

RESTRICTED

Invitation to 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 (T26)

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;

“Categories” or “Staff Categories” (in upper or lower case) means the different categories of Relevant Employees as listed in clause 2.3 of this Part;

“Commencement Date” means a date to be notified by the Government to all SOA Contractors by not less than seven (7) days’ prior written notice and which date can be any date within the period from 1 February 2023 to 1 May 2023 (both dates inclusive);

“conditioned hours of work” has the meaning given to the term in clause 5.1(d) of Part VI;

“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” or “SOA Contract” means the contract between the Contractor and the Government comprising the Terms of Tender, Offer to be Bound, Standing Offer Deed, Conditions of Contract, Specifications, Contract Schedules including those as submitted by the Contractor as part of its Tender and other documents which are incorporated by reference herein;

in each case (a) subject to such further changes as the Government may stipulate in exercise of its powers under the Terms of Tender or the Terms of Tender (Supplement), and/or otherwise subject to such further changes as the Government and the Contractor may agree; and (b) in the version as attached to the Standing Offer Deed for identification purposes.

Each of the above documents shall be referred to throughout the Tender Documents and the Contract by their respective titles as appearing in quotation marks above.

References to “the Contract” or “this Contract” shall mean the same Contract as defined above;

“Contract Ceiling Rate” or “Ceiling Rate” means the upper limit of the Individual Rate per staff category that the Contractor may charge for the Service as proposed in Contract Schedule 1 of Part III, subject to such adjustments as stipulated in clauses 3.2 and 3.3 of Part IV from time to time;

“Contractor” or “SOA Contractor”	means a person who has been awarded with the Contract and whose name is identified as the Contractor in the Standing Offer Deed in Part V;
“day”	means calendar day;
“Employer”	means the Contractor;
“Force Majeure Event”	<p>means:</p> <ul style="list-style-type: none"> (a) any outbreak of war, hostilities (whether war be declared or not), invasion, acts of foreign enemies, rebellion, revolution affecting Hong Kong, overthrow (whether by external or internal means) of the Government; or (b) any event which is not caused or contributed to by, and is beyond the control of, the Contractor, its related persons (as defined in clauses 34.6 and 34.7 below) or any employee or agent or ex-employee or ex-agent of the Contractor and none of them can prevent the consequences of such event from happening; <p>and which, in any case of (a) or (b) above, materially prevents the performance of the duties and obligations of any Party hereunder; for the avoidance of doubt, any change of law and regulation of whichever jurisdiction or any epidemic event affecting Hong Kong or the rest of the world or any anti-epidemic measure introduced in the light of any epidemic event shall not be treated as a Force Majeure Event (unless the Government agrees in writing);</p>
“Government”	means the Government of the Hong Kong Special Administrative Region of the People’s Republic of China;
“Government Data” or “Government Property”	means all property, equipment, data, documents, information, text, drawings, pictures, diagrams, images, sound or music, and any other materials of whatsoever nature (tangible or intangible) stored, presented or embodied in any medium, and which are provided or to be provided by the Government to the Contractor under or for the purposes of or in relation to the Contract or otherwise the Contractor has access;
“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;

The Government may change the Government Representative and/or his post title from time to time as it thinks fit without prior notice to the Contractor;

“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 dollars” or “HK\$”		means the lawful currency of Hong Kong;
“Hong Kong Time”		means local time which is GMT+8;
“Individual Rate”		means in relation to a Relevant Employee, the daily rate of providing that Relevant Employee to the Government for providing Service (RE) throughout the conditioned hours of work per day at an average of 8.8 hours gross per day (i.e. including meal break) (whereby the total hourly figure performed for the week has been adopted to determine the daily average) and throughout the applicable Period of Service (RE), as quoted by the Contractor in response to a Service Request (Competitive Bidding) for such Relevant Employee;
“Intellectual Property Rights” or “IPR”		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 whether now known or created in future (whatever nature and wherever arising) 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;
“laws”		means all and 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”		means any and all works and materials of whatsoever nature (including their drafts and uncompleted versions) developed, written, prepared, produced, created, collected, compiled or provided by or on behalf of or for

the Contractor (including with limitation all Relevant Employees), in the provision of the Services and/or Service (RE) or for the purposes of the Contract including without limitation, any computer programming code (including any source code and object code), reports, summaries, models, questionnaires, analyses, papers, advice, recommendations, documents, records, plans, designs, drawings, pictures, diagrams, images, sound, music, formula, tables, charts, databases, computer source codes, compilation of data or information, data or information collected, compiled, produced or created by the Contractor, its employees, agents or sub-contractors including all Relevant Employees, which are recorded or stored by whatever means in whatever form or media, and all the drafts, uncompleted versions and working papers of any of the above items;

“month”	means calendar month;
“nominee Relevant Employee” or “proposed Relevant Employee” or “candidate”	means a nominee to be proposed by a SOA Contractor in response to a Service Request (Competitive Bidding);
“Non-collusive Tendering Certificate”	means a document known as such and in the form set out in Contract Schedule 11 of Part III for completion and submission by the Tenderer as part of its Tender under clause 32.2 of this Part;
“normal office hours”	has the meaning given to the term in clause 10.2(c) of Part IV;
“Notice of Service (RE)”	means the written notice from the Government to the successful SOA 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;
“Notice of Service (Extension)”	has the meaning given to the term in clause 5.7 of Part IV;
“Original Tender Closing Date”	means 5 August 2022;
“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;

“payment for the Service”	has the meaning given to the term in clause 10.2 of Part IV;
“Period of Service (RE)” or “Service Period (RE)”	means the period during which the Relevant Employee performs the Service (RE) under the Contract as from time to time extended or varied in accordance with clause 5.7 of Part IV;
“Person” (in upper or lower case)	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”	means an employee of the Contractor to be deployed to perform the Service (RE) in accordance with a Notice of Service or a Notice of Service (Extension);
“Service” or “Services”	means all duties, obligations and services to be performed and provided by the Contractor as specified in the Contract;
“Service Request (in upper or lower case)”	has the meaning given to the term in clause 4.3 of Part VI;
“Service Request (Competitive Bidding)”	has the meaning given to the term in clause 4.3 of Part VI;
“Service Request (Extension)”	has the meaning given to the term in clause 4.3 of Part VI;
“Service (RE)”	means the services to be performed by the Relevant Employee as provided by the Contractor to the Government under this Contract in compliance with all requirements of the Contract including without limitation 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, GCIO 5/12-R or GCIO90525965;
“Standing Offer Deed”	means the document in the form set out in Part V 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” (in upper or lower case)	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 this Part;
“Tender Documents”	has the meaning given to it in clause 3 of this Part;
“Tender Submission Date”	means the date of the Offer to be Bound in Part II;
“Tender Validity Period”	has the meaning given to it in clause 7.2 of this Part;
“Tenderer”	means the person 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 clause 1.2 of Part IV;
“Time”	means a time of day as a reference to Hong Kong Time; and
“Working Day” (in upper or lower case)	means Monday to Friday, other than a public holiday, or a day on which Tropical Cyclone Warning Signal No. 8 or above is hoisted, or Black Rainstorm Warning Signal or “extreme conditions after super typhoons” announced by the Government is/are in force, for any time during the normal business hours. For the avoidance of doubt, this definition does not necessarily apply to define the normal office hours or conditioned hours of work of a Relevant Employee.

1.2 Unless otherwise expressly stated to the contrary, 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;
- (e) references to “Tenderer” or “Contractor” include its permitted assigns, successors-in-title, 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 a clause, sub-clause, section in or a Schedule, Appendix or any other attachment to a document are to a clause, sub-clause, section or a schedule, appendix or attachment to that document;
- (h) 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, regardless of the jurisdiction;
- (i) 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;
- (j) a time of a day means a reference to Hong Kong time;
- (k) references to “normal business hours” mean 0900 to 1800 hours;
- (l) references to a day mean a calendar day;
- (m) references to a month mean a calendar month;
- (n) 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;
- (o) 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;

- (p) words importing the whole are treated as including a reference to any part of the whole;
 - (q) the expressions “include” and “including” shall be construed without limitation to the words following;
 - (r) words and expressions extend to their grammatical variations and cognate expressions where those words and expressions are de-fined in the Tender Documents or by reference to any other definition;
 - (s) 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
 - (t) 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 All and any provisions set out in the Tender Documents may be further amended or deleted in the supplements to these documents to be issued as part of the same set of the Tender Documents for an Invitation to Tender, regardless of whether or not this is stated to be the case in the individual provisions.
- 1.6 Unless otherwise provided for in the Tender Documents, all quotations and payments shall be made in Hong Kong dollars.

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 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 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.

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	280
4	Senior Systems Analyst	330
3	Systems Analyst	1 730
2	Analyst/Programmer	1 360
1	Programmer	230
0	Junior Programmer	120
A	Senior Information Technology Assistant	210
B1	Information Technology Assistant (shift duty)	100
B2	Information Technology Assistant (non-shift duty)	230
	Total:	4 600

* Note: One “man-year” is equal to one unit of manpower for provision of Service (RE) for 12 calendar months, irrespective of the number of individuals performing the Service (RE) for making up that one unit of manpower.

- 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 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. The amount payable by the Government to the Contractor for each Relevant Employee to be supplied for performing the Service (RE) throughout the Service Period (RE) will be calculated on a time charge basis according to clause 10 of Part IV for **the Period of Service (RE) actually performed by the Relevant Employees**.
- 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 clause 1.2 of 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 (T26), comprises the following documents (collectively "Tender Documents"):
 - (a) Part I - Terms of Tender (Pages 1 to 61)
 - (b) Part II - Offer to be Bound (Page 1)
 - (c) Part III - Contract Schedules (Pages 1 to 30)
 - (d) Part IV - Conditions of Contract (Pages 1 to 44)
 - (e) Part V - Standing Offer Deed (Pages 1 to 3)
 - (f) Part VI - Specifications (Pages 1 to 25)
- 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, exemption from compliance or observance, 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 obligation or liability under the Contract as a consequence of any misinterpretation by it of any provision in 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 Contract Schedules 1, 2A, and 8 of Part III. **Failure to submit (a) the Contract Ceiling Rate for each Staff Category; (b) the name of the proposed Contract Manager, Key Operations Contact Person, and the Technical Support Officer; and/or (c) one or more proposals but not necessarily proposals for all items required in**

the plans in Contract Schedule 8 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 (T26)” and the words, “Technical Submission” and in another envelope clearly marked with the tender reference “GCIO 5/2 (T26)” and the words, “Price Submission”. Both envelopes should be placed inside another sealed envelope marked with the tender reference “GCIO 5/2 (T26)” 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 Secretariat Tender Box** situated at the Lobby of the Public Entrance on the Ground Floor, East Wing, Central Government Offices, 2 Tim Mei Avenue, Tamar, Hong Kong **before 12:00 noon (Hong Kong Time) on the Tender Closing Date. Late Tenders will not be considered.**
- 5.6 The envelope marked “Technical Submission” should contain **one original** of each of the following:
- (a) the duly signed “Offer to be Bound” in Part II;
 - (b) the completed Contract Schedule 2A of Part III – “Experience and Employment Status of Nominees for Contract Manager, Key Operations Contact Person and Technical Support Officer”, Contract Schedule 2B of Part III – “Tenderer’s Experience” and Contract Schedule 8 of Part III – “Service Assurance Plan and Staff Management Plan”; and
 - (c) all proposals, information and supporting documents requested in the Tender Documents or relevant to its tender, including but not limited to those required set out in the checklist on the information, forms, schedules, documents, etc. to be submitted by Tenderers at **Annex A** (other than (i) Contract Schedule 1 which is required to be submitted in the Price Submission; and (ii) those items which are stated to be submitted upon request of the Government).
- 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 dollars. 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, 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 5.8 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; or
 - (iii) its business name as shown in the current business registration certificate of the Tenderer;
 - (b) if the Tenderer is a sole proprietorship or a Partnership, the latest business registration certificate of the Tenderer issued under the Business Registration Ordinance (Chapter 310 of the Laws of Hong Kong); 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 signing the Tender in the name of the Tenderer (or of the sole proprietorship), or a person authorised by the Tenderer signing the Tender for and on behalf of the Tenderer;
 - (ii) if the Tenderer is a partnership, one or more partner(s) of the Tenderer signing in the name of the partnership (and in the case of

limited partnership, that partner must be a general partner); or a person authorised by the partnership, signing the Tender for and on behalf of the Tenderer; or

- (iii) if the Tenderer is a company, a director of the Tenderer or one or more persons who are duly authorised by the Tenderer signing 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 or “extreme conditions after super typhoons” announced by the Government is/are 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.

5.15 In case of blockage of the public access to the location of the Specified Tender Box at any time between 9:00 a.m. (Hong Kong Time) and 12:00 noon (Hong Kong Time) on the Original Tender Closing Date, the Government will announce extension of the Original Tender Closing Time until further notice. Following removal of the blockage, the Government will announce the extended tender closing time as soon as practicable. The above announcements will be made via press releases on the website of Information Services Department (<http://www.info.gov.hk/gia/general/today.htm>).

5.16 The Government shall not have or accept any liability, obligation or responsibility whatsoever for any loss of, destruction of or damage to the Tender submission submitted and/or deposited by Tenderers in the Specified Tender Box if such loss, destruction or damage shall be caused by or directly or indirectly due to any outbreak of war, hostilities (whether war be declared or not), invasion, acts of foreign enemies, riot, civil commotion, rebellion, storm or other cause whatsoever beyond the reasonable control of the Government. Following any event which results in such loss, destruction or damage, the Government will announce any arrangements concerning Tender submission as soon as practicable. The above announcements will be made via press release on the website of Information Services Department (<http://www.info.gov.hk/gia/general/today.htm>).

6. Essential Requirements

6.1 Tenderers must demonstrate in their Tenders full compliance with each of the essential requirements set out in clauses 6.2(a) to 6.2(c) below, failing which the Tenders shall not be considered.

6.2 A Tenderer must nominate a team of professional staff conforming to the following requirements to manage and implement the Services to the Government as specified in the Contract including the Specifications in Part VI:

- (a) nominate a Contract Manager who is empowered with full authority to make all necessary decisions regarding the performance of the Service under this Contract on behalf of the Tenderer. The nominated Contract Manager must be employed by the Tenderer on a full-time basis on the date of Tender submission and the nominee must, in the past ten (10) years immediately preceding the Original Tender Closing Date, have at least four (4) aggregate years of work experience in managing the supply services of information technology contract staff to clients;
- (b) nominate a person to be the Key Operations Contact Person for the Tenderer to liaise with the Government Representative and users of bureaux / departments in handling the day-to-day operational matters arising from and in the course of delivering the Service under this Contract. The nominated Key Operations Contact Person must be employed by the Tenderer on a full-time basis on the date of Tender submission and the nominee must, in the past five (5) years immediately preceding the Original Tender Closing Date, have at least three (3) aggregate years of work experience in handling the day-to-day operational matters relating to the supply services of information technology contract staff to clients; and
- (c) nominate a person to be the Technical Support Officer for the Tenderer and serving as a liaison with the IT Support Team of the Office of the Government Chief Information Officer (OGCIO) regarding the installation and usage of the Contract Staff Administration System (CSAS) – CSA Contractor Module provided by the Government. The nominated Technical Support Officer must be employed by the Tenderer on a full-time basis on the date of Tender submission and the nominee must, in the past five (5) years immediately preceding the Original Tender Closing Date, have at least two (2) aggregate years of work experience in providing technical support for the operations of a dedicated information technology system to be used for the supply services of information technology contract staff to clients.

