Part IV, or to terminate the Contract in accordance with clause 26 of Part IV.

10. Payment for Service

- 10.1 Subject to the satisfactory performance of the Service, the Government shall pay the Contractor for providing the Relevant Employees and the amount payable will be calculated on a time charged basis in accordance with the Individual Rates of the Relevant Employees being engaged.
- 10.2 Payment for Service will be made in accordance with the procedures specified below:
- (a) at the end of each month, the Relevant Employees will be required to submit time sheets to the Government Representative detailing the Service (RE) rendered and the time spent. Calculation of payment will be based on time spent on the Service (RE) rendered and the Individual Rate of the Relevant Employee. The Contractor is

responsible to ensure that correct time sheets are submitted by the Relevant Employees to the Government.

- (b) unless the Government agrees otherwise, the Contractor shall, at the end of each month during the Term, produce an invoice for the month, based on time sheets prepared according to clause 10.2(a) herein, for certification by the Government Representative. The Contractor shall send the invoices to the Government as soon as possible, and in any case, within one month from the end of the month that the Service (RE) has been rendered, unless specified otherwise by the Government.
- (c) if the Government elects to pay the Contractor for any Relevant Employee working overtime in lieu of granting time off, an hourly rate equivalent to one-eighth (1/8) of the Individual Rate of the Relevant Employee payable at the time of working will be paid to the Contractor. Payment of overtime service is payable on a half-hourly basis, **subject to a minimum of one hour** overtime worked outside normal office hours **or** outside the same on any one shift stipulated under clause 5.1(e) of Part VI.
- (d) if the Relevant Employee is deployed to work on shift or irregular working hours as required under clause 5.1(e) of Part VI, the Government may elect to pay the Contractor for providing the Relevant Employee at an hourly rate equivalent to one-eighth (1/8) of the Individual Rate payable at the time of working.
- (e) payment for Service provided under this Contract shall become due upon certification of the correct invoice of the Service (RE) by the Government Representative in accordance with clause 10.2(b) thereof.
- (f) payment for Service shall be paid within thirty (30) working days after the payment became due in accordance with clause 10.2(e) thereof.
- (g) payment for Service rendered shall be arranged by the person named in the Notice of Service (RE) to whom invoices and correspondence concerning payment shall be addressed. The Government shall not be held responsible for any delay in payment if any invoice or correspondence is improperly addressed.

11. Insurance

- 11.1 The Contractor shall effect and maintain throughout the Term a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor in connection with the performance or attempted performance of its obligations under the Contract, including death, personal injury, loss of or damage to property or any other loss. Such insurances shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor. The insurance company or companies shall be authorised under the Insurance Ordinance (Cap. 41).

- 11.2 Without prejudice to clause 11.1, the Contractor shall effect and maintain employer's liability insurance in respect of all its employees and other staff in accordance with all applicable legal requirements.
- 11.3 If required by the Government, the Contractor shall deliver to the Government copies of all insurance policies referred to in the Contract together with receipts or other evidence of payment of the latest premium due under the policies.
- 11.4 The Contractor shall be responsible for lodging claims with the insurance company and shall notify the insurance company within the time period specified in the policy of the occurrence of any event liable to give rise to a claim.
- 11.5 If the Contractor fails to give effect to or maintain any insurance required under the Contract, the Government may make such alternative arrangements as it considers appropriate to protect its interests and may recover from the Contractor the costs of putting such in place and maintaining such arrangements.
- 11.6 No provision in any insurance and no amount of insurance covered shall relieve the Contractor of any liability under the Contract. It is the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability under the Contract.

12. Liability for Damages or Compensation

- 12.1 Government and its employees or agents shall not be under any liability whatsoever for or in respect of:
- (a) any loss of or damage to any of the Contractor's property or that of its employees, sub-contractors or agents however caused (whether by any Negligence of the Government or any of its employees or agents or otherwise).
 - (b) any injury to or death of any of the Contractor's employees, sub-contractors or agents save and except any such injury or death caused by the Negligence of the Government or any of its employees or agents.
- 12.2 The Contractor shall indemnify the Government and its employees or agents against any claim or demand made against or liability incurred (including all costs, charges or expenses whatsoever) by the Government or any of its employees or agents in respect of:
- (a) any loss, damage, injury or death referred to in clause 12.1 of this clause (save and except injury or death caused by the Negligence of Government or any of its employees or agents).
 - (b) any loss or damage sustained by or any injury to or death of any third party in consequence of any Negligence of the Contractor or any of its employees or agents.

- 12.3 The Contractor shall indemnify the Government against any loss of or damage to any property of the Government or of any of its employees or agents or any injury to any employee or agent of the Government arising out of the Negligence of the Contractor or any of its employees, sub-contractors or agents.
- 12.4 For the purposes of this clause “Negligence” shall have the same meaning as that assigned to it in section 2(1) of the Control of Exemption Clauses Ordinance (Cap. 71).

13. Mandatory Provident Fund

- 13.1 The Contractor shall provide and maintain at its own cost a provident fund scheme for the Relevant Employees as required under the Mandatory Provident Fund Schemes Ordinance (Cap. 485).

14. Performance Bond

- 14.1 Within one (1) month from the date of execution of the Contract by way of signing of the Standing Offer Deed in Part V or by any other date to be specified by the Government, whichever is the later, the Contractor who is required to submit a bond in accordance with clause 24 of Part I shall submit to the Government a duly issued performance bond in an amount equivalent to that defined in clause 24.1 of Part I and in the form appearing in **Annex 1** of Part IV.
- 14.2 The performance bond to be submitted by the Contractor pursuant to clause 14.1 above shall be issued by a bank details of which shall have been submitted in writing to the Government prior to execution of the Contract for the Government’s approval. If the Contractor wishes to replace the bank with another bank, it shall give full written details of the proposed replacement to the Government who shall within fourteen (14) days of receipt of the same notify the Contractor in writing of any objection to such proposed replacement whereupon the Contractor may either revert to the original bank or propose a further replacement in the same manner as set out above.
- 14.3 Notwithstanding any other provision of the Contract:
- (a) submission by the Contractor of the requisite performance bond in accordance with the provisions of this clause 14 shall be a condition precedent to the Contractor’s entitlement to any payment under the Contract; and
 - (b) failure by the Contractor to provide a performance bond in accordance with the provisions of this clause 14 shall entitle the Government to terminate the Contract forthwith by notice in writing to that effect, and the Contractor shall not be entitled to any compensation whatsoever as a consequence of such termination.

- 14.4 Upon the expiry or termination of the Contract, the performance bond shall normally be discharged or released within six (6) months after the expiry or termination of the Contract (including all extensions thereof), or the date when all obligations of the Contractor have been performed and discharged to the satisfaction of the Government Representative, whichever is the later.

15. Pre-commencement Arrangements

- 15.1 At least three (3) months prior to the Commencement Date, the Contractor shall, at its own cost, take all such actions as may be necessary to ensure that:
- (a) the electronic interfaces between the Government and the Contractor as stated in clause 9 of Part VI are ready for use and in good conditions; and
 - (b) it is in a position fully ready to propose eligible Relevant Employees for selection by the Government Representative and make all necessary arrangements in response to service requests in accordance with clause 4 of Part VI.
- 15.2 The start date of Period of Service (RE) for all Relevant Employees shall not be earlier than the Commencement Date.

16. Relationship of Parties

- 16.1 The Contractor enters into this Contract with the Government as an independent contractor only and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership, or a joint venture between the Government and the Contractor. Unless otherwise expressly provided for in the Contract, neither party is authorised to act in the name of, or on behalf of, or otherwise bind the other party.
- 16.2 The Contractor or any person employed or engaged by the Contractor or any sub-contractor or person concerned with the same shall not be deemed to be the employee, servant, or agent of the Government.

17. Assignment and Sub-Contracting

- 17.1 Unless otherwise provided for in the Contract, the Contractor shall not, without the prior written consent of the Government, assign, transfer, sub-contract or otherwise dispose of any of its interests, rights, benefits or obligations under the Contract. The performance of the Contract by the Contractor shall be personal to it.
- 17.2 The Contractor shall submit the proposed sub-contract to the Government for approval. The Government reserves the right to grant permission for sub-contracting and determine the terms and conditions of the sub-contract. A

certified copy of the sub-contract shall be deposited with the Government within seven (7) days after the effective date of the sub-contract.

- 17.3 The Contractor shall remain fully liable and shall not be relieved from any of its obligations hereunder by entering into any sub-contract for the performance of any part of the Contract and the Contractor shall be responsible for the acts, defaults or neglect of any sub-contractor, its employees and agents.

18. Disclosure of Information

- 18.1 The Contractor hereby irrevocably authorises, consents 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 considers fit:

- (a) the Service provided or to be provided by the Contractor;
- (b) the tender price calculated in accordance with the formula set out at Annex B of Part I by use of the price proposal submitted by the Contractor in Contract Schedule 1 of Part III to the Government in relation to the Service;
- (c) the engagement by the Government of the Contractor under the Contract and the name and address of the Contractor and persons appointed or engaged by the Contractor to assist in the performance of the Contract; and
- (d) the Service Assurance Plan and Staff Management Plan submitted by the Contractor in Contract Schedule 8 of Part III to the Government in relation to the Service.