6.3 For the avoidance of doubt, the persons specified in clauses 6.2(a) to (c) shall be three (3) different persons, failing which the nominee will not be counted in the evaluation.

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

- (a) the experience of the Contract Manager, Key Operations Contact Person and Technical Support Officer mentioned in clause 6.2 above shall be counted as at the Original Tender Closing Date. Otherwise, the experience of any person from time to time replacing these nominees during the SOA Period and of any person filling in a role shall be determined as at the date he or she proposes to take up any one of the three roles mentioned above;
- (b) the experience of the nominee for Contract Manager, Key Operations Contact Person or Technical Support Officer gained by providing the supply services of information technology contract staff to the Tenderer itself and

any of its related persons (as defined in clauses 34.6 and 34.7 below) will not be counted;

- (c) both local and non-local experience of the nominee will be counted;
- (d) the aggregate years of experience for Contract Manager, Key Operations Contact Person and Technical Support Officer will be counted in calendar days and converted to years by dividing by 365. The overlapping period of the experiences gained will only be counted once. For example, if the staff has full-time involvement in different contract management job positions as shown in the table below, the number of “complete years of experience” is worked out as follows. 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; and

Employer	Post Title	Employment Period (dd.mm.yyyy)	Number of calendars days counted for accumulated experience in the period
Company A	Senior Contract Manager	01.02.2016 to 31.01.2017	366 ^{Note 1}
	Commercial Contract Manager	01.02.2016 to 31.03.2016	0 ^{Note 2}
Company B	Corporate Contract Manager	01.02.2017 to 31.12.2020	1 430 ^{Note 3}
Total no. of calendar days :			1 796
Total no. of aggregate years (1 796/365):			4.92 years

Note 1: there were 29 days in February 2016.

Note 2: after excluding the overlapping period of “01.02.2016 to 31.03.2016” which has been counted once above.

Note 3: there were 29 days in February 2020.

- (e) a Tenderer is required to submit to the satisfaction of the Government the documentary evidence (i) to prove the experience of the nominee for Contract Manager, Key Operations Contact Person and Technical Support Officer claimed in Contract Schedule 2A of Part III and (ii) to show that the nominee for Contract Manager, Key Operations Contact Person and Technical Support Officer is a full-time employee of the Tenderer at the time of Tender submission as required under clauses 6.2(a) to 6.2(c). Any claimed experience not substantiated by documentary evidence will not be counted.

7. Tenders to Remain Open

- 7.1 A Tender once submitted by a Tenderer will be binding on the Tenderer. By submitting a Tender, the Tenderer shall be deemed to have represented to the Government that it has done so as the principal but not as an agent of any other person. If the Tenderer submits a Tender as an agent on behalf of another person, full disclosure must be made in the Tender.
- 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, or if it rejects the two hundred and seventy (270) days as the tender validity period prescribed in clause 7.2 above, 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 issued under the Business Registration Ordinance (Cap. 310) or documentary evidence showing that

the Tenderer is exempted from business registration under the Business Registration Ordinance (Cap. 310); or if the Tenderer does not carry on business in Hong Kong, the equivalent document issued by the authority of the place of business of the Tenderer;

- (f) if the Tenderer is a company or body corporate, its Memorandum (if any) and Articles of Association, Certificate of Incorporation, Certificate of Change of Name (if any), or the equivalent documents issued by the authority of the place of incorporation of the Tenderer if the Tenderer was not incorporated under the Companies Ordinance (Cap. 622) (or its predecessor Ordinance);
- (g) if the Tenderer is a company incorporated in Hong Kong or is a registered non-Hong Kong company under the Companies Ordinance (Cap. 622), a copy of the latest annual return filed with the Companies Registry and all subsequent filings since the latest annual return; or the equivalent documents issued by the authority of the place of incorporation of the Tenderer if the Tenderer was not incorporated or registered under the Companies Ordinance (Cap. 622) (or its predecessor Ordinance);
- (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) acceptable to the Government demonstrating authorisation and approval for the submission of its Tender and 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;
- (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 may be requested by the Government. The legal opinion, if required, should be made available upon request during the tender validity period. Upon such request, the Tenderer shall provide such legal opinion covering 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 and in good understanding 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. By "validly existing and

in good standing”, it is meant that no event mentioned in any of the clause 25.1 (b) of Part IV or any event which has an equivalent effect to any such event has occurred in relation to the Tenderer;

- (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 this Part, 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 submission of its Tender and the 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 (if any) 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 (if awarded to the Tenderer) 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;
- (i) the judgment handed by the courts of Hong Kong after the adjudication of any dispute arising from the Contract will be recognised and given effect to by the courts of the place of incorporation, formation or establishment of the Tenderer; and
- (j) 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. Where the opinion on the question specified in clause 8.3(i) above is negative or otherwise subject to qualifications not satisfactory to the Government, the additional legal opinion shall opine that any ruling made by the arbitrator under the arbitration provision set out in clause 8.5 below will be recognised and given effect to by the courts of the place of incorporation, formation or establishment of the Tenderer (“additional opinion on arbitration”). Together with the additional opinion on arbitration to be provided, the Tenderer shall also be required to provide a confirmation in writing that in consideration of the award of the Contract, it agrees that clause 29.2 of Part IV shall be replaced by the arbitration clause in clause 8.5 below.
- 8.5 Where the opinion on the question specified in clause 8.3(i) above is negative or otherwise subject to qualifications not satisfactory to the Government, subject to the obtaining of the additional opinion on arbitration as mentioned in clause 8.4 above, clause 29.2 of Part IV shall be deemed deleted and replaced by the following: “Any dispute arising from the Contract shall not be adjudicated by the courts of Hong Kong but shall be adjudicated by arbitration to be held in accordance with the Hong Kong International Arbitration Centre Domestic Arbitration Rules prevailing at the time when a notice of arbitration is issued by a Party (“Arbitration Rules”) except that regardless of whether the Arbitration Rules providing anything to the contrary, unless the Parties otherwise agree in writing: (a) the arbitration hearing must be held in Hong Kong and that the Arbitration Ordinance (Chapter 609 of the Laws of Hong Kong) shall apply to the arbitration (including the whole of Schedule 2); and (b) without prejudice to section 18(2) of the Arbitration Ordinance, the Government may on its own disclose any information relating to (i) the arbitral proceedings under the arbitration agreement; and (ii) an award made in those arbitral proceedings, under any of the circumstances mentioned in clause 33.2 of Part I”.

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 the 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 accounts of the Tenderer, and the audited consolidated accounts of the group 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 with a period not more than three (3) months before the tender submission date (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 statements 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 company's chief executive. For a Partnership, separate certification from each partner of the Partnership is required;

- (d) The Tenderer is required to provide documentary evidence showing adequate 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 to the Tenderer and the current undrawn/unutilised balances of such facilities on or shortly before the tender submission 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 prior to the Original Tender Closing Date (if available).

9.2 In the case where the Tenderer is unable to provide adequate financial information for a meaningful financial vetting to be conducted (which is equally considered as a failure of the 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 this Part.

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 part of the 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. The Tenderer concerned shall thereafter within five (5) working days from the date of the request or within such other period as specified in the request submit the clarification, information or document. If the clarification or information or document is not provided by the aforesaid deadline, the Tender may not be considered further.

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

- (a) price quotation of the Contract Ceiling Rate for each staff category in Contract Schedule 1 of Part III of 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 this Part 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.

10.4 Any excess proposal or information supplied by a Tenderer which goes beyond what has been requested by the Government pursuant to clauses 10.1 to 10.3 above will be ignored for the purposes of the tender evaluation or will entitle (but not oblige) the Government not to consider the Tender further.

11. Counter-Proposals

11.1 A Tenderer must not submit any proposal that has the effect of varying or modifying (a) any essential requirements specified in the Tender Documents; (b) all provisions in the Tender Documents concerning the preparation, submission and evaluation of Tenders and award of Contract; and (c) those additional provisions which are not permitted to be subject to any counter-proposal as identified in the Terms of Tender (Supplement) (if any).

11.2 The Tenderer must not directly or indirectly attempt to preclude or limit the effect of any requirements or instructions set out in the Tender Form, these Terms of Tender or the Terms of Tender (Supplement) or the Schedules.

- 11.3 If a Tenderer fails to comply with clause 11.1 and 11.2 above, subject to any clarification which the Government may, but is not obliged to, seek from the Tenderer, its Tender will not be further considered.
- 11.4 Counter-proposal to other provisions of the Tender Documents not specified in clause 11.1 or 11.2 above, whilst not strictly disallowed, is not encouraged. If the Tenderer wishes to submit one or more counter-proposals to any provision in the Tender Documents not of the types specified in clause 11.1 or 11.2 above (“Counter-Proposals”), the Counter-Proposals shall be submitted in the following manner:
- (a) the Counter-Proposals shall be attached to “Offer to be Bound” in Part II of the Tender Documents;
 - (b) the original provision which the Counter-Proposals 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 “[]”.
- 11.5 Unless the Government otherwise agrees, Counter-Proposals that are not submitted in accordance with clause 11.4 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 provisions to which the Counter-Proposals relate and the Government will continue to consider the Tenderer’s Tender on this basis.
- 11.6 Notwithstanding and without prejudice to the aforesaid, the Government may, but is not obliged to, negotiate with the Tenderer any Counter-Proposal. The Government may at its absolute discretion reject any Counter-Proposal. If the Government does elect to negotiate with a Tenderer concerning a Counter-Proposal, and if after such negotiation, the Tenderer is unwilling to withdraw such Counter-Proposal, or otherwise revise it on terms acceptable to the Government, its Tender may not be considered further. Any accepted Counter-Proposal following from a successful negotiation shall be deemed as part of the Tenderer’s Tender and forms part of the Contract and shall be binding on the Tenderer if the Contract is eventually awarded to it.

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 Without prejudice to the requirements set out in clause 20 of this Part concerning formation of Contract, 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 31 of 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, by facsimile or by email 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. 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.
- 20.2 All Tenderers whom the Government intend to sign the Standing Offer Deed subject to the fulfilment of the conditions specified below ("successful Tenderer") will be notified within the Tender Validity Period (such notification is referred to as "conditional acceptance of tender"). Upon receipt of such conditional acceptance of tender, each such successful Tenderer shall be obliged to fulfil all of the following conditions to the satisfaction of the Government within one month from the date of the notification (or such later date as the Government may allow) ("Deadline") (all items specified below shall be delivered first by fax or email and subsequently by hand delivery to the fax number email address, and physical address specified in the conditional acceptance of tender):
- (a) the provision of the performance bond as required under clause 24 of this Part;

- (b) (if not already requested earlier prior to the conditional acceptance of tender) the provision of a legal opinion as required under clause 8.3 of this Part if the successful Tenderer is incorporated outside Hong Kong;
- (c) if the legal opinion in relation to the successful Tenderer is required as mentioned in sub-clause (b) above, and that the legal opinion on the issue specified in clause 8.3(i) of this Part is negative or is subject to conditions not considered to be satisfactory to the Government, the provision of an additional opinion on arbitration as well as the successful Tenderer's written confirmation on arbitration as required in clause 8.5 of this Part;
- (d) the provision of evidence that the team of professional staff meeting the essential requirements set out in clause 6.2 of this Part comprising those as nominated in Contract Schedule 2A or any replacement possessing not less than the experience and qualifications of the original nominee(s) has been employed by the successful Tenderer;
- (e) the provision of evidence to show that the electronic interfaces between the Government and the Contractor as proposed in Contract Schedule 10 are ready for use and in good conditions;
- (f) the provision of evidence to show that the successful Tenderer is in a position fully ready to propose eligible Relevant Employees for selection by the Government Representative and is ready to make all necessary arrangements in response to Service Request (Competitive Bidding) in accordance with clause 4 of Part VI; and
- (g) such other conditions as the Government may stipulate in the conditional acceptance of tender including without limitation the business registration certificate and certificate of registration as a non-Hong Kong company under the Companies Ordinance, Chapter 622 of the Laws of Hong Kong (where applicable and where required).

20.3 Unless and to the extent waived by the Government in writing, upon fulfilment of the conditions by the Tenderer specified in clause 20.2 of this Part to the satisfaction of the Government and by the Deadline stated therein, the Government will, subject to clauses 34 and 37 of this Part, enter into the Contract with the successful Tenderer by physically signing the Standing Offer Deed (regardless of the permissible mode of submission of Tender). In the case where the Tenderer is an unincorporated joint venture, each joint venture party must have signed the Standing Offer Deed as the Contractor on a joint and several basis. The Government will date these Standing Offer Deed on the date that it signs the same under this clause 20.3. The SOA Contract will incorporate, to the extent accepted by the Government, the Tender submitted by the successful Tenderer (subject to such other changes as the Government may stipulate in exercise of its powers under the Tender Documents (including without limitation the exclusion of any parts of the Tender which are to be ignored under any provisions of the Tender Documents) or such changes as the parties may agree). If a Tenderer fails to fulfil all or any of the conditions mentioned in clause 20.2 of this Part by the Deadline (unless and save to the extent they are waived by the Government in writing, if any), or fails to enter into the Standing Offer Deed upon notification by the Government ("defaulting Tenderer"),

the conditional acceptance of tender will become void and be of no further force. The Government will disqualify the defaulting Tenderer, and it may, but is not obliged to, award the SOA Contract to another Tenderer. Upon such disqualification, the Government and the disqualified Tenderer shall have no further claim against the other of them. On the other hand, notwithstanding anything in the Tender Documents or in the conditional acceptance of tender to the contrary, in the event that the Government exercises any of its discretion or power under clause 34 or 37 of this Part, the Government shall be entitled not to enter into the Contract with a Tenderer even if the Tenderer has received a conditional notification of acceptance and fulfilled all the conditions specified in clause 20.2 of this Part.

- 20.4 Notwithstanding the signing of the Standing Offer Deeds by the Government with one or more SOA Contractors, the Commencement Date will not be fixed until and unless the Government issues not less than seven (7) days' prior written notice to notify these SOA Contractors the Commencement Date which shall be any date within the period from 1 February 2023 to 1 May 2023 (both dates inclusive).
- 20.5 Upon signing of the Standing Offer Deed with the successful Tenderer, even if the Commencement Date is not yet fixed by the Government under clause 20.4 above, any Government bureau or department may issue to all those successful Tenderers who have for the time being entered into the Standing Offer Deed with the Government one or more Service Request(s) (Competitive Bidding) in accordance with clause 4 of Part VI which shall apply and come into force notwithstanding that the Commencement Date is not yet fixed. Any Relevant Employee to be appointed from this process will only commence the Service (RE) starting from the Commencement Date or otherwise such other date as specified in the Notice of Service (RE) to be issued.
- 20.6 Tenderers who do not receive any notification of conditional acceptance of tender within the Tender Validity Period should assume that their Tenders have not been accepted.