19. Publicity

- 19.1 Whether before, during or after the expiry or termination of the Term of the Contract, the Contractor shall not use the Government's name in any document, publication, advertisement or publicity material without the prior written consent of the Government.
- 19.2 Subject to clause 19.1 above, the Contractor shall submit to the Government Representative for approval all the proposed advertising or other publicity material relating to the Contract, the Service or other services provided 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.
- 19.3 Notwithstanding any consent or approval given under clauses 19.1 or 19.2 above, whenever required by the Government, the Contractor shall remove all advertisement and publicity material relating to the Contract wherein the

Government is mentioned or language used from which a connection with the Government can reasonably be inferred or implied and the Contractor must comply with such request.

20. Intellectual Property Rights

- 20.1 The Government shall be the exclusive owner of the Materials. All the Intellectual Property Rights in the Materials shall vest in the Government at the time they are created. Subject to clause 20.3 below, the Contractor warrants that such Materials are original works developed by or on behalf of the Contractor, its directors, officers, employees, agents or sub-contractors.
- 20.2 The Contractor shall not use or allow to be used directly or indirectly the Materials except for the performance of its obligations under the Contract or except with the prior written approval of the Government. "Use" includes any acts restricted by copyright (including reproduction) set out in sections 22 to 29 of the Copyright Ordinance (Cap. 528).
- 20.3 If materials from other copyright works or Intellectual Property Rights from other sources (except those originating from the Government) are included in the Materials or any software and materials are supplied or used by the Contractor in the performance of the Contract and the Intellectual Property Rights are vested in a third party, the Contractor shall identify such materials to the Government and keep the Government informed in writing of such third party materials.
- 20.4 The Contractor warrants that:
- (a) it has or shall have a valid and continuing licence under which it is entitled to use or sub-license such third party materials and the third party Intellectual Property Rights for itself and for the Government and its authorised users to use such third party materials;
 - (b) prior to the use and incorporation of such third party materials, the Contractor shall have obtained the grant of all necessary clearances for itself and for the Government and its authorised users authorising the use of such third party materials for the purposes contemplated under the Contract;
 - (c) the provision of the Service by the Contractor and the use or possession by the Government and its authorised users of the Materials including the third party materials for any of the purposes contemplated by the Contract does not and will not infringe any Intellectual Property Rights of any person; and
 - (d) the exercise of any of the rights granted under the Contract by the Government and its authorised users will not infringe any Intellectual Property Rights of any person.

- 20.5 The Contractor hereby waives and will procure its officers, employees, agents, sub-contractors and all authors concerned to waive all moral rights (whether past, present or future) in respect of the Materials to which they may now or at any time in the future be entitled under the Copyright Ordinance (Cap. 528) and under any similar law in force from time to time anywhere in the world. Such waiver shall operate in favour of the Government, its authorised users and licensees and shall take effect upon delivery of the relevant Materials.
- 20.6 The Contractor shall at its own costs execute or procure the execution of any further assignments, deeds, licence, documents and instruments and do or procure the doing of any further things as may be necessary to give full effect to this clause.
- 20.7 The Contractor shall indemnify the Government and keep the Government fully and effectively indemnified against any loss or damage which the Government may sustain or incur as a result of any allegation of or claim for infringement of the Intellectual Property Rights of any party arising from or in any way related to the provision of the Service by the Contractor.
- 20.8 The provisions of this clause 20 shall survive the expiry or termination of the Contract and shall continue in full force and effect notwithstanding such expiry or termination.

21. Software Asset Management

- 21.1 The Contractor shall at all times during the execution of the Contract exercise due diligence in software asset management and as and when required by the Government, furnish to the Government satisfactory evidence that this clause has been complied with.
- 21.2 The Contractor warrants and undertakes that the use of any software by the Contractor for the purpose of or otherwise in connection with the performance of this Contract shall not infringe any Intellectual Property Rights of any party.
- 21.3 The Contractor shall notify the Government immediately in writing of any allegation, claims, actions and/or proceedings in respect of such infringement and any progress thereof from time to time.
- 21.4 If the Contractor's use of the software for the purpose of or otherwise in connection with the performance of this Contract is held by a court to constitute an infringement of a third party's Intellectual Property Rights, the Government may, without prejudice to any other rights or remedies that the Government may have, terminate this Contract forthwith by giving notice in writing to the Contractor and recover from the Contractor the amount of any loss or damage sustained or incurred by the Government as a consequence of such termination.
- 21.5 The provisions of this clause 21 shall survive the expiry, completion or termination of this Contract (howsoever occasioned) and shall continue in full force and effect notwithstanding such expiry or termination.

22. Confidential and Official Information

- 22.1 The Contractor shall treat as confidential all Confidential Information.
- 22.2 The Contractor shall not at any time during or after the Term divulge or allow to be divulged to any person any such Confidential Information other than to the Relevant Employees, or any other employees, agents or sub-contractors who need to know the same for the purpose of carrying out the Contract and each having signed an undertaking in favour of the Contractor and the Government jointly and severally on non-disclosure regarding such Confidential Information in a form prescribed by the Government. The Contractor shall provide the original or certified true copies of all such undertakings to the Government as may be required by the Government. The Contractor further agrees that, if so required by the Government, it shall take all such steps as are lawful and necessary to enforce such undertakings or to co-operate with the Government in their enforcement.
- 22.3 The Contractor shall protect the Confidential Information using not less than the same standard of care the Government applies to their Confidential Information and shall at its own expense take such measures as are necessary, whether by adequate security systems, legal proceedings or otherwise, to ensure compliance with the confidentiality obligation.
- 22.4 The Government may request the Contractor in writing at any time that any Confidential Information disclosed pursuant to the terms of this clause 22 and any copies, analyses, compilations and extracts thereof whether in hard copies, electronic format or other media by returned, destroyed and/or deleted with a written statement to the effect that upon such return, destruction and/or deletion it has not retained in its possession or under its control, either directly or indirectly, any Confidential Information in whatever form. The Contractor shall comply with any such request from the Government within seven (7) days of receipt of such request.
- 22.5 The Contractor shall ensure that the Relevant Employees and any other persons engaged on any work in connection with the Contract are aware of and comply with the provisions of this clause and the Official Secrets Ordinance (Cap. 521).
- 22.6 Without prejudice to any other provision of the Contract, the Contractor shall indemnify and keep the Government and its authorised users fully and effectively indemnified against any and all actions, damages, costs, claims, demands, expenses (including the fees and disbursements of lawyers, agents and expert witnesses) and any awards and costs which may be agreed to be paid in settlement of any proceedings and liabilities of any nature arising from or incurred by reason of:
- (a) a breach of confidence (whether under the Contract or general law) by the Contractor or any of its employees, agents or sub-contractors;
 - (b) any actions or claims made in respect of information subject to the Personal Data (Privacy) Ordinance (Cap. 486), which action and/or

claim would not have arisen but for the act, negligence or omission of the Contractor or any of its employees, agents or sub-contractors in connection with the performance of the Contract; and

- (c) any act done or omission in the performance of the Contract that contravenes the Unsolicited Electronic Messages Ordinance (Cap. 593).

- 22.7 The Contractor shall use the Confidential Information solely for the purposes of the Contract. The Contractor shall not, at any time whether during the Term or after the expiry or termination (howsoever occasioned) of the Contract, use (or allow to be used) the Confidential Information for any other purposes without the Government's prior written consent.
- 22.8 The Contractor shall not and shall not permit any of its Relevant Employees from publishing or disclosing any Confidential Information. The Contractor further agrees that it will not at any time whether by itself or through any subsidiary or agent use, sell, license, sub-license, create, develop or deal with any Confidential Information otherwise than in accordance with the Contract. If the Contractor becomes aware of any breach of confidence by any of its employees, any of its sub-contractors or agents it shall promptly notify the Government and give the Government all reasonable assistance in connection with any proceedings which the Government may institute against any such persons.
- 22.9 The Contractor shall comply with any disclosure restrictions and conditions of use of the Confidential Information as may be stipulated by the Government from time to time.
- 22.10 The Contractor must ensure that the Relevant Employee, or any other employees, agents or contractors of the Contractor shall conform and abide by the Government normal codes of staff and security practice, as laid down in various government regulations and departmental circulars, to protect Government data from unauthorized disclosure or loss.
- 22.11 The provisions of this clause 22 shall survive the expiry or termination of the Contract and shall continue in full force and effect notwithstanding such expiry or termination.

23 Contractor's Obligation to Inform Government of Relevant Facts

- 23.1 The Contractor shall keep itself informed and immediately inform the Government of any or all facts or matters incidental to or related to its obligations under the provision of this Contract with respect to prevention of bribery, conflict of interest and Contractor's obligation not to disclose Confidential Information, including any such facts and matters affecting the Relevant Employees. The Contractor shall also keep itself informed and immediately inform the Government of any facts and matters aforementioned affecting the Relevant Employees, including any previous conviction records before the commencement of and/or during the Period of Service (RE) of the Relevant Employees.

- 23.2 The Contractor shall notify in writing the Government Representative immediately of any circumstances relating to the Contractor and/or the Government concerning the Service of which the Contractor is aware or which it anticipates may justify the Government taking action to protect its interests (including its reputation and standing).
- 23.3 The Contractor shall keep itself informed and immediately inform the Government of any unauthorized disclosure or loss of Government data by any of its employees, any of its sub-contractors or agents.

24. Conflict of Interest

- 24.1 The Contractor shall, during the Term of the Contract, ensure that it (including its Associates and Associated Persons, each of the Relevant Employees and each sub-contractor and their Associates and Associated Persons) shall not undertake any service, task or job or do anything whatsoever for or on behalf of any third party (other than in the performance of this Contract) which conflicts or competes, or which may be seen to conflict or compete with the Contractor's duties or obligations to the Government under this Contract without the prior written approval of the Government.
- 24.2 The Contractor shall, during the Term of the Contract, immediately notify in writing the Government of all or any facts which may reasonably be considered to give rise to a situation where the financial, professional, commercial or other interests of the Contractor or its Associates or Associated Persons, or each and every Relevant Employee and his Associates or Associated Persons, or any one of the Contractor's sub-contractors, or its Associates or Associated Persons, conflict or compete, or may be seen to conflict or compete, with the Contractor's duties or obligations, as the case may be, to the Government under the Contract.
- 24.3 The Contractor must ensure that the Relevant Employees will observe all Government rules and regulations on conflict of interest and related matters, as amended from time to time, which shall be circulated to the Relevant Employees by the Government Representative, as if the references to Government and its officers, servants and employees were references to the Relevant Employees.
- 24.4 The Contractor must ensure that the Relevant Employees shall keep themselves informed and inform the Contractor and keep it informed regularly of all facts which may reasonably be considered to give rise to a situation in which the financial, professional, commercial, personal or other interests of the Relevant Employees, conflict or compete, or may be seen to conflict or compete, with the Contractor's duties or obligations to the Government under this Contract.

25. Prevention of Bribery

- 25.1 The Contractor must inform the Relevant Employees in writing, and keep them informed in writing regularly and not less than once in every three (3) months, that soliciting or accepting of advantages, as defined in the Prevention of Bribery Ordinance (Cap. 201) is a serious crime and may also result in substantial civil liability. Without limitation, the Contractor must inform the Relevant Employees that:
- (a) offering any advantage to a public servant, as defined in the Prevention of Bribery Ordinance (Cap. 201), as an inducement to or reward for or otherwise on account of that public servant's performing or abstaining from performing any act in his capacity as a public servant, or expediting, delaying, hindering or preventing the performance of an act, or assisting, favouring, hindering or delaying any person in the transaction of any business with a public body, is an offence under section 4 of the Prevention of Bribery Ordinance (Cap. 201);
 - (b) without the permission from the Contractor through the Supervisor, soliciting or accepting any advantage as an inducement to or reward for or otherwise on account of their doing or forbearing to do any act in relation to the Contractor's affair or business, or showing favour or disfavour to any person in relation to the Contractor's affairs or business is an offence under section 9 of the Prevention of Bribery Ordinance (Cap. 201); and
 - (c) any person who, without lawful authority or reasonable excuse, while having dealings of any kind with the Government through any department, office or establishment of the Government, offers any advantage to any prescribed officer employed in that department, office or establishment of the Government shall be guilty of an offence under section 8 of the Prevention of Bribery Ordinance (Cap. 201).
- 25.2 The Contractor must ensure that the Relevant Employees will observe all Government rules and regulations on prevention of bribery, acceptance of advantages and related matters, as amended from time to time, which shall be circulated to the Relevant Employees by the Government Representative, as if the references to Government and its officers, servants and employees were references to the Relevant Employees.
- 25.3 If the Contractor or any of its employees, officers, agents or contractors shall be found to have offered or given any advantage, gratuity, bonus, discount, bribe or loan of any sort to any agent or employee of the Government, the Government shall be at liberty forthwith to terminate the Contract, and to hold the Contractor liable for any direct or consequential loss or damage which the Government may thereby sustain.

26. Termination of Contract

26.1 Default of the Contractor

The following shall be deemed a fundamental breach entitling the Government to terminate this Contract immediately and the rights and liabilities of the parties shall thereafter be determined in accordance with clause 27 of Part IV:

- (a) failure on the part of the Contractor to make available the Relevant Employees to perform the Service (RE) on the date as specified in the Notice of Service (RE) issued under clause 4.6 of Part VI;
- (b) the levying of any distress or execution against the Contractor or the making by him of any composition or arrangement with creditors or being a company if the Contractor shall pass a resolution, or the court shall make an order that the company be wound up otherwise than for the purposes of reconstruction or amalgamation, or if a receiver or manager on behalf of a creditor shall be appointed, or if circumstances shall arise which entitle a court or a creditor to appoint a receiver or manager or which entitle the court otherwise than for the purposes of amalgamation or reconstruction to make a winding up order;
- (c) the doing or permitting of any act on the part of the Contractor by which Government's proprietary rights in the Materials may be prejudiced or put in jeopardy;
- (d) to offer or give any advantage, gratuity, commission, bonus, discount, bribe or loan of any sort or in any form whether directly or indirectly by the Contractor to any agent or employee of the Government; or
- (e) the Contractor having been issued an aggregate of three (3) or more Notices of Default during the Term due to its failure to rectify any unsatisfactory Service, or any breach or non-compliance with the warranty, undertaking, requirement or obligation under the Contract in accordance with clause 6.8 of Part IV.

26.2 Automatic Right of Termination by the Government

The Government may at any time or times prior to the expiry of the Term at its option terminate without cause the Contract by giving the Contractor thirty (30) days' written notice of such termination.

27. Termination Consequences

- 27.1 On termination of the Contract for any reason, the Government is under no further obligation to the Contractor under the Contract without thereby releasing the Contractor from any of its liabilities under the Contract, or affecting any rights and powers conferred upon the Government by the Contract.

- 27.2 The expiry or termination of the Contract shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision of the Contract which is expressly or by implication intended to come into or continue in force on or after such expiry or termination.
- 27.3 If the Contract is terminated under clause 26.1 of Part IV and the Government makes other arrangements for the provision of any Service from any other source, the Government may recover from the Contractor: (a) any amount in excess of the amount payable by the Government to the Contractor under the Contract incurred by the Government in engaging another contractor to complete the uncompleted Service and all costs and expenses incurred in making the arrangements for the same including conducting tender for the uncompleted Service; and (b) any additional expenditure incurred by the Government in connection with a default by the Contractor referred to in clause 26.1 of Part IV. If the Contract is so terminated, until the Government has established the final cost of making other arrangements contemplated under this clause, no further payments shall be payable by the Government to the Contractor for the Service provided by the Contractor prior to termination and in accordance with the Contract for which payment has yet to be made by the Government.
- 27.4 On the expiry or termination of the Contract for any reason, the Contractor shall:
- (a) immediately return to the Government all documents containing confidential information, personal data and such other information, property and materials in the possession or under the control of the Contractor or any of its sub-contractors and agents, which was obtained or produced in the course of providing the Service;
 - (b) assist and co-operate with the Government to ensure an orderly transition of the provision of the Service to such person specified by the Government Representative and/or the completion of any work-in-progress;
 - (c) within twenty-eight (28) days of the date of termination compile and submit to the Government a report of all relevant information, facts, data, findings and conclusions in respect of the Service which have been provided up to the effective date of termination; and
 - (d) promptly provide all information concerning the provision of the Service which may reasonably be requested by the Government for the purposes of adequately understanding the manner in which the Service have been provided or the purpose of allowing the Government or a replacement contractor to conduct due diligence.
- 27.5 Save as otherwise expressly provided for in the Contract, no compensation whatsoever (including compensation for any loss or expense arising from any consequential loss or damage, or loss of opportunity, suffered or incurred by the Contractor) shall be payable by the Government to the Contractor as a result of any suspension or early termination of the Contract by the Government.

28. Set-off

- 28.1 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 the Contract or any other contracts.

29. Costs and Expenses

- 29.1 Save as otherwise expressly provided for in the Contract, the Contractor shall comply with all provisions of the Contract and its obligations under the Contract at its own costs and expenses.

30. Governing Law

- 30.1 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 exclusive jurisdiction of the courts of Hong Kong in relation to any matters arising out of the Contract.

31. Change of Address

- 31.1 Each of the parties shall give notice to the other of any change or addition of any postal address, telephone, telex, fax, electronic mail or similar number at the earliest possible opportunity but in any event within forty-eight (48) hours of such change or addition.

32. Notices

- 32.1 Any notice to be served by the parties hereto shall be sent by recorded delivery, registered post, telex, fax or electronic mail and shall be deemed to have been served to the addressee within seventy-two (72) hours of posting the notice or within twenty-four (24) hours of sending the notice to the correct number of the addressee by telex, fax or electronic mail as the case may be.

33. Force Majeure

- 33.1 If the Contractor becomes aware of any matter likely to constitute a Force Majeure Event, the Contractor shall forthwith notify the Government in writing of that matter and all relevant particulars.
- 33.2 Within three (3) days after the occurrence of a Force Majeure Event, the Contractor shall notify the Government in writing of the full particulars of the Force Majeure Event including its nature, extent and likely duration of its effect on the Contractor's ability to perform its obligation under the Contract. In the

event of an occurrence of a Force Majeure Event, the Government may on its own issue a notice to the Contractor noting the occurrence of the Force Majeure Event and requiring the Contractor to suspend all or any of the obligations under the Contract. A notice issued by the Contractor or the Government pursuant to this clause is hereinafter referred to as the “Suspension Notice”.