21. Cost of Tender

- 21.1 Each Tenderer shall submit its Tender at its own cost and expense. 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 and the doing of all acts required for the purpose of this Invitation to 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 this Part;

- (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 If a Tenderer which has been issued with the notification of conditional acceptance of tender has failed the financial vetting in the manner mentioned in clause 9.2 of this Part, it shall submit the performance bond as set out in clause 14 of Part IV in an amount equal to five (5) percent of the estimated total value of all SOA Contracts to be awarded and equally divided by the total number of Tenderers who have been awarded with the notification of conditional acceptance of tender ("Relevant Base Amount"). If that 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 Relevant Base Amount. The estimated total value of all SOA Contracts to be awarded will be calculated using the following formula:

Estimated total
value of all
SOA Contracts
to be awarded

$$= A \times B \times C$$

A	Summation of the following calculation for 10 staff categories : Estimated requirements of <u>the relevant staff category</u> as set out in clause 2.3 of this Part x Simple average of the Contract Ceiling Rates of <u>such staff category</u> submitted by all of the Tenderers which have been issued with the notification of conditional acceptance of tender
B	22 work days (i.e. estimated working days per month)
C	48 months (i.e. the Term of the Contract)

- 24.2 The Tenderer which has been issued with the notification of conditional acceptance of tender must pay the performance bond by first demand banker's guarantee. The banker's guarantee must comply with the following:
- (a) it must be in the form set out in Annex 1 to Part IV and 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;
 - (c) the banker's guarantee must come into effect on the date that it is executed 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 of Part IV and Annex 1 to 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 this Part.

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 the Invitation to Tender

- 30.1 Without prejudice to the Government's right to cancel this Invitation to 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 Invitation to Tender.

31. Warning against Bribery

- 31.1 The offer of an advantage to any public 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 the 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 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 The Tenderer must ensure that the Tender is prepared without any agreement, arrangement, communication, understanding, promise or undertaking with any other person (except as provided in paragraph 3 of the Non-collusive Tendering Certificate referred to in clause 32.2 below), regarding, amongst other things, price, tender submission procedure or any terms of the Tender. Bid-rigging is inherently anti-competitive and is considered serious anti-competitive conduct under the Competition Ordinance (Cap. 619). Tenderers who engage in bid-rigging conduct may be liable for the imposition of pecuniary penalties and other sanctions under the Competition Ordinance.
- 32.2 The Tenderer shall complete and submit to the Government a Non-collusive Tendering Certificate (in the form set out in Contract Schedule 11 of Part III) as part of its Tender.
- 32.3 In the event that a Tenderer is in breach of any of the representations, warranties and/or undertakings in clause 32.1 above or in Non-collusive Tendering Certificate submitted by it under clause 32.2 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 Tenderer's Tender; and
 - (c) if the Government has entered into the Contract with the Tenderer, terminate the Contract under clause 25 of Part IV.
- 32.4 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, warranties

and/or undertakings in clause 32.1 above or in Non-collusive Tendering Certificate submitted by it under clause 32.2 above.

- 32.5 A breach by a Tenderer of any of the representations, warranties and/or undertakings in clause 32.1 above or in Non-collusive Tendering Certificate submitted by it under clause 32.2 above may prejudice its future standing as a Government contractor or service provider.
- 32.6 The rights of the Government under clauses 32.3 to 32.5 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 in relation to or concerning any Tenderer (successful or unsuccessful) or its tender (whether or not the information is specified in clause 33.1 above and including information recorded in whatever media) if the disclosure is made under any one of the following circumstances (even if disclosure may also mean the information will at the same time, or subsequently, become public information):
- (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 (including because of any disclosure under clause 33.2(a) above);
 - (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;
 - (e) the disclosure of any information regarding anti-competitive collusive conduct to the Competition Commission of Hong Kong (and other authorities as relevant); or
 - (f) 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 (i) a claim or an allegation by any person, or a ruling or judgment by a court, or decision by a competent tribunal or arbitration body 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 or any other rights of any person (“IPR infringement”) (and in the case of any claim or allegation, it was made any time during a period of seven (7) years preceding the Tender Closing Date and up to the time of Contract award); or (ii) the Government having grounds to believe there is or will be such IPR infringement; or (iii) an agreement has been entered into whether by the Tenderer or any other person to settle or compromise any claim or allegation about IPR Infringement (regardless of whether on an admission basis or non-admission basis) which agreement is still valid and subsisting at any time during a period of seven (7) years preceding the Tender Closing Date and up to the time of Contract award;
- (d) any time during the thirty-six (36) months prior to the Tender Closing Date or between the Tender Closing Date and the award of the Contract, the Tenderer or a related person of the Tenderer (as defined in clauses 34.6 and 34.7 below and including those who were in such capacity any time within the same period, i.e., thirty-six (36) months prior to the Tender Closing Date or between the Tender Closing Date and the award of the Contract) has committed significant or persistent default(s) or deficiency(ies) in the performance of any requirement or obligation under any other Government contract regardless of the procurement department of such other Government contract, regardless of whether the default(s) or deficiency(ies) led to the actual termination of the relevant Government contract and regardless of whether such default(s) or deficiency(ies) occurs before or after the termination or expiry of the relevant Government contract, and in the case of the latter, provided that the default(s) or deficiency(ies) relates to any provisions which survive such termination or expiry, and regardless of whether such default(s) or deficiency(ies) has been remedied (“Contract Default(s)"); and the Government Representative in its sole judgment is satisfied that such Contract Default(s) casts a

reasonable doubt on the capability of the Tenderer to perform the Contract to be awarded in this Invitation to Tender;

- (e) (i) the Tenderer; or (ii) a related person of the Tenderer; or (iii) a director or management staff of the Tenderer or those of the related person of the Tenderer, has been convicted by the final judgement in respect of one or more serious crimes or other serious offences including conviction of offences involving bribery, false accounting, corruption, dishonesty or employment handed down;
- (f) in the event of the professional misconduct or acts or omissions that adversely reflect on the commercial integrity of the Tenderer or a related person of the Tenderer or a director or management staff of the Tenderer or those related person of the Tenderer; professional misconduct includes any breach of the Good Industry Practice;
- (g) any failure of the Tenderer to pay taxes to the Government during a period of five (5) years preceding the Tender Closing Date and up to the time of Contract award; 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 all infringement claims, allegations, rulings, judgments, decisions or settlement agreements as mentioned in clause 34.1(c) above;
- (c) details of all Contract Defaults and breaches or performance deficiencies of the Tenderer or a related person as mentioned in clause 34.1(d) above;
- (d) details of conviction as mentioned in clause 34.1(e) above in Hong Kong or any overseas jurisdiction;
- (e) details of any professional misconduct or act or omission as mentioned in clause 34.1(f) above; and

- (f) details of any failure to pay taxes as mentioned in clause 34.1(g) above.

If none of the events as mentioned in clauses 34.2(a) to 34.2(h) 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. The information provided by the Tenderer is not conclusive. The Government may independently verify the veracity and completeness of any information provided. In the case of Contract Default, the Government will form an assessment as to whether or not such Contract Default has occurred.

- 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 up to the date of lodging its Tender with the Government shall be in writing and shall be submitted to the Government no later than three (3) working days before the Tender Closing Date. The request shall be submitted in the manner specified in clause 14.1 of this Part to:

Government Chief Information Officer
Office of the Government Chief Information Officer
12/F., Treasury Building,
No. 3 Tonkin Street West,
Cheung Sha Wan, Kowloon
(Attn: Senior Executive Officer (Administration)2)
E-mail: t26@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.

36. Tender Briefing Session

- 36.1 A tender briefing session will be held, tentatively scheduled for **1500 hours on 20 July 2022** by online video conferencing through “Webex” software. Although attendance at the tender briefing session is not compulsory, prospective Tenderers are encouraged to participate. A prospective Tenderer who wishes to attend the briefing session is requested to complete the reply slip at Annex C of this Part and fax it to the Office of the Government Chief Information Officer (Attn.: Contract Staff Services Unit) on (852) 2573 7076 on or before 14 July 2022. Confirmation of registration will be issued to the prospective Tenderer upon receipt of the signed reply slip. Late registration may not be accepted.
- 36.2 For the online tender briefing session, only one (1) login to the “Webex” meeting room will be allowed for each prospective Tenderer (i.e., the prospective Tenderer may only register with one (1) email address for accessing the meeting room). The invitation and password for joining the online briefing session will be provided on or before 1800 hours on 18 July 2022 through email to the prospective Tenderers who have submitted the reply slip. Only the “Webex” account holder with the email address registered with that account and provided in the reply slip will be allowed to join the online tender briefing session.
- 36.3 Questions for clarification at the tender briefing session may be submitted in writing to the Office of the Government Chief Information Officer (Attn.: Contract Staff Services Unit) by fax (fax no.: (852) 2573 7076) or email (email: t26@ogcio.gov.hk) on or before 18 July 2022.

- 36.4 In case Tropical Cyclone Warning Signal no. 8 or above is hoisted, or a Black Rainstorm Warning Signal or “extreme conditions after super typhoons” announced by the Government is/are in force, or there arises any inaccessibility of the “Webex” meeting room for all attendees registered for the online briefing session, for any duration at or after 1100 hours on 20 July 2022, the tender briefing scheduled for that day will be cancelled and the Government will notify prospective Tenderers who have submitted the reply slip of the arrangement for the rescheduled tender briefing.
- 36.5 The schedule of the tender briefing session is subject to change at the sole discretion of the Government. Prior notice will be given to the prospective Tenderers who have submitted the reply slip regarding the arrangement of the rescheduled tender briefing (if necessary).

37. One Tender Only

- 37.1 No Tenderer is permitted to submit more than one tender.
- 37.2 A Tender from a Tenderer’s related person will be treated as a tender from the same Tenderer for the purposes of the restriction mentioned in clause 37.1 above.
- 37.3 Where 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 more than 50% the issued share capital of the Tenderer (“majority shareholder”); or
 - (b) a holding company or a subsidiary of the Tenderer; or
 - (c) a holding company or a subsidiary of a majority shareholder (being a company) of the Tenderer; or
 - (d) a company in which a majority shareholder (being an individual) of the Tenderer directly or indirectly beneficially owns more than 50% of its issued share capital or controls the composition of its board of directors; or
 - (e) an officer of the Tenderer.
- 37.4 The expressions “holding company”, “subsidiary” and “officer” have the meanings assigned to them under the Companies Ordinance (Cap. 622) regardless of their place of incorporation.
- 37.5 Where the Tenderer is a sole proprietorship or partnership, “related person” of the Tenderer includes any one of the following:
- (a) any partner of the Tenderer (if it is a partnership); or
 - (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 of 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; or

- (c) a company in which the Tenderer or any partner of the Tenderer beneficially directly or indirectly owns more than 50% of its issued share capital or controls the composition of its board of directors.

37.6 For each Contract for which both the Tenderer and its related person(s) have bidden, the Government will choose the conforming tender which has earned the highest Combined Score for such Contract amongst the conforming tenders submitted by them for further evaluation, and the other tender(s) will be disqualified.

Annex A

Checklist for items to be submitted by Tenderers

The following is a list 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, the completed Contract Schedule 2A of Part III – “Experience and Employment Status of Nominees for Contract Manager, Key Operations Contact Person and Technical Support Officer”, the completed Contract Schedule 2B of Part III – “Tenderer’s Experience” and the completed Contract Schedule 8 of Part III – “Service Assurance Plan and Staff Management Plan”
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 (j) 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.

Clause in Part I	Item ^{Note 1}
9.1 (d)	Documentary evidence showing financial resources
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
32.2	The completed and duly signed Contract Schedule 11 of Part III – “Non-collusive Tendering Certificate”
34.2	The completed Contract Schedule 7 of Part III - “Information Schedule”
Part B of Annex B	The completed Contract Schedule 9 of Part III – “Minimum Monthly Wage Rate committed for Relevant Employees of Staff Category 1”

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”;
- (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 in 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 60:40 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 clause 5.3 of Part I of the Tender Documents. **If a Tenderer fails to submit any of the following information/documents before 12:00 noon (Hong Kong Time) on the Original 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 name of the proposed Contract Manager, Key Operations Contact Person, and the Technical Support Officer in Contract Schedule 2A; and/or
 - (c) one or more proposals but not necessarily proposals for all items required in each of the Service Assurance Plan and Staff Management Plan in Contract Schedule 8.

For Contract Schedule 3 (Company/Business Organisation Status of the Tenderer), Contract Schedule 4 (Projected Statement of Profit or Loss), Contract Schedule 7 (Information Schedule), Contract Schedule 9 (Minimum Monthly Wage Rate Committed for Relevant Employees of Staff Category 1), Contract Schedule 10 (Statement of Minimum Information Technology Facilities/Resources to be Committed for Interfacing Electronically with the Government) and Contract Schedule 11 (the Non-collusive Tendering Certificate), if they are not provided by the Tender Closing Date or if the Government so elects to ask for subsequent submission, upon such subsequent request by the Government, the Tender 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 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 requirement as set out under clause 6.2 of Part I of the Tender Documents. Any Tender which fails to meet any of the essential requirements will not be considered further.

Stage 3 – Technical Assessment (maximum weighted technical score : 60)

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. The maximum total technical marks are 100 and there is no overall passing mark for the total marks scored in the Technical Assessment. The passing marks of **six (6) is set for each of Assessment Criterion 1 (Service Assurance Plan) and Assessment Criterion 2 (Staff Management Plan) in Part A, which is 20% of the maximum mark of the respective Assessment Criterion. Tenders that failed to attain any of the passing marks for Assessment Criteria 1 and 2 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 60 and the remaining Tenders which fulfill the passing mark requirements will be given a **weighted technical score** in accordance with the following formula:

$$\text{Weighted technical score} = 60 \times \frac{\text{The overall mark of the Tender which has passed Stage 3 being assessed}}{\text{The highest overall mark among all Tenders which have passed Stage 3}}$$

8. Tenderers are encouraged to make innovative suggestions in their proposed plans for Assessment Criteria (1) and (2) which are to be carried out by themselves through their own resources. Innovative suggestions will be assessed in comparison to how the Services are previously delivered under the existing contract or the conventional mode of service delivery adopted by the Government.
9. **All Innovative Suggestions accepted shall form part of the Standing Offer Agreement.**

Stage 4 – Price Assessment (maximum weighted price score : 40)

10. 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.
11. 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:

$$\text{Tender price} = A \times B \times C$$

A	Summation of the amount to be calculated below for 10 staff categories (each a “relevant staff category”): Estimated requirements of <u>the relevant staff category</u> as set out in clause 2.3 in Part I of the Tender Documents x Contract Ceiling Rates of <u>that relevant staff category</u> of submitted by the Tenderer being assessed
B	22 work days (i.e. estimated work days per month)
C	48 months (i.e. the Term of the Contract)

12. The lowest tender price among all Tenders which have passed Stage 3 assessment will be given the highest weighted price score of 40 and the remaining Tenders that have passed Stage 3 will be given a **weighted price score** in accordance with the following formula:

$$\text{Weighted price score} = 40 \times \frac{\text{The lowest tender price among all Tenders which have passed Stage 3}}{\text{The tender price of the Tender which has passed Stage 3 being assessed}}$$

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

Stage 5 – Acceptance and Award of Contract

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

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

15. 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 (T26)

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		
(A)	Execution Plan										
1	Service Assurance Plan (Passing Mark : 6)	30	6								See Note 2
2	Staff Management Plan (Passing Mark: 6)	30	6								See Note 2
3	Innovative Suggestions	15	NA								See Note 7
	Sub-total for (A):	75									
(B)	Tenderer's Experience										
4	Aggregate years of experience in the supply services of information technology contract staff	5	NA								See Note 3
5	Number of information technology contract staff supplied to one or more clients	5	NA								See Note 4
6	Number of clients which have been provided with the supply services of information technology contract staff	5	NA								See Note 5
(C)	Other Specific Criteria										
7	Minimum monthly wage rate committed for Relevant Employees of Staff Category 1	10	NA								See Note 6
	(Maximum Overall Mark: 100)										See Note 8

Explanatory Notes for Marking Scheme

Tenderers shall note that they must meet the essential requirement in clause 6 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 7 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

In accordance with the rules set out in Note 7 below.