33.3 Following the issue of a Suspension Notice by the Contractor or the Government, the Contractor shall keep the Government informed at reasonable intervals, and upon the request of the Government, of:

- (a) the likely duration of the relevant Force Majeure Event and of its effect on the Contractor’s ability to perform its obligations under the Contract;
- (b) the actions taken or proposed to be taken by the Contractor to mitigate or minimise the effects of that Force Majeure Event; and
- (c) any other matters relevant to that Force Majeure Event or the Contractor’s performance affected by that Force Majeure Event.

33.4 To the extent that the performance of obligations by the Contractor under the Contract is prevented by a Force Majeure Event, the Contractor’s performance of such obligations will, subject to clause 33.5 below, be suspended to that extent from the date the Contractor or the Government gives a Suspension Notice in respect of that Force Majeure Event until the Contractor ceases to be so prevented (“Cessation Date”). Notwithstanding anything in the Contract to the contrary, as soon as the Government issues a Suspension Notice to the Contractor, the Contractor shall forthwith suspend the performance of the obligations to the extent specified in the Suspension Notice.

33.5 During the suspension of any obligations under clause 33.4 above:

- (a) the Contractor shall use its best endeavours (including incurring any reasonable expenses and re-deploying its manpower and resources) to remove or mitigate the effect of each Force Majeure Event on the Contractor’s performance of the obligations under the Contract;
- (b) the Government may make alternative arrangements for the performance of any suspended obligations, whether by another person or otherwise; and
- (c) the Contractor shall not be entitled to any cost, fee or charge or such pro rata portion thereof in respect of the suspended obligations for the suspended period.

33.6 As soon as the relevant Force Majeure Event has ended, the Contractor shall forthwith notify the Government of the Cessation Date, or the Government may on its own, after consultation with the Contractor, by notice in writing to the Contractor, determine the appropriate Cessation Date. The Contractor shall immediately after the Cessation Date resume performance of the suspended

obligations in accordance with the terms and conditions of the Contract. In the event of any disagreement between the Government and the Contractor on the appropriate Cessation Date, the Government's decision shall be final in the absence of manifest error.

- 33.7 Should suspension of the performance by the Contractor of its obligations under the Contract persist or be likely to persist as a result of a Force Majeure Event, the Government shall be entitled to terminate the Contract pursuant to clause 26.2 of Part IV.
- 33.8 The Contractor shall ensure that provisions similar to this clause 33 are incorporated in all its contracts with sub-contractors made pursuant to this Contract.

34. Severability

- 34.1 If any provision of the Contract is found by any authority or court of competent jurisdiction to be illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect the other provisions of the Contract, all of which shall remain in full force and effect.

35. Waiver

- 35.1 No failure, delay, forbearance or indulgence by any party to the Contract to exercise any right, power or remedy available to it under the Contract or at law or in 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. A right or a remedy of each party under the Contract shall be cumulative and not exclusive of any other rights, power or remedies provided by the Contract, at law or in equity. Without limiting the foregoing, no waiver by any 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.
- 35.2 Without prejudice to the generality of clause 35.1 above, any right of termination of the Contract or any other right, power or remedy of whatsoever nature conferred upon the Government under the Contract shall be exercisable by it in addition to and without prejudice to any other rights and remedies available to it under the Contract or at law (and, without prejudice to the generality of the foregoing, shall not extinguish any right to damages to which the Government may be entitled in respect of the breach of the Contract) and no exercise or failure to exercise a right of termination shall constitute a waiver by the Government of any other right, power or remedy.

36. Entire Agreement

- 36.1 The Contract constitutes the whole agreement between the parties thereto and supersedes any previous agreements or arrangements between them relating to the subject matter hereof. The Contractor acknowledges that in entering into the Contract, it has not relied on any statements, warranties or representations given or made by the Government. No addition to or modification of any provision of this Contract shall be binding upon the parties unless made in writing and signed by duly authorized representative of each of the parties.
- 36.2 All of the provisions of the Contract shall remain in full force and effect notwithstanding the completion of the Service (except insofar as those obligations which have been fully performed).

37. Assistance in Legal Proceedings

- 37.1 If and whenever requested to do so by the Government Representative, the Contractor shall provide to the Government all relevant information, documents (including documentation and statements from staff) and other assistance in connection with any inquiry, investigation, arbitration, tribunal hearings or court proceedings in which the Government may become involved or any internal disciplinary hearing of the Government that arises out of or in connection with the Contract or the Contractor's presence at the Government's premises. If requested by the Government, the Contractor shall arrange for relevant staff to give evidence at such inquiries, investigations, arbitrations, hearings or proceedings.
- 37.2 Where the Contractor or any employees, agents or contractors of the Contractor become aware of an incident, accident or other matter which may give rise to a claim or legal proceedings by a third party against the Government or the Contractor or in respect of the Contract, it shall notify the Government Representative immediately in writing giving full details of such incident, accident or matter as the Government Representative may require.

38. Order of Precedence

- 38.1 In the event of, and only to the extent of, any conflict or inconsistency between the clauses of the Contract, any documents referred to in those clause and the Contract Schedules in Part III, the following order of precedence shall be applied, but only in as far as is necessary to resolve that conflict or inconsistency:
- (a) Conditions of Contract in Part IV;
 - (b) Contract Schedules in Part III; and
 - (c) Specifications in Part VI.

39. Contracts (Rights of Third Parties) Ordinance

- 39.1 The parties hereby declare that nothing in this Contract confers or purports to confer on any third party any benefit or any right to enforce any term of this Contract pursuant to the Contracts (Rights of Third Parties) Ordinance (Cap. 623).

40. Retention of Records

- 40.1 The Contractor shall keep and maintain until six (6) years after the expiry of the Contract, or such longer period as may be agreed by the parties, full and accurate records of the Contract including the Service provided under it, all expenditure reimbursed by the Government, and all payments made by the Government. If requested by the Government, the Contractor shall afford the Government or its representative access to the records as may be requested by the Government.

Annex 1**FORM OF CONTRACTOR'S PERFORMANCE BOND**

BY THIS BOND dated the _____ day of _____ 2018

_____ whose registered office is at _____
 _____ (“the Surety”) is
 irrevocably and unconditionally bound to the Government of the Hong Kong Special
 Administrative Region (together with its successors and assigns, “the Government”) in the sum
 of HK Dollars _____
 (HK\$ _____) (“the Bonded Sum”) for payment of which sum the Surety
 binds itself in accordance with the provisions of this bond. [Note 1]

WHEREAS

- (A) By a contract dated _____ (“the Contract”) made between the
 Government and _____ (the “Contractor”), the
 Contractor has agreed to provide the Supply Services of Information Technology
 Contract Staff (“the Service”) upon the terms and conditions contained in the
 Contract.
- (B) Pursuant to the terms of the Contract, the Contractor agreed to procure the provision
 to the Government of a bond in the terms hereof.

NOW THE TERMS AND CONDITIONS of this bond are:

1. Where applicable, words and expressions used in this bond shall have the meaning
 assigned to them in the Contract.
2. In the event of default by the Contractor in respect of any of its obligations under the
 Contract, the Surety shall upon demand made by the Government in writing at any
 time and from time to time and without proof or conditions satisfy and discharge any
 damages, losses, charges, costs or expenses sustained by the Government thereby in
 such amount or amounts as may be specified by the Government in any such demand
 up to an aggregate amount equal to the Bonded Sum.
3. The liability of the Surety under this bond shall remain in full force and effect and
 shall not be affected or discharged in any way by and the Surety hereby waives notice
 of:
 - (a) any suspension of, performance of, variation to or amendment of the Contract
 (including without limitation extension of time for performance or adjustment
 to the amount payable to the Contractor under the Contract) or any concession
 or waiver by the Government in respect of the Contractor's obligations under
 the Contract;

- (b) the termination of the Contract or of the employment of the Contractor under the Contract solely as a result of default by the Contractor under the Contract;
 - (c) any right of action or remedy the Government may have against the Contractor under the Contract or otherwise for the time being or any forbearance or waiver of any such right or remedy or negligence by the Government in enforcing any such right of action or remedy;
 - (d) any other bond, security or guarantee held or obtained by the Government for any of the obligations of the Contractor under the Contract or any release or waiver thereof;
 - (e) any act or omission of the Contractor pursuant to any other arrangement with the Surety.
4. This bond shall have immediate effect upon execution and is a continuing security. This bond shall cover all of the obligations and liabilities of the Contractor under the Contract and shall remain in full force and effect and irrevocable until:
- (a) the date falling six (6) months after the expiry of the Contract (including all extensions thereof); or
 - (b) the date on which all the obligations and liabilities of the Contractor under the Contract have been duly carried out, completed and discharged in accordance with the Contract,
- whichever is the later.
5. The Government shall be entitled to assign the benefit of this bond at any time without the consent of the Surety or the Contractor being required.
6. All documents arising out of or in connection with this bond shall be served:
- (a) upon the Government represented by the Government Chief Information Officer, at Office of Government Chief Information Officer, 19/F, West Wing, Central Government Offices, 2 Tim Mei Avenue, Tamar, Hong Kong, marked for the attention of Government Chief Information Officer;
 - (b) upon the Surety, at _____
_____ Hong Kong. [Note 2]
7. The Government and the Surety may change their respective nominated addresses for service of documents to another address in Hong Kong but only by prior written notice to each other. All demands and notices must be in writing.
8. This bond shall be governed by and construed according to the laws for the time being in force in the Hong Kong Special Administrative Region and the Surety agrees to submit to the exclusive jurisdiction of the courts of the Hong Kong Special Administrative Region.