For Assessment Criteria 4 to 6

In accordance with the rules set out in Notes 3 to 5 below.

For Assessment Criterion 7

In accordance with the rules set out in Note 6 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 proposal that could effectively enhance / improve the quality of performance 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 and brief information covering the remaining items as well as proposal that could effectively enhance / improve the quality of performance 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 and brief information covering the remaining 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 and brief information covering the remaining 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 six (6) for each of Assessment Criteria 1 and 2 or their Tenders will not be considered further.

Assessment Criterion 4: Aggregate years of experience in the supply services of information technology contract staff within the ten (10) years immediately before the Original Tender Closing Date

Note 3 Marks

- 5 – **At least six (6) years** of experience in aggregate in the supply services of information technology contract staff within the ten (10) years immediately before the Original Tender Closing Date.
- 4 – **At least five (5) years but less than six (6) years** of experience in aggregate in the supply services of information technology contract staff within the ten (10) years immediately before the Original Tender Closing Date.
- 3 – **At least four (4) years but less than five (5) years** of experience in aggregate in the supply services of information technology contract staff within the ten (10) years immediately before the Original Tender Closing Date.
- 2 – **At least three (3) years but less than four (4) years** of experience in aggregate in the supply services of information technology contract staff within the ten (10) years immediately before the Original Tender Closing Date.
- 1 – **At least two (2) years but less than three (3) years** of experience in aggregate in the supply services of information technology contract staff within the ten (10) years immediately before the Original Tender Closing Date.
- 0 – **Not more than two (2) years** of experience in aggregate in the supply services of information technology contract staff within the ten (10) years immediately before the Original Tender Closing Date.

Remarks:

- (i) A Tenderer is required to submit to the satisfaction of the Government the documentary evidence (including but not limited to copy of signed contract on the supply services of IT services of IT contract staff to clients showing title of contract, contractual parties, contract period and specification/scope of the services rendered for each of the claimed experience) to prove its experience claimed in Contract Schedule 2B of Part III of the Tender Documents. Any claimed experience not substantiated by documentary evidence will not be counted.
- (ii) The aggregate years of experience of the Tenderer will be counted in calendar days and converted to years by dividing by 365. 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, the first contract being from 1.1.2020 to 20.7.2020 (i.e. 202 calendar days) and the second contract being from 1.7.2020 to 31.1.2021 (i.e. 215 calendar days), the Tenderer will be considered as having 1.09 years of experience in aggregate (i.e. 397 days of experience (excluding the overlapping period) divided by 365) and will be awarded 0 marks for Assessment Criterion 4. 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.

- (iii) Only the Tenderer's experience gained in the same name of the Tenderer will be counted.
- (iv) 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.
- (v) Experience gained by the Tenderer as a sub-contractor will not be counted.
- (vi) Experience of a sub-contractor of the Tenderer will not be counted.
- (vii) 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.
- (viii) 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.
- (ix) 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.
- (x) A Tenderer's experience gained by providing the supply services of information technology contract staff to the Tenderer itself will not be counted.
- (xi) Both local and non-local experience of the Tenderer will be counted.
- (xii) 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.

Assessment Criterion 5: Number of information technology contract staff supplied to one or more clients in the three (3) years immediately before the Original Tender Closing Date

Note 4 Marks

- 5 – **At least eighty (80) information technology contract staff supplied to one or more than one clients in a continuous period of twelve (12) months within the three (3) years immediately before the Original Tender Closing Date or at least eighty (80) information technology contract staff supplied to one or more than one clients on average per year in the three (3) years immediately before the Original Tender Closing Date.**
- 4 – **At least seventy (70) but less than eighty (80) information technology contract staff supplied to one or more than one clients in a continuous period of twelve (12) months within the three (3) years immediately before the Original Tender Closing Date or at least seventy (70) information technology contract staff supplied to one or more than one clients on average per year in the three (3) years immediately before the Original Tender Closing Date.**
- 3 – **At least sixty (60) but less than seventy (70) information technology contract**

staff supplied to one or more than one clients in a continuous period of twelve (12) months within the three (3) years immediately before the Original Tender Closing Date **or at least sixty (60) information technology contract staff supplied to one or more than one clients on average per year in the three (3) years immediately before the Original Tender Closing Date.**

- 2 – **At least fifty (50) but less than sixty (60) information technology contract staff supplied to one or more than one clients in a continuous period of twelve (12) months** within the three (3) years immediately before the Original Tender Closing Date **or at least fifty (50) information technology contract staff supplied to one or more than one clients on average per year in the three (3) years immediately before the Original Tender Closing Date.**
- 1 – **At least forty (40) but less than fifty (50) information technology contract staff supplied to one or more than one clients in a continuous period of twelve (12) months** within the three (3) years immediately before the Original Tender Closing Date **or at least forty (40) information technology contract staff supplied to one or more than one clients on average per year in the three (3) years immediately before the Original Tender Closing Date.**
- 0 – **At least thirty (30) but less than forth (40) information technology contract staff supplied to one or more than one clients in a continuous period of twelve (12) months** within the three (3) years immediately before the Original Tender Closing Date **or at least thirty (30) information technology contract staff supplied to one or more than one clients on average per year in the three (3) years immediately before the Original Tender Closing Date.**

Remarks:

- (i) A Tenderer is required to submit to the satisfaction of the Government the documentary evidence (including but not limited to copies of signed contract/invoices of the service fee charged for the supply of the IT contract staff claimed, statements of purchase/manpower orders in respect of the claimed IT contract staff supplied bearing the name of clients, post title of IT contract staff, service start/end dates of the IT contract staff concerned) to prove its experience claimed in Contract Schedule 2B of Part III of the Tender Documents. Any claimed experience not substantiated by documentary evidence will not be counted.
- (ii) For the avoidance of doubt, the information technology contract staff referred to for this criterion 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).
- (iii) Remarks (iii) to (xii) under Note 3 are equally applicable to Note 4.

Assessment Criterion 6: Number of clients which have been provided with the supply services of information technology contract staff within the three (3) years immediately before the Original Tender Closing Date

Note 5 Marks

- 5 – **At least eight (8) clients which have been provided with the supply services of information technology contract staff** within the three (3) years immediately before the Original Tender Closing Date.
- 4 – **At least seven (7) but less than eight (8) clients which have been provided with the supply services of information technology contract staff** within the three (3) years immediately before the Original Tender Closing Date.

- 3 – **At least six (6) but less than seven (7) clients which have been provided with the supply services of information technology contract staff** within the three (3) years immediately before the Original Tender Closing Date.
- 2 – **At least five (5) but less than six (6) clients which have been provided with the supply services of information technology contract staff** within the three (3) years immediately before the Original Tender Closing Date.
- 1 – **At least four (4) but less than five (5) clients which have been provided with the supply services of information technology contract staff** within the three (3) years immediately before the Original Tender Closing Date.
- 0 – **At least (3) but less than two (2) clients which have been provided with the supply services of information technology contract staff** within the three (3) 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 2B of Part III of the Tender Documents and submit valid documentary proof (including but not limited to those documentary evidence submitted in respect of Assessment Criteria 4 and 5 which will be used for this Criterion) 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) 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. Contracts with different Government bureaux/departments for providing the supply services of information technology contract staff will be considered as having provided the said services to one (1) client only. 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.
- (iii) Remarks (iii) to (xii) under Note 3 are equally applicable to Note 5.

Assessment Criterion 7: Minimum Monthly Wage Rate committed for Relevant Employees of Staff Category 1

Note 6 The mark scored by each Tender will be determined by the following formula:

$$10 \times \frac{P - C}{H - C}$$

- 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> $10 \times \frac{21,000 - 20,500}{22,000 - 20,500}$ <p>= 3.33</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) If a Tenderer fails to submit Contract Schedule 9 or 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 tender will be evaluated but 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. 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 after the Tender Closing Date. If upon clarification in writing, 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.
- (iv) 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.
- (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.

Assessment Criterion 3: Innovative Suggestions

Note 7 Tenderers are encouraged to put up innovative suggestions for Assessment Criteria (1) and (2). Marks for innovative suggestions will be given to two types of innovative suggestions as follows:

- (a) Type I – innovative suggestions which are considered effective and practicable in improving the delivery of the Services. The benefits that this type of innovative suggestions shall bring about are not pre-defined for tender assessment. Tenderers may propose innovative suggestions, which may not necessarily be technology-related, bringing benefits in terms of any of the following:

- attaining better quality of Services;
- savings of manpower resources for delivering the Services;
- boosting satisfaction of procuring bureau/department; and
- any other benefits that can facilitate the delivery of the Services.

Innovative suggestions will be assessed in comparison to how the Services are previously delivered under the existing contract or the conventional mode of service delivery adopted by the Government.

- (b) Type II – innovative suggestions which may not be directly relevant to the supply services of information technology contract staff to the Government being procured by this Invitation of Tender but which can bring positive value(s) or benefit(s) to the Government or public at large. A maximum of 3 marks shall be given to innovative suggestions in their proposed plans for Assessment Criteria (1) and (2). Such positive values of benefits may include, inter alia, the following:

- sustainable development of the supply of contract staff industry;
- employment of persons with disabilities or the underprivileged in the society; and or environmental protection.

Marks will not be given to any innovative suggestion which a Tenderer will neither be capable of nor responsible for implementation.

The distribution of marks for innovative suggestions between Type I and Type II in respect of Assessment Criteria (1) to (2) are as follows:

Assessment Criterion	Maximum Mark for Type I Innovative Suggestion	Maximum Mark for Type II Innovative Suggestion
(1) Service Assurance Plan	6	1.5
(2) Staff Management Plan	6	1.5
Total:	12	3

For Type I innovative suggestions meeting requirements under (a) above, marks will be given in accordance with the following rule:

Percentage of Maximum Mark	Marking Standard
100%	The proposed plan contains three or more practicable innovative suggestions
66%	The proposed plan contains two practicable innovative suggestions
33%	The proposed plan contains one practicable innovative suggestion
0%	The proposed plan does not contain any innovative suggestions

For Type II innovative suggestions, marks will be given in accordance with the following rule:

Percentage of Maximum Mark	Marking Standard
100%	The proposed plan contains three or more practicable innovative suggestions
66%	The proposed plan contains two practicable innovative suggestions
33%	The proposed plan contains one practicable innovative suggestion
0%	The proposed plan does not contain any innovative suggestions

For calculation of marks for Type I and Type II innovation suggestions, 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.

An innovative suggestion that score marks under Type I will not earn marks again under Type II and vice versa. If the Tender Assessment Panel (TAP) considers that the same innovative suggestion could earn marks as Types I and II, it will be taken as scoring marks under Type I only. Furthermore, an innovative suggestion scores marks under one assessment criterion will not earn marks again under the other assessment criteria. If the TAP considers that the same innovative suggestion could score marks under more than one assessment criterion, it will be taken as scoring marks under the first relevant criterion. For example, if a Tenderer proposes the same innovative suggestions which could earn marks under both Assessment Criterion (1) and (2), it will be taken as scoring marks under Assessment Criterion (1) only.

Tenderers shall propose innovative suggestions by filling in the details in the schedule of innovative suggestions (i.e. Part (C) of Contract Schedule 8 of Part III – Contract Schedules) to facilitate tender evaluation.

If a Tenderer fails to specify the type (i.e. Type I or Type II) of innovation suggestion which the proposed innovative suggestion belongs to, and that the innovative suggestion is capable of being treated as either Type I or Type II, the innovative suggestion will be deemed as proposed as Type I. If the innovative suggestion is only capable being treated as either type I or II, it will be treated as that type.

Apart from the schedule of innovative suggestions mentioned above, Tenderers shall submit the following information for demonstrating the effectiveness and practicability of the innovative suggestions. Marks will not be given if the tenderers only propose a concept without sufficient details. The information that shall be provided by the tenderers includes the following:

- if the suggestion is concerned with a kind of technology, equipment, tool, system, material, facility and vehicle, etc. : scope of the services involved, details on how to implement, specifications, catalogues, features, functions, quantity, coverage, locations and outcome, etc. as appropriate;

- if the suggestion is concerned with a kind of measure, service, scheme and activity, etc. : the objective, scope of the services involved, details on how to implement, functions, quantity, monetary value, scale, coverage, locations, frequency, duration, outcome and number of target beneficiaries, etc. as appropriate; and
- if the suggestion is related to manpower : the objective, scope of the duties involved, details on how to implement, work shifts (full time or part time), posts, recruitment method, means to approach the target candidates, quantity, monetary value, scale, coverage, locations, frequency, duration, outcome and number of target beneficiaries, etc. as appropriate.

Tenderers may also be requested to provide supporting documents or a demonstration to prove the practicability of their innovative suggestions. All proposed innovative suggestions will be assessed on the basis of the information provided in the quotation submissions and the factual supporting documents (e.g. test reports/certificates) provided by the Tenderers upon request by the Government. The demonstration will not be taken into account in marking. It only serves as a means to enable members of the TAP to have a better understanding of the innovative suggestions proposed by Tenderers concerned. During the demonstration, Tenderers are also not allowed to provide additional information not contained in its original quotation submission.

Apart from the proposed plans for Evaluation Criteria (1) to (2), all practicable innovative suggestions included in the proposed plans submitted by the successful Tenderers for all evaluation criteria and accepted by the Government shall also form part of the Contract.

Passing Marks

Note 8 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

Annex C

Reply Slip For Tender Briefing Session

To: Office of the Government Chief Information Officer
(Attn: Contract Staff Services Unit)
Fax No. (852) 2573 7076

Tender Ref. GCIO 5/2 (T26)

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

Tender Briefing Session

I would like to join the online briefing session held at 1500 hours on 20 July 2022 (Hong Kong time) through the use of email addresses specified below:

Full Name of Representative: _____

Post/Title: _____

Email Address: _____

Name of Company: _____

Signature of Authorised Person: _____

Full Name of Authorised Person
(in block letters): _____

Post Title of Authorised Person: _____

Telephone No.: _____ Fax No.: _____

Mobile Phone No.: _____ Email Address: _____

Notes:

- (a) Each prospective Tenderer may only register with one (1) email address for accessing the meeting room as completed in this form.
- (b) Please register on or before 14 July 2022. Late registration may not be accepted.
- (c) Prospective Tenderer is required to check your electronic device and the minimum system requirement for joining/hosting Webex Events. Please refer to the url below. Only the “Webex” account holder with email address registered with such account and provided in this reply slip will be allowed to join the online tender briefing session.
URL: <https://help.webex.com/en-us/1vek5r/Webex-Meetings-System-Requirements-and-Cross-Platform-Information#Webex-Meetings-Suite-System-Requirements>

- (d) The invitation and password for joining the online tender briefing session will be sent to the provided email address on or before 1800 hour on 18 July 2022 to the prospective Tenderers who have submitted the reply slip on or before the above deadline.
- (e) A trial session of the online meeting will be held from 1500 to 1600 hours on 19 July 2022. Prospective Tenderer may make use of the trial session to test the connection to the online meeting room and familiarise themselves with the software functions.

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, the Tenderer mentioned below, agree to be bound by all the terms and conditions as stipulated therein.
2. I/We, the Tenderer mentioned below, do hereby agree to make a standing offer to perform as and when required by the Government the Services as specified in the Tender Documents which may, during the Term be required, by the Government to be carried out, at rates not exceeding the Contract Ceiling Rates quoted by me/us in Contract Schedule 1 of Part III free of all other charges, subject to and in accordance with the terms and conditions as stipulated in the Tender Documents.

Signed by the Tenderer / Signed by an
authorised signatory for and on behalf :
of the Tenderer

Name of the Tenderer :

Name and title of the authorised
signatory :
(where applicable)

Date :

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 11 to 13 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 2A

Experience and Employment Status of Nominee for Contract Manager, Key Operations Contact Person and Technical Support Officer

*(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 the nominee for Contract Manager, Key Operations Contact Person and Technical Support Officer including their respective experience and employment status in this Contract Schedule 2A for “Stage 2 - Assessment of Compliance with the Essential Requirements” as set out in the tender assessment procedures at Annex B of Part I of the Tender Documents.

The Contract Manager, Key Operations Contact Person and Technical Support Officer shall meet the essential requirements set out in paragraphs 6.2(a) to 6.2(c) of Part I of the Tender Documents, failing which the tender will not be considered further. The Tenderer is required to submit to the satisfaction of the Government the relevant documentary evidence to prove the experience claimed for and employment status of the respective nominee for Contract Manager, Key Operations Contact Person and Technical Support Officer in this Contract Schedule 2A. Please note that persons holding the above three posts shall be three (3) different persons. Any claimed experience and full-time employment status with the Tenderer not substantiated by documentary evidence will not be counted.

(a) Contract Manager

- (i) Please provide the name of the Contract Manager below:

_____ (in Chinese)

_____ (in English)

- (ii) Is the Contract Manager a full-time¹ employee of the Tenderer?
(Please “✓” in the appropriate box below and attach the relevant documents as required under clauses 6.2(a) and 6.4(e) of Part I of the Tender Documents.)

☐ Yes

☐ No

¹ Employed to work a minimum of 44 hours per week
Part III – Contract Schedules

- (iii) Does the Contract Manager possess, in the past ten (10) years immediately preceding the Original Tender Closing Date, at least four (4) aggregate years of work experience in managing the supply services of information technology contract staff to clients?

(Please “✓” in the appropriate box below and attach the relevant documents as required under clauses 6.2(a) and 6.4(e) of Part I of the Tender Documents.)

☐ Yes

☐ No

Note: The work experience of the Contract Manager **in managing the supply services of information technology contract staff to clients** in the past ten (10) years immediately preceding the Original Tender Closing Date in aggregate number of calendar days which shall then be divided by 365 to derive the number of years. For the avoidance of doubt, period(s) of employment with employers other than the Tenderer will be counted while overlapping periods of experience in different posts will only be counted once. Please refer to the example set out in clause 6.4(d) of Part I showing how the work experience shall be calculated.

Please indicate below the work experience of the full-time Contract Manager in managing the supply services of information technology contract staff to clients in the past ten (10) years immediately preceding the Original Tender Closing Date.

Employer	Post title and Name/Nature of the Project	Employment period (dd.mm.yyyy to dd.mm.yyyy)	Number of calendar days counted for accumulated experience in the period
Total no. of calendar days:			(A) days
Total no. of aggregate years: <i>(See clause 6.2(a) of Part I. (A)/365 should be <u>at least four (4) aggregate years.</u>)</i>			(A/365) years

(b) Key Operations Contact Person

- (i) Please provide the name of the Key Operations Contact Person below:

_____ (in Chinese)

_____ (in English)

- (ii) Is the Key Operations Contact Person a full-time
- ²
- employee of the Tenderer?
-
- (Please “✓” in the appropriate box below and attach the relevant documents as required under clauses 6.2(b) and 6.4(e) of Part I of the Tender Documents.)

☐ Yes☐ No

- (iii) Does the Key Operations Contact Person possess, in the past five (5) years immediately preceding the Original Tender Closing Date, at least three (3) aggregate years of work experience in handling the day-to-day operational matters relating to the supply services of information technology contract staff to clients?
-
- (Please “✓” in the appropriate box below and attach the relevant documents as required under clauses 6.2(b) and 6.4(e) of Part I of the Tender Documents.)

☐ Yes☐ No

Note: The work experience of the Key Operations Contact Person **in handling the day-to-day operational matters relating to the supply services of information technology contract staff to clients** in the past five (5) years immediately preceding the Original Tender Closing Date in aggregate number of calendar days which shall then be divided by 365 to derive the number of years. For the avoidance of doubt, period(s) of employment with employers other than the Tenderer will be counted while overlapping periods of experience in different projects/posts/employers will only be counted once. Please refer to the example set out in clause 6.4(d) of Part I showing how the work experience shall be calculated.

Please indicate below the work experience of the full-time Key Operations Contact Person in handling the day-to-day operational matters relating to the supply services of information technology contract staff to clients in the past five (5) years immediately preceding the Original Tender Closing Date.

Employer	Post title and Name/Nature of the Project	Employment period (dd.mm.yyyy to dd.mm.yyyy)	Number of calendar days counted for accumulated experience in period

² Employed to work a minimum of 44 hours per week.

Total no. of calendar days:			(A) days
Total no. of aggregate years: <i>(See Paragraph 6.2(b) of Part I. (A)/365 should be <u>at least three (3) aggregate years.</u></i>			(A/365) years

(c) Technical Support Officer

- (i) Please provide the name of the Technical Support Officer below:

_____ (in Chinese)

_____ (in English)

- (ii) Is the Technical Support Officer a full-time
- ³
- employee of the Tenderer?
-
- (Please “✓” in the appropriate box below and attach the relevant documents as required under clauses 6.2(c) and 6.4(e) of Part I of the Tender Documents.)*

☐

Yes

☐

No

- (iii) Does the Technical Support Officer possess, in the past five (5) years immediately preceding the Original Tender Closing Date, at least two (2) aggregate years of work experience in providing technical support for the operations of a dedicated information technology system to be used for the supply services of information technology contract staff to clients?

(Please “✓” in the appropriate box below and attach the relevant documents as required under clauses 6.2(c) and 6.4(e) of Part I of the Tender Documents.)

☐

Yes

☐

No

Note: The work experience of the Technical Support Officer in providing technical support for the operations of a dedicated information technology system to be used for the supply services of information technology contract staff to clients in the past five (5) years immediately preceding before the Original Tender Closing Date in aggregate number of calendar days which shall then be divided by 365 to derive the number of years. For the avoidance of doubt, period(s) of employment with employers other than the Tenderer will be counted while overlapping periods of experience in different projects/posts/employers will only be counted once. Please refer to the example set out in clause 6.4(d) of Part I showing how the work experience shall be calculated.

³ Employed to work a minimum of 44 hours per week.

Please indicate below the work experience of the full-time Technical Support Officer in providing technical support for the operations of a dedicated information technology system to be used for the supply services of information technology contract staff to clients in the past five (5) years immediately preceding the Original Tender Closing Date.

Employer	Post title and Name/Nature of the Project	Employment period (dd.mm.yyyy to dd.mm.yyyy)	Number of calendar days counted for accumulated experience in the period
Total no. of calendar days:			(A) days
Total no. of aggregate years: <i>(See clause 6.2(c) of Part I. (A)/365 should be <u>at least two (2) aggregate years.</u>)</i>			(A/365) years

PART III

Contract Schedule 2B

Tenderer's Experience

Name of Tenderer : _____

Please provide the details of **Tenderer's experience** in this Contract Schedule 2B for "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 2B. **Any claimed experience not substantiated by documentary evidence will not be counted.**

Table A

Aggregate years of Experience gained by the Tenderer in the supply services of information technology contract staff within the ten (10) 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 2B

- 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 fill in one individual staff for each row in Table B. 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 2B, please refer to 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 the service period 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. Business Registration Certificate number and expiry date

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

 - (b) Core business strategies and strength:

(c) Industry expertise:

8. 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) if the Tenderer is a company, its Memorandum (if any) and Articles of Association, Certificate of Incorporation, Certificate of Change of Name (if any); or the equivalent documents issued by the authority of the place of incorporation of the Tenderer if the Tenderer was not incorporated under the Companies Ordinance (Cap. 622) (or its predecessor Ordinance);
 - (b) if the Tenderer is a company incorporated in Hong Kong or is a registered non-Hong Kong company under the Companies Ordinance (Cap. 622) a copy of the latest annual return filed with the Companies Registry and all subsequent filings since the latest annual return; or the equivalent documents issued by the authority of the place of incorporation of the Tenderer if the Tenderer was not incorporated or registered under the Companies Ordinance (Cap. 622) (or its predecessor Ordinance);
- (iii) a copy of a valid Business Registration Certificate (Cap. 310) or documentary evidence showing that the Tenderer is exempted from business registration under the Business Registration Ordinance (Cap. 310); or if the Tenderer does not carry on business in Hong Kong, the equivalent document issued by the authority of the place of business of the Tenderer;
- (iv) 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 2021 to 31 March 2027 (6-Year Budget)**

	(Plan)	(Plan)	(Plan)	(Plan)	(Plan)	(Plan)	(Actual)
	2026-27	2025-26	2024-25	2023-24	2022-23	2021-22	2020-21
(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 2021 to March 2027 (6-Year Budget)

	(← By year →)						
	2021-22	2022-23	2023-24	2024-25	2025-26	2026-27	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
Net increase in cash and cash equivalents	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) : _____
- (d) Nature of business, i.e. whether it is a sole proprietorship, a partnership, a limited company, etc. : _____
- (e) The ownership details including name(s) of shareholders/ partners/proprietor and their percentages of ownership : _____
- (f) If the Tenderer is a subsidiary, the name(s) and place(s) and date(s) of incorporation of its immediate and ultimate holding companies : _____

2. Financial Information

- (a) Audited Financial Statements (original or certified by the Tenderer's auditors) for the past three (3) financial years provided? [✓] **Yes** ☐ **No** ☐
 If "No", reason(s): _____

- (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 (certified as true in the manner as mentioned in Clause 9.1 (b) of Part I) up to a period not earlier than three (3) months before the Original Tender Closing Date (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) Statement of Profit or Loss and Other Comprehensive Income (for the period April 2021 to March 2027) | _____ | _____ | _____ | _____ | _____ | _____ |
| (ii) Statement of Cash Flows of the contract (for the period April 2021 to March 2027) | _____ | _____ | _____ | _____ | _____ | _____ |
| (iii) Statement of Profit or Loss and Other Comprehensive Income (for the period April 2021 to March 2027) | _____ | _____ | _____ | _____ | _____ | _____ |
| (iv) Statement of Cash Flows of the company (for the period April 2021 to March 2027) | _____ | _____ | _____ | _____ | _____ | _____ |

(d) Assumptions, supporting schedules, and detailed calculation 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.

8. Obligations to Comply with the Staff Code of Conduct issued by the Employer

The Relevant Employee must be fully aware of and to strictly comply with the requirements stated in the “Staff Code of Conduct” issued by the Employer to the Government Representative prohibiting Relevant Employee, among others, to provide Services from soliciting or accepting any form of advantages in discharging his duties under the Contract.

9. Intellectual Property Rights

The Government of the HKSAR shall be the exclusive owner of all intellectual property created by the Relevant Employee when being deployed by the Employer to work at a Government department or bureau (collectively, “Materials”). All the Intellectual Property Rights in the Materials shall vest in the Government at the time they are created. The term “Intellectual Property Rights” shall include 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 whether now known or created in future (whatever nature and wherever arising) and in each case whether registered or unregistered and including applications for the grant of any such rights.

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, 2 and 3 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

(C) Innovative Suggestions

Tenderers shall provide details of the proposed innovative suggestions in the following tables. If there is not enough space, please use supplementary sheets if necessary. Please refer to Note 7 of the Explanatory Notes for Marking Scheme for details.

(i) Innovative Suggestions for Assessment Criterion (1) – Service Assurance Plan

Type I – Improving the Delivery of the Services

Proposed innovative Suggestions	Brief description on improvements/ benefits/ positive values that can bring about	How to implement	Supporting documents (if any)

Type II – Not Directly Relevant to the Services

Proposed innovative Suggestions	Brief description on improvements/ benefits/ positive values that can bring about	How to implement	Supporting documents (if any)

(ii) Innovative Suggestions for Assessment Criterion (2) – Staff Management Plan

Type I – Improving the Delivery of the Services

Proposed innovative Suggestions	Brief description on improvements/ benefits/ positive values that can bring about	How to implement	Supporting documents (if any)

Type II – Not Directly Relevant to the Services

Proposed innovative Suggestions	Brief description on improvements/ benefits/ positive values that can bring about	How to implement	Supporting documents (if any)

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 for Part A and B 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 six (6) 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

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: If a Tenderer fails to submit Contract Schedule 9 or 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 tender will be evaluated but 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. 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 after the Original Tender Closing Date. If upon clarification in writing, 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.
- Note 3: No mark will be given under Assessment Criterion 7 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.

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}
<p><u>Dedicated Server with the following configurations:</u></p> <ul style="list-style-type: none"> ◆ Processor: Processor with 2 Cores, 2MB Cache, 3GHz, 64bit; equivalent or above ◆ Memory: at least 8GB RAM ◆ Hard Drive: at least 100GB free space after the installation of operating system and database software ◆ Gigabit Ethernet adaptor x 1 ◆ Operating System: <ul style="list-style-type: none"> ➤ Windows Server 2016 Standard Edition ◆ Database: <ul style="list-style-type: none"> ➤ SQL Server 2017 Standard Edition ◆ Others: <ul style="list-style-type: none"> ➤ Anti-virus tools that can offer protection against viruses, adware, spyware and malware and updated with the latest signature file; system patches shall be regularly downloaded and applied; system and data backup shall be regularly performed. 	1
<p><u>Dedicated Personal Computer with the following configurations:</u></p> <ul style="list-style-type: none"> ◆ Processor: Processor with 2 Cores, 2MB Cache, 3GHz; equivalent or above ◆ Memory: at least 4GB RAM ◆ Hard Drive: 100GB or more ◆ Gigabit Ethernet adaptor x 1 ◆ Operating System: Windows 10 Professional Edition ◆ Others: <ul style="list-style-type: none"> ➤ Anti-virus tools that can offer protection against viruses, adware, spyware and malware and updated with the 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}
<p><u>Personal Computer with the following configurations:</u></p> <ul style="list-style-type: none"> ◆ Processor: Processor with 2 Cores, 2MB Cache, 3GHz; equivalent or above ◆ Memory: at least 4GB RAM ◆ Hard Drive: 100GB or more ◆ Gigabit Ethernet adaptor x 1 ◆ Operating System: Windows 10 Professional Edition ◆ Others: <ul style="list-style-type: none"> ➤ Anti-virus tools that can offer protection against viruses, adware, spyware and malware and updated with the latest signature file; system patches shall be regularly downloaded and applied ➤ Client access licenses required are listed below: <ul style="list-style-type: none"> - SQL Server 2017 client access license - Windows Server 2016 client access license 	1
<p><u>Other requirements:</u></p> <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 Windows 10 Mail client 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) in Part VI of the Tender Documents.

PART III

Contract Schedule 11

Non-collusive Tendering Certificate

(To be completed and returned together with the tender submission)

To: The Government

Dear Sir/ Madam,

1. I / We, (name of the Tenderer) _____ of
(address(es) of the Tenderer(s)) _____

refer to the Government's invitation to tender for the Contract ("Invitation to Tender") and my/our Tender in response to the Invitation to Tender.