IN WITNESS whereof this bond has been executed as a deed on the date first above written.

THE COMMON SEAL OF [Note 3]

was affixed hereto in
the presence of:

or

By _____ [Note 4]
acting through

.....
Director

.....
Director / Secretary

or

SIGNED, SEALED AND
DELIVERED [Note 5] for
and on behalf of and as
lawful attorney of the
Surety under power
of attorney dated _____

by _____
in the presence of:

.....
[Name]
[Occupation]

Notes : (FOR PREPARATION OF BUT NOT INCLUSION IN THE ENGROSSMENT OF
THIS PERFORMANCE BOND)

1. The Contractor must execute the bond as well as the Surety
2. The address for service shall be in Hong Kong.

3. For execution of the deed with the use of a common seal.
4. For execution of the deed without the use of a common seal.
5. For use where the Surety, whether a firm or limited company, executes through an attorney.

PART V
STANDING OFFER DEED

THIS DEED made on the _____ day of _____, 2018

PARTIES:

- (1) THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION (hereinafter referred to as “the Government”) as represented by the Government Chief Information Officer of 19/F, West Wing, Central Government Offices, 2 Tim Mei Avenue, Tamar, Hong Kong.
- (2) [CONTRACTOR] (hereinafter referred to as “the Contractor”) whose registered address is at:

RECITALS:

- (1) The Government has invited tenders for the provision of the Service as specified in the Conditions of Contract, Specifications, Contract Schedules and any other documents which are incorporated by reference therein.
- (2) A tender was submitted by the Contractor which has been accepted by the Government.
- (3) The Government wishes to acquire the Service if so desires from different Contractors to serve various Government bureaux/departments in Hong Kong.
- (4) Service fee will be paid in accordance with clause 10 of Conditions of Contract.
- (5) The terms and conditions in this Deed shall have the same meaning as in the Tender Documents.

THE CONTRACTOR HEREBY COVENANTS to provide the Service as and when required by Government on the terms and conditions referred to in the following documents:

- (i) Part IV - Conditions of Contract;
- (ii) Part III - Contract Schedules; and
- (iii) Part VI - Specifications.

EXECUTED in three originals and delivered as a deed on the day and year first before written.

[Note: The appropriate execution clause for the person signing the Deed will depend on whether it is an individual, a company incorporated in Hong Kong with a common seal which wishes to use such, a company incorporated in Hong Kong either with a common seal but it does not wish to use such or without a common seal, a company incorporated outside Hong Kong or a Partnership. For example, the following executive clause would apply for a company incorporated in Hong Kong with and using a common seal.]

EXECUTED and DELIVERED as a Deed and the COMMON SEAL of [name of company] was affixed in the presence of [name(s) of director(s)], its director(s) / [name of director], its director and [name of company secretary], its company secretary in the presence of:

[signature of witness]
Name: [witness name]
Address: [witness address]

SIGNED, SEALED and DELIVERED
by [name], Government Chief Information
Officer,
for and on behalf of the Government
in the presence of:

[signature]
[name], Chief Executive Officer(Administration)

PART VI
SPECIFICATIONS
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1. Services to be Provided

1.1 The Contractor is required to provide the supply services of information technology contract staff (“Relevant Employees”) to the Government. The Relevant Employees are employees of the Contractor and they will perform the Service (RE) at Government bureaux/departments under the instruction of Government Representative. Upon request by the Government in accordance with the procedure set out in clause 4 of Part VI, the Contractor is required:

- (a) to ***propose*** eligible candidates fulfilling the essential qualification requirements as set out in clause 2.1.1 of Part VI, as well as any other essential requirements specified by the Government in the respective service requests, for selection by the Government as Relevant Employees; and
- (b) if the Government makes the selection, the Contractor, as the employer of the Relevant Employees, is required to ***supervise and manage*** the Relevant Employees to ensure that they perform the Service (RE) at the relevant Government bureaux/departments to the satisfaction of the Government.

1.2 Before proposing eligible candidates to the Government, the Contractor is required to check and verify the qualifications, skills and experiences of the candidates to ensure that they fulfil all essential requirements as specified by the Government.

2. Qualification and Experience Requirements

2.1 General Requirements

The following general requirements apply to all staff categories of Relevant Employee.

2.1.1 All Relevant Employees presented for selection must fulfil the following essential qualification requirements.

I. Each Relevant Employee in staff categories 0 to 6 must have:

- (a) a Hong Kong degree, or equivalent;

or an accredited associate degree from a Hong Kong tertiary institute, or a higher diploma from a Hong Kong polytechnic / polytechnic university / Hong Kong Institute of Vocational Education / technical college, in information technology, or equivalent;

or

- (b) an accredited associate degree from a Hong Kong tertiary institute, or a higher diploma from a Hong Kong polytechnic / polytechnic university

/ Hong Kong Institute of Vocational Education / technical college, in subjects other than information technology, or equivalent;

or a diploma from a registered post-secondary college issued after the date of its registration, or equivalent;

or a diploma from a Hong Kong polytechnic / polytechnic university / Hong Kong Institute of Vocational Education / technical college, or equivalent;

or Level 3 or equivalent or above in five subjects, including English Language, in the Hong Kong Diploma of Secondary Education Examination (HKDSEE), or equivalent;

or Grade E or above in two subjects at Advanced Level in the Hong Kong Advanced Level Examination (HKALE) and Level 3 / Grade C or above in three other subjects, including English Language (Syllabus B before 2007), in the Hong Kong Certificate of Education Examination (HKCEE), or equivalent;

and

at least two (2) years' relevant post-qualification experience in the computing field;

II. Each Relevant Employee in staff categories A, B1 and B2 must have:

(a) Level 2 or equivalent or above in five subjects, including Chinese Language and English Language, in the Hong Kong Diploma of Secondary Education Examination (HKDSEE), or equivalent;

or Level 2 / Grade E or above in five subjects, including Chinese Language and English Language (Syllabus B before 2007), in the Hong Kong Certificate of Education Examination (HKCEE), or equivalent;

or

(b) any one of the academic qualifications as mentioned in (a) and (b) under section I of clause 2.1.1 above;

2.1.2 In addition to the essential qualification requirements under clause 2.1.1 above, it is desirable for each Relevant Employee of all staff categories to fulfil the following requirements:

(a) Level 2 / Grade E or above in Chinese Language and Level 3 / Grade C or above in English Language (Syllabus B before 2007) in the Hong Kong Diploma of Secondary Education Examination (HKDSEE) or the Hong Kong Certificate of Education Examination (HKCEE), or equivalent; and

- (b) fluency in spoken English, Cantonese and Putonghua and in written English and Chinese.

It is also desirable for each Relevant Employee of staff categories 3 to 6 to possess experience and/or obtain relevant certification in project management, systems development/support using PRINCE, FPA, SSADM, RAD and OOAD.

2.2 Specific Requirements

The experience requirements specified under different staff categories in clauses 2.2.1 to 2.2.9 below are those demanded **on top of** the essential qualification requirements specified in clause 2.1.1 above. The Government at the time of requesting the Service will specify the experience of working in a particular hardware and software environment as specific requirements. Specific requirements such as Information Technology Specialist, Information Technology Security, Web Development, Data Administration, Networking and Quality Assurance experience will also be specified when needed. The requirements specified in clauses 2.2.1 to 2.2.9 below are not exhaustive and the Government may specify other skill and/or experience requirements as appropriate in the service requests.

2.2.1 Staff Category 6

A Senior Project Manager should have:

- (a) at least **eleven (11)** years' post-qualification information technology experience of which **three (3)** years must be in a similar post and in a comparable capacity. He should be proficient in one or more of the following fields - project management, feasibility/technical studies, systems analysis and design, application programming, operations management, systems programming and specialized technical support, which must be in a leading or consultancy role; and
- (b) experience in supervising a team of five (5) members or more.

2.2.2 Staff Category 5

A Project Manager should have:

- (a) at least **eight (8)** years' post-qualification information technology experience of which **two (2)** years must be in a similar post and in a comparable capacity. He should be proficient in one or more of the following fields - project management, feasibility/technical studies, systems analysis and design, application programming, operations management, systems programming and specialized technical support;

- (b) experience in project management or technical consultancy; and
- (c) experience in supervising a team of two (2) members or more.

2.2.3 Staff Category 4

A Senior Systems Analyst should have:

- (a) at least **six (6)** years' post-qualification information technology experience of which **two (2)** years must be in a similar post and in a comparable capacity. He should be proficient in mobile/wireless technologies, knowledge management, collaborative tools, application development, implementation or maintenance using programming languages and various support/development tools/environments such as JAVA, J2EE, WEBSPHERE, XML, C++, C#, COBOL, NATURAL, SQL, VISUAL BASIC, ORACLE tools, WEB SERVICES, .NET or OSS, and operating systems/platforms such as WINDOWS, UNIX, LINUX, MVS, VMWARE or NETWARE;
- (b) knowledge and experience in systems analysis and design;

and with experience in feasibility/technical studies and team leading/supervision.

or

- (a) at least **six (6)** years' post-qualification information technology experience of which **two (2)** years must be in similar post and in comparable capacity. He should be proficient in systems programming or technical support of systems software;
- (b) knowledge and experience in systems programming;

and with experience in feasibility/technical studies and team leading/supervision.