Non-collusion

2. I/We represent and warrant that
- (a)(i) My/Our Tender in response to the Invitation to Tender was prepared genuinely, independently and made with the intention to accept the Contract if awarded;
 - (a)(ii) My/Our response to a Service Request (Competitive Bidding) was prepared genuinely, independently and made with the intention to offer the Service (RE) to be performed by the nominated RE specified therein if awarded;
 - (b) neither my/our Tender nor my/our response to a Service Request (Competitive Bidding) was prepared with any agreement, arrangement, communication, understanding, promise or undertaking with any person (including any other Tenderer or competitor) regarding:
 - i) prices;
 - ii) methods, factors or formulas used to calculate prices;
 - iii) an intention or decision to submit, or not submit, any Tender or response to a Service Request (Competitive Bidding);
 - iv) an intention or decision to withdraw any Tender or response to a Service Request (Competitive Bidding);
 - v) the submission of any Tender or response to a Service Request (Competitive Bidding) that does not conform with the requirements of the Invitation to Tender or SOA Contract;

- vi) the quality, quantity, specifications or delivery particulars of the products or services to which the Invitation to Tender or Service Request (Competitive Bidding) relates; and
- vii) the terms of my/our Tender or response to a Service Request (Competitive Bidding),

and I/we undertake that I/we will not, whether before or after the award of the Contract, enter into or engage in any of the foregoing.

3. Paragraph 2(b) of this certificate shall not apply to agreements, arrangements, communications, understandings, promises or undertakings with:

- (a) the Government;
- (b) a joint venture partner with which I/we have submitted my/our Tender, and such joint venture arrangement has already been notified to the Government in my/our Tender;
- (c) my/our consultants or sub-contractors, provided that the communications are held in strict confidence and limited to the information required to facilitate that particular consultancy arrangement or sub-contract;
- (d) my/our professional advisers, provided that the communications are held in strict confidence and limited to the information required for the adviser to render their professional advice in relation to my/our Tender;
- (e) insurers or brokers for the purpose of obtaining an insurance quote, provided that the communications are held in strict confidence and limited to the information required to facilitate that particular insurance arrangement;
- (f) banks for the purpose of obtaining financing for the Contract, provided that the communications are held in strict confidence and limited to the information required to facilitate that financing; and
- (g) any person other than the Government, provided that the Government has given prior written consent.

Disclosure of subcontracting

4. Without prejudice to other requirements set out in the Tender Documents concerning sub-contracting arrangement, in particular, the requirement to seek the Government's prior written approval before sub-contracting, I/We understand that I/we am/are required to disclose all proposed sub-contracting arrangements for the Contract to the Government in my/our Tender, including those which will be entered into after the Contract is awarded. I/We warrant that I/we have duly disclosed and will continue to disclose such arrangements to the Government.

Consequences of breach or non-compliance

5. I/We understand that in the event of any breach or non-compliance with any representations, warranties and/or undertakings in this certificate or in clause 32.1 of Part I, the Government may exercise any of the rights under clauses 32.3 to 32.5 of Part I in addition to and without prejudice to any other rights or remedies available to it against me/us.
6. Under the Competition Ordinance (Cap. 619), bid-rigging is serious anti-competitive conduct. I/We understand that the Government may, at its discretion, report all suspected instances of bid-rigging to the Competition Commission (the "Commission") and provide the Commission with any relevant information, including but not limited to information on my/our Tender and my/our personal information.

Signed by the Tenderer / Signed by an
authorised signatory for and on behalf of the :
Tenderer

Name of the authorised signatory (where
applicable) :

Title of the authorised signatory (where
applicable) :

Date :

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 commencing on a date to be notified by the Government to the SOA Contractors by not less than 7 days' prior written notice which date shall be any date within the period from 1 February 2023 to 1 May 2023 (both dates inclusive) subject to any earlier termination under any applicable provision of the Contract or extension under clause 1.2 below. 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 under this clause 1.2) for a further period of not exceeding six (6) months as specified in the notice for the extension.

2. Contractor's Acknowledgement

- 2.1 The Contractor acknowledges and agrees that when entering into the Contract, 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 extension).

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 Service Period (RE) of the Relevant Employees who have been selected under the selection procedure specified in clause 4 of Part VI at the respective Individual Rates quoted by the Contractor when submitting a response to a service request which shall not exceed the Contract Ceiling Rates of the applicable Staff Categories to which the Relevant Employees belong. 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 (“Notice (Reduction)”) to propose reduced Contract Ceiling Rates for all the Staff Categories. The notice will specify the date by which the Contractor has to submit its proposal and the date on which the reduced Contract Ceiling Rates may take effect. The Contractor must submit the proposal in writing to the Government Representative in accordance with the requirements stipulated in the relevant Notice (Reduction). 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 Staff Categories covered in the Notice (Reduction) by taking into account all relevant factors such as but not limited to the Contractor’s proposal, the Consumer Price Index (B) year-on-year rate movement, relevant statistical studies on salaries of industries in Hong Kong, income of employees in the IT sectors by Census and Statistics Department, salary review result for civil servants and so on with reference to such date or period(s) as the Government considers relevant. If the Government accepts the Contractor’s proposed reduced Contract Ceiling Rates or if the Government specifies reduced Contract Ceiling Rates, it will notify the Contractor a date or a revised date, as the case may be, on which the reduced Contract Ceiling Rates will take effect (“Notice (Reduction in Effect)”). The reduced Contract Ceiling Rate shall not take effect retrospectively (i.e. any time before the date of the Notice (Reduction in Effect)). The reduced Contract Ceiling Rates shall take effect from that date until the date they are further adjusted under this clause or clause 3.3.

- 3.3 Without prejudice to the powers under clause 3.2, the Contract Ceiling Rates (as from time to time prevailing and as last adjusted) may be adjusted upwards at a frequency of once every year (but without implying that the revised Contract Ceiling Rates will last for one year following from such adjustment) under the following circumstances. The Contractor agrees that there shall be no annual percentage adjustment to the Contract Ceiling Rates during the first twelve (12) months of the Term. Thereafter, the Government may by notice request the Contractor to propose an annual percentage adjustment of the Contract Ceiling Rates for all of the Staff Categories as specified therein (“Notice (“Increase)”). In the Notice (Increase), the Government will 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 may take effect. The Contractor must submit the proposal in writing to the Government Representative in accordance with the requirements stipulated in the relevant Notice (Increase). 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 or nil percentage adjustment applicable to the Contract Ceiling Rates by taking into account all relevant factors, including those

same factors mentioned in clause 3.2 above. 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 in the Notice (Increase). The increased Contract Ceiling Rates shall take effect from the effective date until the date they are further adjusted under this clause or under clause 3.2. The date on which the adjustment shall take effect may be retrospective (i.e. any time before the date of the Notice (Increase in Effect)).

- 3.4 A Contractor bidding for the Service in response to a service request to be issued under clause 4 of Part VI 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 Category to which the Relevant Employee belong.
- 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. All wage stated in the contract of employment signed between the Contractor and the Relevant Employee on or before or after the effective date of rate adjustment to the Contract Ceiling Rate, the wage / salary stated in the said contract shall also be subject to the latest upward adjustment as mentioned in this clause.
- 3.7 Regardless of whether the Individual Rate of an existing Relevant Employee (viz., whose Period of Service (RE) is already subsisting as at the time of the adjustment), is higher or lower than the Contract Ceiling Rate which has been downward adjusted, the Individual Rate of such Relevant Employee will not be affected by any downward adjustment whilst the Period of Service (RE) continues to subsist. When this same Relevant Employee is continued to be employed for another fresh Period of Service (RE) pursuant to clause 5.5(b) below for the same position with the same Government bureau or department, the Individual Rate for

the applicable Staff Category must not be higher than the latest prevailing Contract Ceiling Rate after all applicable adjustments (upward and downward).

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;
 - (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); or
 - (d) the Relevant Employee who refuses to comply with any of the requirements imposed by the Government in writing for the purpose of safeguarding public interest at large, including matters relating to public health (including the vaccine pass arrangements as further specified in clause 36 of this Part), social order and public safety, etc. including those requirements applicable to civil servants.

5. Period of Service (RE)

- 5.1 The Period of Service (RE) of the Relevant Employee shall be of varying duration as confirmed in the Notice of Service (RE) or Notice of Service (Extension) 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. Failure to give such advance notice to the Government will constitute a breach of the Contract.
- 5.3 The Contractor is required to give notice to the Government if a Relevant Employee resigns before completion of his Period of Service (RE). For an Relevant Employee (other than of Staff Category 3, 4, 5 or 6), 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 the Service (RE) of such Relevant Employee, i.e. (the Individual Rate of that Relevant Employee x 14). For an Relevant Employee of Staff Category 3, 4, 5 or 6 as defined in clause 2.3 of Part I, if less than two (2) months’ notice but more than one (1) month’s notice is given, the Contractor is liable to pay to the Government seven (7) days’ payment

for Service (RE) of such Relevant Employee, i.e. (the Individual Rate of that Relevant Employee x 7), and if less than one (1) months' notice is given, the Contractor is liable to pay to the Government fourteen (14) days' payment for the Service (RE) of such Relevant Employee, i.e. (the Individual Rate of that Relevant Employee x 14).

- 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 not less than seven (7) calendar days' prior written notice to the Contractor (and in the case of clause 5.5(b), such notice is to be known as "Service Request (Extension)"), to:
- (a) early terminate the Period of Service (RE) of the Relevant Employee, except that in any one of the following situations, the Government may require the immediate termination of the Period of Service (RE) of the Relevant Employee
 - (i) the death of that Relevant Employee, or sickness or incapacity of that Relevant Employee for seven (7) calendar days or more in any 30-day period (unless otherwise approved by the Government on a case-by-case basis) preventing him from properly discharging his duties; or
 - (ii) in the reasonable opinion of the Government bureau or department at which the Relevant Employee is stationed, the performance of that Relevant Employee is unsatisfactory or has otherwise misconducted himself or has breached any law of Hong Kong; or
 - (iii) that Relevant Employee has on his own accord terminated the employment or appointment with the Contractor; or
 - (b) vary or extend the Period of Service (RE) of the Relevant Employee to any period as may be specified by the Government and the procedures concerning the service request will be handled in accordance with clause 5.7 below.
- 5.6 In the event that the Government exercises the right under clause 5.5(a) above by giving the requisite notice period (if required), the Contractor shall not be entitled to claim any additional payment.
- 5.7 In the event that the Government proposes to extend the Period of Service (RE) of the Relevant Employee under clause 5.5(b) above, the Contractor is requested to make available the Relevant Employee for an extension of the Service Period

(RE) as stated in the Service Request (Extension). If the Contractor is unable to do so whether due to the non-availability of the Relevant Employee or otherwise, the Contractor is required to give the Government notice within seven (7) calendar days following from the date of the Service Request (Extension). In the absence of such notice, the Contractor shall be deemed to be agreeable to the proposed extension whereupon the Government may issue to the Contractor prior notice of more than seven (7) calendar days to confirm the extended Period of Service (RE) and its duration ("Notice of Service (Extension)").

- 5.8 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 another SOA Contractor to provide Service (RE) to the Government.

6. Monitoring the Performance of Service

- 6.1 Prior to the commencement of the Service, the team of professional staff meeting the essential requirements as set out in clause 6.2 of Part I of the Tender Documents shall assist the Contractor in making all necessary preparation for monitoring the performance of the Service on behalf of the Contractor. The team of professional staff shall comprise the following three roles, with three different persons filling them:
- (a) a Contract Manager, who is empowered with full authority to make all necessary decisions regarding the performance of the Service under this Contract on behalf of the Tenderer;
 - (b) a Key Operations Contact Person for the Tenderer to liaise with the Government Representative and users of bureaux / departments in handling the day-to-day operational matters arising from and in the course of delivering the Service under this Contract; and
 - (c) a Technical Support Officer for the Tenderer and serving as a liaison with the IT Support Team of the Office of the Government Chief Information Officer (OGCIO) regarding the installation and usage of the Contract Staff Administration System (CSAS) – CSA Contractor Module provided by the Government.
- 6.2 The team of professional staff shall be readily available throughout the Term to liaise with and take instructions from the Government Representative.
- 6.3 The team of professional staff 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 None of the members in the team of professional staff as nominated in Contract Schedule 2A of Part III may be replaced unless with the Government Representative's prior written approval. If there are any staff changes in the team of professional staff, the Contractor shall propose to the Government Representative in writing with the support of the relevant documentary evidence proving the experience claimed for and employment status of the proposed replacement staff for the specific post, i.e. Contract Manager, Key Operations Contact Person or Technical Support Officer concerned has fully met the respective essential requirement for the position as set out clause 6.2 of Part I. Such proposal with relevant documentary evidence shall be submitted to the Government Representative in no less than fourteen (14) working days in advance of the joining date of the proposed replacement staff. The appointment or replacement of any members in the team of professional staff shall not relieve the Contractor from any liability or obligation under this Contract.
- 6.6 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.
- 6.7 Subject to the Government's obligations of confidence, the Contractor shall on demand provide to the Government Representative all reasonable co-operation and assistance in relation to the inspection and/or checking conducted in accordance with clause 6.6 above, including, but not limited to:
- (a) provision of all information requested by the Government, including employment contracts, wage payment records of the Relevant Employees;
 - (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.
- 6.8 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.
- 6.9 The Contractor shall bear its own costs and expenses incurred in compliance with its obligations specified in clauses 6.1 to 6.4, 6.7 and 6.8 above. If a Contractor fails to rectify any unsatisfactory Service, or any breach or non-compliance in

accordance with clause 6.8 above, the Government Representative shall be entitled, without prejudice to any other rights and remedies or actions to be taken under the Contract (including but not limited to terminate the Contract pursuant to clause 25 of this Part), 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.

- 6.10 Clauses 6.6 to 6.9 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 comply with the essential qualification requirements and essential experience requirements set out in the Specifications in Part VI as well as any essential specific requirements set out in the service request throughout the Period of Service (RE);
- (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 all its obligations under this Contract including without limitation the vesting of the Intellectual Property Rights in the Government, and the granting and/or procuring the grant of the licences to the Government, and its authorised users in accordance with clause 19 of this Part;

- (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 and bear all costs, charges and expenses that may be incurred in obtaining and maintaining all necessary licences or permits throughout this Contract;
- (i) the Contractor shall fully comply with specified requirements imposed by the Government Representative in writing for the purpose of safeguarding public interest at large in connection with its discharge of contractual obligations for the provision of services by the Relevant Employee. The Contractor shall, at its own cost, take all such actions as may be necessary for the compliance and execution of the specified requirements imposed by the Government Representative;
- (j) 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;
- (k) 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 (provided that they shall not be inconsistent with the conditioned hours of work) 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;
- (l) 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 this Part;

- (m) 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;
- (n) the Contract constitutes valid, legally binding obligations of the Contractor enforceable in accordance with its terms;
- (o) 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 genuine, true, accurate and complete;
- (p) throughout the Term, 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;
- (q) throughout the Term, it is not subject to any contractual obligation, or court judgment or ruling order or arbitration decision, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- (r) throughout the Term, 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
- (s) throughout the Term, 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 to the satisfaction of the Government 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 conditioned hours of work as specified in clause 5.1(d) of Part VI for all days of a month (subject to one rest day in every period of seven days and entitlement to statutory holidays), 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 (i) or (ii) or (iii) is the highest but subject to any upward adjustment from time to time as mentioned in clause 3.6 above.
- 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 conditioned hours of work as specified in clause 5.1(d) of Part VI for all days of a month (subject to one rest day in every period of seven days and entitlement to statutory holidays), 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 employment contracts and 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 6.8 and 6.9 of this Part, or to terminate the Contract in accordance with clause 25 of this Part.