2.2.4 Staff Category 3

A Systems Analyst should have:

- (a) at least **four (4)** years' post-qualification information technology experience of which **one (1)** year must be in a similar post and in a comparable capacity. He should be proficient in mobile/wireless technologies, knowledge management, collaborative tools, application development, implementation or maintenance using programming languages and various support/development tools/environments such as JAVA, J2EE, WEBSPHERE, XML, C++, C#, COBOL, NATURAL, SQL, VISUAL BASIC, ORACLE tools, WEB SERVICES, .NET or OSS, and operating systems/platforms such as WINDOWS, UNIX, LINUX, MVS, VMWARE or NETWARE;

- (b) knowledge and experience in systems analysis and design;

and preferably with experience in feasibility/technical studies and team leading/supervision.

or

- (a) at least **four (4)** years' post-qualification information technology experience of which **one (1)** year must be in similar post and in comparable capacity. He should be proficient in systems programming or technical support of systems software;

- (b) knowledge and experience in systems programming;

and preferably with experience in feasibility/technical studies and team leading/supervision.

2.2.5 **Staff Category 2**

An Analyst/Programmer should have:

- (a) at least **three (3)** years' post-qualification information technology experience of which **one (1)** year must be in a similar post and in a comparable capacity. He should be proficient in mobile/wireless technologies, knowledge management, collaborative tools, application development, implementation or maintenance using programming languages and various support/development tools/environments such as JAVA, J2EE, WEBSphere, XML, C++, C#, COBOL, NATURAL, SQL, VISUAL BASIC, ORACLE tools, WEB SERVICES, .NET or OSS, and operating systems/platforms such as WINDOWS, UNIX, LINUX, MVS, VMWARE or NETWARE;

or

- (b) at least **three (3)** years' post-qualification information technology experience of which **one (1)** year must be in a similar post and in a comparable capacity. He should be proficient in systems programming or technical support of systems software.

2.2.6 **Staff Category 1**

A Programmer should have:

At least **two (2)** years' post-qualification information technology experience of which **one (1)** year must be in a similar post and in a comparable capacity. He should be proficient in mobile/wireless technologies, knowledge management, collaborative tools, system support or application development using programming

languages and various support/development tools/environments such as JAVA, J2EE, WEBSPHERE, XML, C++, C#, COBOL, NATURAL, SQL, VISUAL BASIC, ORACLE tools, WEB SERVICES, .NET or OSS, and operating systems/platforms such as WINDOWS, UNIX, LINUX, MVS, VMWARE or NETWARE.

2.2.7 **Staff Category 0**

A Junior Programmer should have:

Knowledge and/or experience in mobile/wireless technologies, knowledge management, collaborative tools, system support or application development using programming languages and various support/development tools/environments such as JAVA, J2EE, WEBSPHERE, XML, C++, C#, COBOL, NATURAL, SQL, VISUAL BASIC, ORACLE tools, WEB SERVICES, .NET or OSS, and operating systems/platforms such as WINDOWS, UNIX, LINUX, MVS, VMWARE or NETWARE.

2.2.8 **Staff Category A**

A Senior Information Technology Assistant should have:

At least **five (5)** years' experience in the control and operation of computer systems such as MVS, VME, UNIX, LINUX, WINDOWS, NETWARE or helpdesk/computer network operation, or writing MS WINDOWS application system, or LAN administration, or PC/LAN support services.

2.2.9 **Staff Categories B1 and B2**

An Information Technology Assistant should have:

At least **two (2)** years' experience in the control and operation of computer systems such as MVS, VME, UNIX, LINUX, WINDOWS, NETWARE or helpdesk/computer network operation, or writing MS WINDOWS application system, or LAN administration, or PC/LAN support services.

2.3 **Other Function/Specialty**

The Relevant Employees of staff categories 0 to 6 may be required to perform and/or be conversant with the following function/specialty:

2.3.1 **Staff Category 6**

- *Information Technology Consultant*
- *Information Technology Specialist*
- *Information Technology Security Specialist*

2.3.2 Staff Category 5

- *Information Technology Consultant*
- *Information Technology Specialist*
- *Information Technology Security Specialist*
- *Web Manager*

2.3.3 Staff Category 4

- *Database Administrator/Designer*
- *Security Consultant*
- *Senior Network System Designer/Engineer*
- *Web Designer*

2.3.4 Staff Category 3

- *Database Administrator/Designer*
- *Security Consultant*
- *Senior Network System Designer/Engineer*
- *Web Designer*

2.3.5 Staff Category 2

- *Network System Engineer*
- *Security Engineer*
- *Web Master*

2.3.6 Staff Category 1

- *Network System Engineer*
- *Security Engineer*
- *Web Programmer*

2.3.7 Staff Category 0

- *Network System Engineer*
- *Security Engineer*
- *Web Programmer*

3. Main Job Responsibilities

- 3.1 The main job responsibilities for each of the different staff categories as mentioned in clauses 2.2.1 to 2.2.9 above are specified below:

3.1.1 **Staff Category 6**

A Senior Project Manager

is mainly deployed to perform any of the duties of staff category 5 as stated in clause 3.1.2 in addition to any of the following:

- (a) to plan and perform information system strategy study;
- (b) to advise and liaise with users on project development initiation and on computer-related activities; and
- (c) to provide specialist advice in specific business areas, business process re-engineering, information technologies, etc.

3.1.2 **Staff Category 5**

A Project Manager

is mainly deployed to perform any of the following duties:

- (a) to plan and control all phases of computer projects including feasibility study, systems analysis and design, procurement and installation of computer systems, programming, implementation, system nursing and maintenance;
- (b) to provide technical consultancy services on operating system, data communication, database, application software and languages;
- (c) to manage the operation of computer centre and data preparation installations;
- (d) to evaluate and select appropriate computer products for the development and maintenance of computer systems; and
- (e) to monitor the performance of his subordinates.

3.1.3 **Staff Category 4**

A Senior Systems Analyst

is mainly deployed to perform any of the duties of staff category 3 as stated in clause 3.1.4 plus any of the following:

- (a) to carry out quality control and quality assurance, and project management duties as designated by the project manager;

- (b) to monitor all phases of computer projects including feasibility study, systems analysis and design, procurement and installation of computer systems, programming, implementation, system nursing and maintenance;
- (c) to monitor analyze, design and specify program components of computer systems;
- (d) to monitor and report system testing and user acceptance;
- (e) to scrutinize project reports and specifications; and
- (f) to monitor the performance of his subordinates.

3.1.4 **Staff Category 3**

A Systems Analyst

is mainly deployed to perform any of the following duties:

- (a) to take part in all phases of computer projects including feasibility study, systems analysis and design, procurement and installation of computer systems, programming, implementation, system nursing and maintenance;
- (b) to analyze, design and specify program components of computer systems;
- (c) to prepare and conduct system testing and user acceptance;
- (d) to produce project reports and specifications;
- (e) to devise system and installation standards;
- (f) to devise and maintain operating procedures in line with these standards;
- (g) to monitor and report system usage and to recommend and control the allocation of computer resources;
- (h) to develop housekeeping jobs for security control, job accounting, system and data backup, and media management purposes; and
- (i) to monitor the performance of his subordinates.

3.1.5 **Staff Category 2**

An Analyst/Programmer

is mainly deployed to perform any of the following duties:

- (a) to write programs and enhance/maintain existing programs;
- (b) to conduct program testing, system testing and user acceptance;
- (c) to prepare and maintain program documentation;
- (d) to prepare job control procedures for trial runs and production runs;
- (e) to assist in the systems design of computer applications; and
- (f) to assist in preparing project reports and specifications.

3.1.6 **Staff Categories 1 and 0**

A Programmer and Junior Programmer

is mainly deployed to perform the following duties:

- (a) to install software on new or existing computer systems;
- (b) to provide end-user computing support services including product evaluation, trouble shooting and help-desk functions;
- (c) to set up and maintain computer networks and data communication environment;
- (d) to write programs and enhance/maintain existing programs;
- (e) to conduct program testing, system testing and user acceptance;
- (f) to prepare and maintain program documentation; and
- (g) to prepare job control procedures for trial runs and production runs.

3.1.7 **Staff Category A**

A Senior Information Technology Assistant

is mainly deployed to perform any of the duties of staff categories B1 or B2 as stated in clauses 3.1.8 and 3.1.9 below in addition to any of the following:

- (a) to control or operate computer systems or network;

- (b) to install hardware and software, helpdesk and network support, automation tools; and
- (c) to assist in system administration or information technology security.

3.1.8 **Staff Category B1**

An Information Technology Assistant (Shift Duty)

is mainly deployed to perform the following duties, work on shift system (including overnight shift) and may be required to work on Saturdays, Sundays and public holidays:

- (a) to operate computer and associated equipment/facilities according to prescribed standards and procedures, monitor their performance and perform routine operator maintenance;
- (b) to prepare jobs according to prescribed procedures and ensure their successful completion and check completeness and qualities of the computer output;
- (c) to provide first line help service to terminal network users and perform associated help desk activities using tools provided, if any and carry out on-site inspection and take recovery action according to prescribed procedures;
- (d) to assist in setting up workstation or networked equipment, scheduling and monitoring computer equipment installation/relocation and perform site preparation work;
- (e) to fulfil logging and administrative reporting requirements and assist in preparing statistics and reports;
- (f) to keep stock and monitor stock level of computer supplies and assist in their procurement and payment; and
- (g) to update and maintain inventory records of computer hardware, perform physical checks and maintain procedure manuals and documentation.

3.1.9 **Staff Category B2**

An Information Technology Assistant (Non-shift Duty)

is mainly deployed to perform the duties of staff category B1 as stated in clause 3.1.8 above during office hours normally. May be required to work outside normal office hours including Saturdays, Sundays and public holidays as and when required.

3.2 **Job Responsibilities for Other Function/Specialty**

In addition to the main job responsibilities set out in clauses 3.1.1 to 3.1.9 above, the Relevant Employees of staff categories 0 to 6 may be required to perform the following job responsibilities for each function/specialty:

3.2.1 **Staff Category 6**

An Information Technology Consultant

is mainly deployed to perform any of the duties of the same function/specialty of staff category 5 as stated in clause 3.2.2 in a senior management role.

An Information Technology Specialist

is mainly deployed to perform any of the duties of the same function/specialty of staff category 5 as stated in clause 3.2.2 in a senior management role.

An Information Technology Security Specialist

is mainly deployed to perform any of the duties of the same function/specialty of staff category 5 as stated in clause 3.2.2 in a senior management role.

3.2.2 **Staff Category 5**

An Information Technology Consultant

is mainly deployed to perform the following duties:

- (a) to provide specialist advice and consultation in specific business areas, information technology strategic planning, business process re-engineering, specific information technologies, etc.;
- (b) to prepare business and information technology strategy plans and re-engineering plans to satisfy corporate and business objectives, identify critical success factors and conduct organizational and structure analysis;
- (c) to provide consultancy services in adoption and application of specific information technologies in the Government; and
- (d) to assist the Government in selecting tools and/or developing procedures for planning, controlling and tracking program activities and assessing goals and objectives.

An Information Technology Specialist

is mainly deployed to perform any of the following duties:

- (a) to provide specialist advice and consultation in information technology areas such as data analysis and modeling, network, methodologies, quality, disaster recovery planning, etc.;
- (b) to design and implement quality procedures and processes for an organization including workflow and document management;
- (c) to undertake quality audit work; and
- (d) to provide data analysis and data modeling techniques.

An Information Technology Security Specialist

is mainly deployed to perform any of the following duties:

- (a) to provide specialist advice and consultation in information technology security; and
- (b) to provide consultancy services in formulating security strategy and designing security framework and architecture with regard to corporate and business requirements, environment and constraints.

A Web Manager

is mainly deployed to perform any of the following duties:

- (a) to plan and manage multiple project teams and technologies;
- (b) to establish procedures and automated performance measurement capability to monitor the technical accomplishment and progress of projects;
- (c) to maintain cross-platform and cross-browser compatibility of web sites;
- (d) to develop project management plans and quality control parameters for each work assignment; and
- (e) to schedule and assign duties to subordinates.

3.2.3 Staff Category 4

A Database Administrator/Designer

is mainly deployed to perform any of the duties of the same function/specialty of staff category 3 as stated in clause 3.2.4 in a supervisory role.

A Security Consultant

is mainly deployed to perform any of the duties of the same function/specialty of staff category 3 as stated in clause 3.2.4 in a supervisory role.

A Senior Network System Designer/Engineer

is mainly deployed to perform any of the duties of the same function/specialty of staff category 3 as stated in clause 3.2.4 in a supervisory role.

A Web Designer

is mainly deployed to perform any of the duties of the same function/specialty of staff category 3 as stated in clause 3.2.4 in a supervisory role.

3.2.4 Staff Category 3

A Database Administrator/Designer

is mainly deployed to perform any of the following duties:

- (a) to design, implement, and support databases and database programs to meet user requirements;
- (b) to provide technical database support on data analysis and modeling, database definitions and design, monitoring and advice to the development team;
- (c) to evaluate and recommend available DBMS products after matching user requirements with system capabilities; and
- (d) to prepare and deliver presentations on DBMS concepts.

A Security Consultant

is mainly deployed to perform any of the following duties:

- (a) to perform security risk assessment, security audit, and penetration testing;
- (b) to identify and recommend security safeguards and solutions, and provide general and technical security consultation and advice to user;
- (c) to develop and review security policies, standards, guidelines and procedures;
- (d) to define the approach, methodology and tools used in various security services;

- (e) to prepare deliverables such as security requirement report, security risk assessment report, security policies, standards, guidelines and procedures etc., and deliver presentations;
- (f) to develop course materials and conduct training and education on information technology security awareness and information technology security skills;
- (g) to perform network and host intrusion monitoring and detection; and
- (h) to provide on-site investigation, containment, eradication and recovery for information security incident response support.

A Senior Network System Designer/Engineer

is mainly deployed to perform any of the following duties:

- (a) to analyze and interpret user requirements on networking and office systems to provide viable solutions and produce the respective proposals and specifications;
- (b) to liaise with other hardware and software vendors on product selection, development, evaluation and conformance leading to recommendations on cost effective network solutions;
- (c) to perform quality control and quality assurance in network implementation and to perform studies on the optimization of network availability;
- (d) to provide high level and detailed networking advice to system developer;
- (e) to implement and provide support for resolving network troubles, tracking network performance and managing growth;
- (f) to prepare and conduct system test and user acceptance test for the office systems;
- (g) to provide pre-installation and post-installation support to computer networks; and
- (h) to supervise and lead the work of network engineers working in the same team.

A Web Designer

is mainly deployed to perform any of the following duties:

- (a) to participate in the design of web sites using web development tools and software;
- (b) to provide creative direction and design web templates for personal performing the design and implementation tasks;
- (c) to create graphics, multimedia assets for the web sites;
- (d) to produce and maintain documentation; and
- (e) to prepare and deliver presentations on the design of web sites to colleagues and Government Representatives.

3.2.5 Staff Category 2

A Network System Engineer

is mainly deployed to perform any of the duties of the same function/specialty of staff categories 1 and 0 as stated in clause 3.2.6 in a supervisory role.

A Security Engineer

is mainly deployed to perform any of the duties of the same function/specialty of staff categories 1 and 0 as stated in clause 3.2.6 in a supervisory role.

A Web Master

is mainly deployed to perform any of the following duties:

- (a) to manage the content of web sites;
- (b) to integrate multimedia assets and applications into the web sites;
- (c) to organize, maintain and enhance the web sites;
- (d) to maintain cross-platform and cross-browser compatibility of the web sites;
- (e) to provide daily support services for the web sites; and
- (f) to capture and provide statistics on web site usage and workload.

3.2.6 **Staff Categories 1 and 0**

A Network System Engineer

is mainly deployed to perform the following duties:

- (a) to participate in the configuration and installation of popular office automation application, network operating systems, network equipment and networking software;
- (b) to diagnose and resolve problems encountered during network implementation;
- (c) to prepare guidelines and procedures for the daily operations of installed WAN/LAN;
- (d) to develop programs and ensure program testing meets user requirements for office systems;
- (e) to produce and maintain documentation of office systems; and
- (f) to develop course materials and conduct user training of the developed office systems.

A Security Engineer

is mainly deployed to perform the following duties:

- (a) to perform network and host intrusion monitoring and detection;
- (b) to assist in performing security risk assessment, security audit, and penetration testing; and
- (c) to assist in on-site investigation, containment, eradication and recovery for information security incident response support.

A Web Programmer

is mainly deployed to perform the following duties:

- (a) to participate in the development of programs using web development tools and software and ensure program testing meets user requirements;
- (b) to produce and maintain well documented programs that adhere to standards and satisfy user requirements;
- (c) to provide daily support services for the web sites; and
- (d) to produce and maintain documentation.

The responsibility listed above for each staff category is for illustrative purpose only and is not exhaustive. Relevant Employees are required to carry out other duties as directed by the Supervisor and the Government Representative. Relevant Employees shall work in office premises designated by the Government Representative.