10. Payment for Service

- 10.1 Subject to the satisfactory performance of the Services, 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 Payments for the Services shall be made on a monthly basis in accordance with the procedures specified below and comprising the amounts specified in sub-clauses (a) and (c) below (“payment for the Service”):
 - (a) at the end of each month of the Term, the Relevant Employees will be required to submit time sheets to the Government Representative detailing the Service (RE) rendered and the time spent. The payment in respect of that month for the Service (RE) performed by each Relevant Employee will be based on time spent (per day provided that the conditioned hours of work as specified in clause 5.1(d) of Part VI are complied with) on the Service (RE) rendered and the Individual Rate of that Relevant Employee (viz., the number of such days of Service (RE) rendered multiplied by the Individual Rate of that 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. For those Relevant Employees who are not working under a shift arrangement, normal office hours means the standard working hours as stated in the respective employment contracts of the Relevant Employees; for those working under a shift arrangement, normal office hours means the designated working hours according to the shift arrangement drawn up by the Government Representative as mentioned in 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) the 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) the 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) the 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 Where and to the extent it is stated to be required in Part IV of this Contract, the Contractor shall effect and keep in force, and renew upon expiry, throughout the Applicable Period (as defined in clause 11.3 below):
 - 11.1.1 a public liability insurance policy in the joint names of (i) the Contractor and (ii) the Government, (with appropriate cross-indemnity clause as if a separate policy has been issued to each of them) subject to a maximum indemnity amount in the sum of not less than an indemnity amount of HK\$10,000,000 for each claim or a

series of claims arising from one event, but otherwise unlimited in the aggregate indemnity amount for all claims arising during the entire period of insurance (“public liability insurance policy”); and

11.1.2 any other insurance specified in Part IV of this Contract (including those specified in clause 11.4 below);

- (a) with an insurance company authorised under the Insurance Ordinance (Chapter 41 of the Laws of Hong Kong) and on such terms and conditions as shall be approved by the Government; and
- (b) (applicable to the public liability insurance policy under clause 11.1.1 above) against liability to pay damages and compensation for injury or death of any person and loss or damage to any property.

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 For the purposes of obtaining the Government’s approval of the terms and conditions of the insurance policy, before taking out of the same, if required by the Government, the Contractor shall submit the draft insurance policy to the Government for review no later than one (1) week after the signing and execution of Standing Offer Deed.

11.3 The Applicable Period for the public liability insurance policy shall be the Term of Contract; and for other insurance policies specified to be required in the Part IV of the Contract, such Applicable Period shall be as stated in the Part IV of the Contract.

11.4 Without prejudice to clauses 11.1 and 11.3 above, the Contractor shall effect and maintain employer’s liability insurance in respect of all its employees and other staff in accordance with all applicable laws and regulations.

11.5 If required by the Government, the Contractor shall deliver to the Government copies of all insurance policies required under the Contract together with receipts or other evidence of payment of the latest premium due under the policies.

11.6 For all insurance policies required under the Contract, the Contractor shall comply with and observe duly and punctually all terms and conditions set out in these policies. 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 covered by the relevant insurance policy.

- 11.7 If the Contractor fails to give effect to or maintain any insurance policy 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.
- 11.8 No provision including any indemnity limit specified in any insurance policy required under the Contract shall relieve the Contractor of any liability under the Contract or be construed as a cap on the liability of the Contractor 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 and Indemnities

- 12.1 Neither the Government nor any of its employees or agents shall 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 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 (in the course of employment).
- 12.2 Without prejudice to any other provision of the Contract, the Contractor shall indemnify the Government and its employees or agents (each an "Indemnified Party") from and against
- (a) all and any liabilities and indebtedness (including liabilities to pay damages or compensation), losses, damage, costs, charges and expenses incurred or suffered by an Indemnified Party of whatsoever nature (including all legal and expert costs, charges and expenses on a full indemnity basis); and
 - (b) all and any demands, claims, actions, arbitrations, proceedings, threatened, brought or instituted by any person against an Indemnified Party or by an Indemnified Party against any person (regardless of whether or not they have been settled or compromised) (collectively, "Claims" and each a "Claim") and everything stated in Sub-clause (a) above incurred or suffered by an Indemnified Party in all and any such Claims,

which arise directly or indirectly as a result of or in connection with, or which relate in any way to, all or any of the following:

- (i) the breach of any provisions of the Contract by the Contractor;

- (ii) the negligence, recklessness, tortious acts or wilful act or omission of the Contractor, its employees, agents or sub-contractors;
- (iii) any Warranty which is incorrect, inaccurate, incomplete or misleading;
- (iv) any claim or allegation that the use or possession of the Materials or Third Party Materials infringes the Intellectual Property Rights or any other rights of any person; or
- (v) the non-compliance by the Contractor, its employees, agents or sub-contractor(s) with any applicable law, or regulation, order or requirement of any government agency or authority;
- (vi) any act or omission of the Contractor, or its employees, agents or sub-contractors, in the performance of the Contract notwithstanding that the Contractor is authorised or obliged to do or commit any such act or omission under this Contract;
- (vii) any loss, damage, injury or death referred to in Clause 12.1 above save and except injury or death caused by the Negligence of the Government or any of its employees (in the course of employment); or
- (viii) any injury or death of any third party, or any loss or damage to property sustained by any third party, in consequence of any act, omission, default, or negligence of the Contractor or any of its employees, agents and sub-contractors.

Each of the above is separate and shall be construed independently and shall not prejudice or be limited by reference to or inference from the other of them or other provisions of this Contract.

- 12.3 In the event of any person suffering any injury or death in the course of or arising out of the Contract and whether there be a claim for compensation or not, the Contractor shall verbally inform the Government Representative as early as practicable and deliver to the Government a written report within seven (7) working days after the occurrence of the injury or death, or on an earlier date specified by the Government Representative.
- 12.4 For the purposes of this clause 12, “Negligence” (appearing in upper case) shall have the same meaning as that assigned to it in section 2(1) of the Control of Exemption Clauses Ordinance (Chapter 71 of the Laws of Hong Kong).
- 12.5 The indemnities, payment and compensation given in pursuance of the Contract by the Contractor shall not be affected or reduced by reason of any failure or omission of the Government in enforcing any of the terms and conditions of the Contract.

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 By the Deadline as specified in the notification of conditional acceptance of tender to be issued under clause 20.2 of Part I, the successful Tenderer is required to submit a performance bond (alternatively referred to as the bank guarantee or banker's guarantee) in accordance with clause 24 of Part I and in the form appearing in **Annex** to this Part.
- 14.2 The performance bond to be submitted by the successful Tenderer pursuant to clause 14.1 above shall be issued by a bank details of which shall have been submitted in writing to the Government for the Government's approval before issue. 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. The effective date of the replacement performance bond (if approved) must remain as no later than the Commencement Date.
- 14.3 The performance bond shall only be released in accordance with the terms stated therein.

15. Relationship of the Parties

- 15.1 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.
- 15.2 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.

16. Assignment and Sub-Contracting

- 16.1 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. Any person purportedly appointed by the Contractor as agent shall be treated as sub-contractors for the purpose of this clause 16 and for the whole of the Contract.

- 16.2 The Contractor shall submit the proposed sub-contract to the Government for approval.
- 16.3 The Government may impose conditions either to be complied with by the Contractor and/or any proposed sub-contractors before giving any approval under clause 16.1 above including without limitation the execution of a sub-contractor's undertaking by the proposed sub-contractor in favour of the Government in such form and substance to be prescribed by the Government. Where the Government requests the same, 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.
- 16.4 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. The Contractor shall be responsible for all acts, defaults, omissions and neglect of any of its officers, employees, agents, sub-contractors (at whatever level), and employees and agents of any such sub-contractor as if they were its own.

17. Disclosure of Information

- 17.1 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) a brief description of 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 the team of professional staff employed meeting the essential requirements as set out in clause 6.2 of Part I by the Contractor to assist in the performance of the Contract;
 - (d) the date of award of the Contract; and

- (e) 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.

- 17.2 Disclosure may also be made by the Government under any of the circumstances specified in clause 33 of Part I in relation to any information concerning or relating to the Contractor or the Contract or the Services or the Materials, recorded in whatever media.
- 17.3 Nothing in this clause 17 or in clause 33 of Part I shall imply or be construed that the Government owes any duty of confidentiality to the Contractor including without limitation in relation to any information of or concerning this Contract or the Contractor or the Services or the Materials.

18. Publicity

- 18.1 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.
- 18.2 Subject to clause 18.1 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.
- 18.3 Notwithstanding any consent or approval given under clauses 18.1 or 18.2 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.

19. Intellectual Property Rights

- 19.1 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 19.3 below, the Contractor warrants that such Materials are original works developed by or on behalf of the Contractor including without limitation all Relevant Employees.
- 19.2 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).

- 19.3 If any materials of which the Intellectual Property Rights are owned by third parties and incorporated into the Materials or supplied or used by the Contractor in the performance of the Contract (“Third Party Materials”), the Contractor shall identify the Third Party Materials to the Government and keep the Government informed in writing of such Third Party Materials. The Contractor hereby grants or in case it is not empowered to do so, shall at its own costs and expenses procure that there will be granted, in favour of the Government, its authorised users, assigns and successors-in-title a royalty-free, non-exclusive, irrevocable, perpetual, worldwide and sub-licensable licence, for all purposes contemplated by the Contract, to use (including doing any of the acts restricted by copyright set out in sections 22 to 29 of the Copyright Ordinance (Chapter 528 of the Laws of Hong Kong)) the Third Party Materials.
- 19.4 The Contractor warrants that:
- (a) prior to the use and incorporation of such Third Party Materials into the Materials or in providing the Services, the Contractor shall have obtained the grant of all necessary clearances for itself and for the Government, its authorised users, assigns and successors-in-title to use the Third Party Materials in the manner and for any of the purposes contemplated by the Contract. The costs of the above clearances and licences shall be borne by the Contractor;
 - (b) the provision of the Materials, Services and Third Party Materials by the Contractor and the use or possession by the Government, its authorised users, assigns and successors-in-title 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 or any other rights of any person; and
 - (c) the exercise of any of the rights granted under the Contract by the Government, its authorised users assigns and successors-in-title will not infringe any Intellectual Property Rights or any other rights of any person.
- 19.5 The Contractor hereby irrevocably waives and undertakes to procure, at its own costs and expenses, its officers, employees, agents, sub-contractors and all authors concerned to irrevocably waive all moral rights (whether past, present or future) in respect of the Materials and Third Party Materials. Such waiver shall operate 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.
- 19.6 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 required by the Government to give full effect to this clause 19, and shall provide all such assignments, deeds, licences,

documents and instruments to the Government within fourteen (14) days from the date of the Government's written request or such longer period as may be agreed by the Government in writing.

- 19.7 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.
- 19.8 The provisions of this clause 19 shall survive the expiry or termination of the Contract and shall continue in full force and effect notwithstanding such expiry or termination.

20. Software Asset Management

- 20.1 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.
- 20.2 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.
- 20.3 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.
- 20.4 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.
- 20.5 The provisions of this clause 20 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.

21. Confidential and Official Information

- 21.1 The Contractor shall not disclose and shall treat as confidential all Confidential Information.
- 21.2 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 before the formal engagement of the Relevant Employee as 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.

- 21.3 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.
- 21.4 The Government may request the Contractor in writing at any time that any Confidential Information disclosed pursuant to the terms of this clause 21 and any copies, analyses, compilations and extracts thereof whether in hard copies, electronic format or other media be 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.
- 21.5 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).
- 21.6 Without prejudice to any other provision of the Contract, the Contractor shall indemnify and keep indemnified each of the Government, its assigns successors-in-title and authorised users from and against everything stated in clauses 12.2 and 12.3 above 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).

- 21.7 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, disclose, publish or reproduce, and shall procure and ensure each person who may be imparted with any Confidential Information in accordance with clauses 21.1 and 21.2 above shall not use, disclose, publish or reproduce, the Confidential Information for any other purposes without the Government's prior written consent.
- 21.8 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.
- 21.9 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.
- 21.10 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.
- 21.11 The provisions of this clause 21 shall survive the expiry or termination of the Contract and shall continue in full force and effect notwithstanding such expiry or termination.

22. Contractor's Obligation to Inform Government of Relevant Facts

- 22.1 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.

- 22.2 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).
- 22.3 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.

23. Conflict of Interest

- 23.1 The Contractor shall, during the Term of the Contract and for six (6) months thereafter, ensure that it (including its Associates and Associated Persons, each of the Relevant Employees and each sub-contractor and their Associates and Associated Persons (collectively “Restricted Group”)) shall not undertake any business, activity, service, task or job or do anything whatsoever for its own account or for or on behalf of another person (other than in the proper 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.
- 23.2 The Contractor shall, during the Term of the Contract and for six (6) months thereafter, immediately notify in writing the Government of all or any facts which may reasonably be considered to give rise to a situation where the interests (of whatsoever nature) of the Contractor or any other member of the Restricted Group, conflict or compete, or may be seen to conflict or compete, with the Contractor’s duties or obligations under the Contract.
- 23.3 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.
- 23.4 The Contractor must ensure that itself and each other member of the Restricted Group (including the Relevant Employees) shall keep themselves informed and that each other member of the Restricted Group (including the Relevant Employees) shall 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 under this Contract.

24. Prevention of Bribery

- 24.1 The Contractor acknowledges it has been reminded that:

- (a) dishonesty, theft and corruption on its part or that of its officers, employees, agents or sub-contractors are criminal offences and may lead to prosecution under section 9 of the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong), sections 17, 18D and 19 of the Theft Ordinance (Chapter 210 of the Laws of Hong Kong) and section 161 of the Crimes Ordinance (Chapter 200 of the Laws of Hong Kong); and
- (b) the soliciting or accepting of advantages, as defined in the Prevention of Bribery Ordinance is not permitted.

24.2 The Contractor shall inform its officers, employees (whether permanent or temporary), agents and sub-contractors that the soliciting or accepting of advantages (as defined in the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong)) is not permitted. The Contractor shall also caution its officers (including directors), employees and agents and sub-contractors against soliciting or accepting any 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.

24.3 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).

- 24.4 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.
- 24.5 The Government shall have the right to terminate the entire Contract pursuant to clause 25.1 of this Part in the event that the Contractor or any of its officers, employees, agents and sub-contractors is convicted of an offence under the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong), the Theft Ordinance (Chapter 210 of the Laws of Hong Kong) or the Crimes Ordinance (Chapter 200 of the Laws of Hong Kong).
- 24.6 The Contractor shall within two (2) weeks after the commencement of the Contract draw up and submit a staff code of conduct to the Government Representative including, among other probity issues, a statement explicitly prohibiting its sub-contractor (if any), or any person employed by it to provide the Services from soliciting or accepting any form of advantages in discharging his duties under the Contract. It shall ensure that its sub-contractor (if any), or any person employed by it to provide the Services is well aware of the prohibited acts explicitly stated in clause 24.2 above and of the staff code of conduct. The code of conduct should form part of the employment contract to ensure acknowledgement and compliance by the employees.