4. Selection of Relevant Employee

- 4.1 This Contract adopts a competitive bidding approach to service engagement by requiring the Contractors to propose Individual Rates for Relevant Employees and bid for every service request instead of adopting a pre-determined service rate.
- 4.2 Under the competitive bidding approach, (i) Contract Ceiling Rates and (ii) Individual Rates are introduced.
- 4.3 As and when the Service is required, the Government shall request the Contractor to propose eligible Relevant Employee for selection by the Government Representatives. On the request, the Government shall specify the Period of Service (RE) of a Relevant Employee or period for extension of service of the Relevant Employee. The Government is not under any obligation to make any request. The Government may or may not make any request under the Contract. Alternatively, the Government, where applicable, shall deploy the serving Relevant Employee and/or extend the Period of Service (RE) of the serving Relevant Employee in accordance with clause 5.5 of Part IV, in order to render the Service (RE).
- 4.4 In the event that the Service is required, the Government shall notify the Contractor of relevant details such as the required staff category, number, skills and experience of Relevant Employee and the anticipated Period of Service (RE) and invite the Contractor to propose by the specific time as indicated in the service request and make available eligible Relevant Employee for selection by the Government Representatives accordingly. Under normal circumstances, the Contractor shall be given no less than one (1) week to respond to the service request. In proposing eligible Relevant Employee for selection by the Government Representatives, the Contractor shall also quote the Individual Rate for the proposed Relevant Employee. Unless otherwise specified by the Government Representatives, the validity of the proposal by the Contractor shall be no less than ninety (90) calendar days. Upon the deadline of submission of proposal, the Government Representatives will verify the information submitted and only qualified bids will be accepted.
- 4.5 Selection of Relevant Employee as stipulated in clause 4.4 above is on an individual person basis and will be conducted by a selection board appointed by the Government. The Relevant Employee proposed by the Contractor may be invited to selection interviews and is required to produce evidence on his qualifications, past performance, skills and experience. In shortlisting the eligible Relevant Employees for consideration or selection interviews, the Individual Rate will be taken into account. Priority will be given to eligible candidates with lowest Individual Rates for selection interviews. Nevertheless,

the Government is not bound to select the proposed Relevant Employee with the lowest Individual Rate or any Relevant Employee.

- 4.6 Notice of Service (RE) will be issued upon successful selection of Relevant Employee who will then be deployed to provide the Service (RE) under the instruction of the Government Representative.
- 4.7 The Contractor shall ensure that Relevant Employees deployed to provide the Service (RE) to the Government are lawfully employable in Hong Kong.
- 4.8 The Contractor will arrange the Relevant Employees to make declaration on their previous criminal records and to give consent for the Government to conduct checking on their previous criminal conviction records if required by the Government. A Relevant Employee who refuses to make declaration or give consent if required by the Government may not be accepted by the Government pursuant to clause 4.3 of Part IV.
- 4.9 The Government has the absolute discretion to accept/reject any candidates proposed by the Contractor.

5. Working Conditions of Relevant Employee

- 5.1 The Contractor shall ensure that each Relevant Employee:
 - (a) shall follow instructions issued by the Government Representative for the proper performance of the Service (RE);
 - (b) shall work at such locations in Hong Kong as deemed necessary by the Government Representative and as may be designated from time to time. On occasions, a Relevant Employee may be required to work at locations in Guangdong Province, including Shenzhen, on same day return journey as deemed necessary and as may be designated by the Government Representative. Such occasions, however, will be rare and in any case will not be more than five (5) times in a year for each Relevant Employee;
 - (c) shall upon request by the Government Representative provide on-call service and carry any mobile telephone/pager provided by the Government;
 - (d) shall devote fully to providing Service (RE) to the Government Representative during the conditioned hours of work as well as outside the same under clause 5.1(e) below. The conditioned hours of work of Relevant Employee are forty-four (44) hours gross per week (i.e. including meal breaks). The Contractor shall specify the normal office hours of each Relevant Employee in his contract of employment;
 - (e) shall upon request by the Government Representative provide Service (RE) (i) on any day or days including Saturdays, Sundays and

public holidays; (ii) in shift arrangement drawn up by Government Representative; and (iii) on an hourly basis; and

(f) shall immediately report to the Contractor about his/her criminal conviction record during the Period of Service (RE).

- 5.2 In the event that the Relevant Employee works overtime to provide Service (RE) at the request of the Government Representative, the Contractor shall provide the Relevant Employee time-off equivalent to the said period. Subject to clause 10.2(c) of Part IV, the time and date for the Relevant Employee to have the time-off shall be at the Government Representative's absolute discretion.
- 5.3 The Contractor shall take notice of clause 5 of Part IV and make available the Relevant Employee to provide Service (RE) for the whole Period of Service (RE). If the Contractor permits the Relevant Employee to take leave during the Period of Service (RE), the Contractor must consult the Government Representative and the time and length of any leave to be taken by the Relevant Employee shall only be with the prior agreement of the Government Representative.
- 5.4 Throughout the Period of Service (RE), the Relevant Employee may be deployed to perform any other duties as deemed necessary by the Government Representative.
- 5.5 The Relevant Employee shall observe all Government rules and regulations on conduct and related matters as applied to civil servants. Government rules and regulations on conduct and related matters cover a wide field, and it is the responsibility of the Relevant Employee to acquaint himself with **all** such rules and regulations including Civil Service Regulations, memoranda and circulars issued and updated by the Government from time to time. Relevant Employees will be, however, excluded from any fringe benefits normally applicable to a civil servant.
- 5.6 The Contractor shall cover all Relevant Employees by valid insurance pursuant to the Employees' Compensation Ordinance (Cap. 282).
- 5.7 The Government shall not be responsible for any expenses that may be incurred by the Relevant Employee during the Period of Service (RE) (e.g. meal allowance, sick leave allowance, on-call allowance, subsistence allowance.) In special circumstances where the Relevant Employee is, with the prior authorization and certification of the Government Representative, (i) required to take journey(s) in Hong Kong other than normal home-office journey; or (ii) on rare occasions required to work in Guangdong Province on same day return journeys as stipulated in clause 5.1(b) above, the Government will reimburse the Contractor for the traveling expenses spent by the Relevant Employee on such journey(s) which is/are made by means of public land transport and the Contractor shall reimburse the same to the Relevant Employee. The rules of reimbursement will be based on the principles as laid down in the relevant regulations of the Government.

6. Work Arrangements during Severe Weather Conditions

6.1 Unless otherwise specified by the Government, the Relevant Employees will be released from work under the following circumstances:

- (a) When a Pre-No. 8 Tropical Cyclone Warning Signal (“No. 8 Warning Signal”) Special Announcement, or the No. 8 or higher Warning Signal, or Black Rainstorm Warning is issued outside of office hours, the Relevant Employee need not report for duty while the Announcement or the Signal/Warning remains in effect; or
- (b) When a Pre-No. 8 Special Announcement, or the No. 8 or higher Warning Signal is issued during office hours, the Relevant Employees will be released having regard to operational requirements and the circumstances of the Relevant Employees.

6.2 The number of release hours granted by the Government stipulated in clause 6.1 above will not be deducted from the number of chargeable hours of services. The Contractor shall pay the Relevant Employee for the total duration of such release in the same manner as he has performed the Service (RE) as required by the Contract such that the pay of the Relevant Employee shall not be reduced due to the release.

7. Training for Relevant Employee

7.1 Relevant Employees are expected to have completed all training covering the knowledge and skill required and be competent in their jobs.

7.2 At the request of the Government, the Contractor shall provide and/or arrange job-related training for the Relevant Employees during the Period of Service (RE), for which the costs shall be borne by the Contractor.

7.3 Subject to the prior agreement of the Government Representative to release the Relevant Employees to attend training during office hours, the Contractor may initiate to provide and/or arrange training to the Relevant Employees at the Contractor’s own cost during the Period of Service (RE).

7.4 The Government may, at the Government’s own cost, arrange any job-related training for the Relevant Employees during the Period of Service (RE).

7.5 Time spent on training referred in clauses 7.2 and 7.3 above shall not be counted as chargeable hours of services by the Contractor against the Government. Time spent on training referred in clause 7.4 above shall be counted as chargeable hours of services by the Contractor against the Government. During the periods of the Relevant Employee attending the training courses referred in clauses 7.2, 7.3 and 7.4 above, the Contractor shall pay the Relevant Employee for the total duration of such attendance in the same manner as he has performed the Service (RE) as required by the Contract such that the pay of the Relevant Employee shall not be reduced after attendance of the training.

8. Human Resources Management of Relevant Employee

- 8.1 The Contractor shall be responsible for the human resources management over the Relevant Employee. The Contractor must demonstrate that it is fully capable and is ready to acquire in a timely manner fully qualified staff of the requisite staff category; to update and upgrade the skills of its staff; to maintain their stability and to review their performance. The Contractor shall report on the above aspects on a regular basis or as and when required by the Government Representative.
- 8.2 The Contractor shall implement the Service Assurance Plan and Staff Management Plan (referred hereunder as “the Plans”) in managing the Relevant Employees as proposed in Contract Schedule 8 of Part III, subject to any amendments prescribed in the Plans by the Government Representative in accordance with clauses 8.1 and 8.2 of Part IV.
- 8.3 The Contractor shall take actions to enhance the Relevant Employees’ awareness of labour protection and benefits they are entitled to under the laws and employment contracts.

9. Electronic Interfaces between the Government and the Contractor

- 9.1 To enable effective electronic interactions and communications as well as to facilitate the interoperability of information systems between the Government and the Contractor throughout the Term of the Contract:
- (a) The Contractor must equip itself with and maintain at its own cost no less than the minimum information technology facilities/resources as stated in Contract Schedule 10 of Part III; and
 - (b) The Contractor undertakes to comply with the prevailing Government’s Interoperability Framework when exchanging information/data electronically with the Government. Reference materials and details about the prevailing Government’s Interoperability Framework can be found in the website of the Office of the Government Chief Information Officer at https://www.ogcio.gov.hk/en/our_work/infrastructure/e_government/if/interoperability_framework.html. In the event that the Government elects to offer any PC-based and/or internet-based application programs for use by the Contractor, the Contractor shall provide support and render all assistance to the Government and follow the guidelines and procedures as given by the Government for installation, upgrade, testing and operation of the electronic interfaces.