25. Termination of Contract

25.1 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 26 of this Part:

- (a) failure on the part of the Contractor to make available one or more Relevant Employee(s) to perform the Service (RE) with effect from the date as specified in a Notice of Service (RE) issued or on the date as specified in the Notice of Service (Extension) issued (as the case may be);
- (b) 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;
- (c) 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 6.9 of this Part;

- (d) the Contractor being in breach of any provision of the Contract which in the opinion of the Government is not capable of remedy;
- (e) any Warranty is incorrect, inaccurate, incomplete or misleading;
- (f) the Contractor having made a material misrepresentation (including submission of false statement or inaccurate information) during the tendering process of the Contract;
- (g) the Contractor, any officer (including director), employee, agent or sub-contractor of the Contractor having committed an offence under the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong) or any law of a similar nature in relation to the Contract or any other contract made by the Contractor with the Government;
- (h) the Contractor abandoning the Contract in whole or in part;
- (i) the Contractor assigning or transferring or purporting to assign or transfer all or any part of the Contract or all or any of its rights or obligations thereunder without the prior written consent of the Government; or
- (j) any event or circumstance occurring which enables the Government to terminate the Contract under any one of the following provision of the Part IV of Contract:
 - (i) clause 14 and Annex to Part IV (Performance Bond);
 - (ii) clause 24.5 (Prevention of Bribery);
 - (iii) clause 32.3 (Force Majeure);
 - (iv) clause 33.1 (Illegal Workers);
 - (v) clause 36.4 (Admission of Contractor Personnel to Government Premises); or
 - (vi) clause 32.3(c) of Part I of Terms of Tender (Warranty against Collusion).

25.2 The Government may immediately terminate the Contract upon the occurrence of any of the following events:

- (a) a proposal is made for a voluntary arrangement or any other composition, scheme or arrangement with, or assignment for the benefit of, the Contractor's creditors;
- (b) if the Contractor is an incorporated body, a shareholders' or members' resolution has been passed that it be wound up or dissolved (other than voluntarily for the purpose of bona fide reconstruction or solvent amalgamation the terms of which have been approved by the Government in advance);

- (c) a petition is presented for the winding up or dissolution or bankruptcy of the Contractor, which is not dismissed within fourteen (14) days after the petition is presented;
- (d) the Contractor is or becomes insolvent, or any order is made for the Contractor's bankruptcy or winding up or dissolution;
- (e) an administrator, administrative receiver, receiver or similar officer is appointed over the whole or any part of the Contractor's business or assets;
- (f) the Contractor suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- (g) the Government reasonably believes that any of the events mentioned above is about to occur.

25.3 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.

- 25.4** Each of the grounds entitling the Government to terminate the Contract as specified above shall be construed independently and shall not be limited or restricted by reference to or inference from any other ground or any other provision of this Contract.

26. Termination Consequences

- 26.1** Upon expiry or early termination of the Contract (howsoever occasioned) ("Termination"):

- (a) the Contract shall be of no further force and effect, but without prejudice to:
 - (i) the Government's rights and claims under the Contract or otherwise at law against the Contractor arising from antecedent breaches of the Contract by the Contractor (including any breach(es) which entitle the Government to terminate the Contract);
 - (ii) the rights and claims which have accrued to a Party prior to the Termination; and
 - (iii) the continued existence and validity of those provisions which are expressed to or which in their context by implication survive the Termination (however occasioned) (including but not limited to

clauses 6.6, 6.7, 6.8, 6.9, 19, 20, 21 of this Part and clause 1 of Part I containing the interpretation);

- (b) the Government shall not be responsible for any claim, legal proceeding, liability, loss (including any direct or indirect loss, any loss of revenue, profit, business, contract or anticipated saving), damages (including any direct, special, indirect or consequential damages of whatsoever nature) or any cost or expense, suffered or incurred by the Contractor arising out of or in relation to the Termination;
- (c) without prejudice to the other rights and claims of the Government including the right to seek indemnity under clause 12.2 of this Part in the event of the Termination under clause 25.1 or 25.2 of this Part, the Contractor shall be liable for all losses, damage, costs and expenses incurred by the Government arising from the Termination under clause 25.1 or 25.2 of this Part only (and excluding under clause 25.1(j)(iii) of this Part) including without limitation (i) 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 Services and all costs and expenses incurred in making the arrangements for the same including conducting tender for the uncompleted Services; and (ii) any additional expenditure incurred by the Government in connection with a default by the Contractor referred to in clause 25.1 or 25.2 of this Part. 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 Services provided by the Contractor prior to Termination and in accordance with the Contract for which payment has yet to be made by the Government;
- (d) the Contractor shall 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;
- (e) the Contractor shall 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;
- (f) within twenty-eight (28) days of the date of termination, the Contractor shall 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
- (g) the Contractor shall 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.

- 26.2 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.

27. Set-off

- 27.1 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 by way of equitable set off or at common law the amount of such liquidated liability and a reasonable estimate of the amount of any unliquidated 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 made between the Government and the Contractor.

28. Costs and Expenses

- 28.1 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.

29. Governing Law and Jurisdiction

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

30. Change of Address

- 30.1 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.

31. Notices

- 31.1 Any notice to be served by Government to the Contractor shall be sent by recorded delivery, registered post, telex, fax or electronic mail and shall be deemed to have been served to the Contractor within twenty-four (24) hours of posting the notice or immediately upon sending the notice to the number or address of the addressee by post, fax or electronic mail as the case may be as stated in the Standing Offer Deed (or such other number or address as the Contractor may by not less than five (5) days' prior written notice specify).

32. Force Majeure

- 32.1 If the Contractor becomes aware of any matter likely to constitute a Force Majeure Event, the Contractor shall forthwith notify the Government in writing concerning such matter and provide the Government with all relevant information as the Government may request.
- 32.2 Within seven (7) 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, how the Force Majeure Event has and/or will materially prevent it from performing the Contract or such part thereof, and likely duration of such material prevention.
- 32.3 Provided the Government is satisfied with the Contractor's claim of a Force Majeure Event which has materially prevented and/or will continue to materially prevent it from performing its obligations under the Contract or such part thereof, the Contract or such part thereof strictly to the extent of such prevention shall be suspended during the subsistence of such Force Majeure Event commencing from a date to be agreed between the Parties ("Suspension due to Force Majeure"). Where the Government is not so satisfied about any alleged claim of a Force Majeure Event, there shall be no Suspension due to Force Majeure. The Contractor may not allege or claim any event as a Force Majeure Event. Any failure by the Contractor to perform any obligation under the Contract shall be treated as default and entitles the Government to terminate the Contract under clause 25 of this Part.
- 32.4 Without prejudice to the generality of clause 32.3 above, whilst the Suspension due to Force Majeure subsists:
- (a) the Contractor shall not be required to perform any part of its obligations under the Contract strictly to the extent it is materially prevented from doing so by the Force Majeure Event ("Affected Obligations") but it shall use its best endeavours to remove or mitigate the effect of the Force Majeure Event on the Affected Obligations;
 - (b) the Government may make alternative arrangements for the performance of the Affected Obligations, whether by another person or otherwise, without compensation to the Contractor;

- (c) the Contractor shall not be entitled to any payment of money in respect of the Affected Obligations (if any money would have been payable in the first place);
- (d) notwithstanding anything in the Contract to the contrary, no compensation shall be payable by either Party to the other due to any losses or damage arising from the Suspension due to Force Majeure; and
- (e) the Contractor shall continue to fully and punctually perform and observe all of its other obligations which are not affected by the Force Majeure Event in full accordance with the requirements of the Contract including those obligations which are not Affected Obligations, and to that extent, all terms and conditions of the Contract shall continue to apply and be in full force and effect.

32.5 Following the issue of a notice by the Contractor under clause 32.1 above which has led to Suspension due to Force Majeure under clause 32.3 above, the Contractor shall keep the Government informed once every week or at such longer frequency as may be allowed by the Government, and in any event from time to time upon the request of the Government, of:

- (a) the likely duration of the relevant Force Majeure Event and of its effect of materially preventing the Contractor from performing the Affected Obligations;
- (b) the actions taken or proposed to be taken by the Contractor to mitigate or minimise the effects of that Force Majeure Event (“Mitigation Actions”); and
- (c) any other matters relevant to that Force Majeure Event or the Contractor’s performance affected by that Force Majeure Event.

32.6 As soon as the relevant Force Majeure Event has terminated or otherwise that the Government considers that the Mitigation Actions have minimised the effect of the Force Majeure Event on the ability of the Contractor to perform the Affected Obligations, the Contractor shall forthwith notify the Government, or the Government may on its own, after consultation with the Contractor, by notice in writing to the Contractor, determine the appropriate date for resuming the performance of the Affected Obligations (“Resumption Date”). The Contractor shall immediately after the termination of the Force Majeure Event or with effect from Resumption Date as determined by the Government in the aforesaid manner, resume performance of the Affected 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 Resumption Date, the Government’s decision shall be final in the absence of manifest error.

32.7 Should a Suspension due to Force Majeure subsists for more than thirty (30) days, the Government shall be entitled to, but is not obliged to terminate the Contract pursuant to clause 25 of this Part.

33. Illegal Workers

- 33.1 The Contractor undertakes not to employ illegal workers in the execution of this Contract or any other Government contracts. Should the Contractor be found to have employed illegal workers in breach of this undertaking, the Government Representative may, on behalf of the Government, by notice, terminate this Contract pursuant to clause 25.1(j) of this Part.

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 Time shall be of the essence of the Contract but 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. Admission of Contractor Personnel to Government Premises

- 36.1 Upon request from time to time by the Government, the Contractor shall provide to the Government a list of the names, posts, staff identity card numbers, addresses and telephone numbers of all Contractor's employees, agents, sub-contractors and those employees and agents of the aforementioned sub-contractors (collectively "Relevant Personnel" which term shall for the avoidance of doubt include all

Relevant Employees) who may at any time require admission on behalf of the Contractor to any premises occupied by the Government for the purposes of the Contract if so required by the Government Representative, and in that event such list shall specify the capacities in which those persons are employed by or connected with the Contractor and shall contain such other particulars as the Government Representative may reasonably require.

- 36.2 The Contractor shall ensure that while any of the Relevant Personnel is on the Government's premises they will conform to the Government's normal codes of staff and security practice.
- 36.2A The Contractor shall require all Relevant Personnel, save for those exempted, to present vaccination record complying with the scheduled dosage requirements from time to time set out in the Vaccine Pass website of the Government prior to their entry into indoor government premises which are their places of work, or for work-related purposes (including for meetings and for fulfillment of duties). The number of vaccine doses required may be revised by prior written notice from the Government to the Contractor in the light of the development of COVID-19 epidemic situation by revising the aforesaid website.
- 36.2B Exemption from the requirement to present vaccination record will be granted to (a) those who are medically unfit for COVID-19 vaccination as supported by a valid medical certificate; and (b) pregnant staff with prior exemption to be granted by the Government on a case-by-case basis. The exempted categories of Relevant Personnel mentioned in this clause may be revised by prior written notice from the Government to the Contractor.
- 36.2C For the purpose of clauses 36.2A and 36.2B, the Contractor shall comply with the entry requirement of Government premises, implementation approaches, requirement on the vaccination record and other relevant documentations to be presented, consequence of non-compliance, maintenance and updating of the register of vaccination status, and all other necessary requirements as determined by the Government by prior written notice from the Government to the Contractor.
- 36.2D The Contractor shall ensure that the Relevant Personnel will have given consent to the Contractor to pass the personal data in relation to clauses 36.2A and 36.2B above to authorised persons of the Government for the purposes of the provisions of this clause 36 and other provisions of the Contract.
- 36.3 The Government Representative reserves the right to refuse to admit to the Government premises any person, whose admission would be, in the reasonable opinion of the Government Representative, undesirable.
- 36.4 In the event that the Contractor fails to comply with this clause 36 and it is determined that such failure is prejudicial to the interests of the Government, the Government Representative may thereupon terminate the Contract forthwith pursuant to clause 25.1(j) of this Part.

37. Entire Agreement

- 37.1 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. On the other hand, the Government has relied on the Warranties when entering into the Contract. 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.
- 37.2 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).

38. Variations

- 38.1 Subject to other provisions of the Contract which provide for the power of the Government to make changes, no waiver, cancellation, alteration or amendment of or to the provisions of the Contract shall be valid unless made by an agreement in writing and duly signed by the Contractor and the Government and in which agreement, the Parties expressly agree to the relevant waiver, cancellation, alteration or amendment of or to the provisions of the Contract as specified therein.

39. Assistance in Legal Proceedings

- 39.1 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.
- 39.2 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.

40. Order of Precedence

40.1 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) the Conditions of Contract in Part IV;
- (b) the Contract Schedules in Part III;
- (c) the Specifications in Part VI;
- (d) the Terms of Tender in Part I including the interpretation in clause 1;
and
- (e) the Standing Offer Deed in Part V.

41. Contracts (Rights of Third Parties) Ordinance

41.1 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).

42. Retention of Records

42.1 The Contractor shall keep and maintain until seven (7) years after the expiry of the Contract, or such longer period as may be agreed by the parties, full and accurate records in relation to the Contract including the Services 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 or authorised person access to the records and to make and retain copies thereof as may be requested by the Government or its representative or authorised person.

Annex - Form of Bank Guarantee

THIS GUARANTEE is made on the day of 20
BY.....
of, a bank with a valid banking licence within the
meaning of the Banking Ordinance, Chapter 155 of the Laws of Hong Kong (“Guarantor”)

IN FAVOUR OF

The Government of the Hong Kong Special Administrative Region of the People’s Republic
of China (“Government”)

WHEREAS

- (A) By an invitation to tender issued by the Government (Tender Ref: GCIO 5/2 (T26)), the Government invited tenders for the Supply Services of Information Technology Contract Staff to the Government of the Hong Kong Special Administrative Region Tender Reference: GCIO 5/2 (T26)(“Contract”) upon the terms and conditions of the Contract.
- (B) It is proposed that the Contract shall be awarded to <Name of the Contractor>, a company whose registered office is situated at <registered office address> (“Contractor”).
- (C) It is a condition precedent to the Government agreeing to grant the Contract the Contractor that, inter alia, the Guarantor executes this Guarantee in favour of the Government.

Now this Deed witnesses as follows :-

- (1) Where applicable, words and expressions used in this Guarantee (including the recitals) shall have the meaning assigned to them in the Contract. The interpretation principles set out in Clause 1.2 of Part IV of the Contract shall also apply to this Guarantee.
- (2) In consideration of the Government agreeing to enter into the Contract with the Contractor:

- (a) The Guarantor hereby irrevocably and unconditionally guarantees, as a primary obligor and not as a surety, and as a continuing security, the due and punctual performance and observance by the Contractor of all of its obligations under the Contract and the Guarantor shall pay to the Government on demand and without cavil or argument all monies and liabilities which are now or at any time hereafter shall become due or owing by the Contractor to or in favour of the Government under or in connection with the Contract together with all costs, charges and expenses on a full indemnity basis which may be sustained or incurred by the Government by reason or in consequence of any default on the part of the Contractor in performing or observing any of its obligations under the Contract.
 - (b) The Guarantor, as a principal obligor and not as a surety, and as a separate and independent obligation and liability from its obligations and liabilities under sub-clause (a) above, irrevocably and unconditionally agrees to indemnify and keep indemnified the Government from and against and shall pay to the Government on demand and without cavil or argument all losses, damages, costs, charges and expenses on a full indemnity basis suffered or incurred by the Government arising from or in connection with the failure of the Contractor to perform or observe fully or punctually any of its obligations under the Contract.
 - (c) The Government may place and keep any monies received by virtue of this Guarantee to the credit of a suspense account for so long as the Government may think fit in order to preserve the rights of the Government to sue or prove for the whole amount of its claims against the Guarantor, the Contractor or any other person.
- (3) This Guarantee shall not be affected by any change of name or status in the company, firm or individual described as “the Contractor” or where the Contractor is a partnership, any change in the partners or where the Contractor is a company, any change in its members or directors.
- (4) The Guarantor shall not be discharged or released from this Guarantee by any arrangement made between the Government and the Contractor or by any change in obligations of the Contractor under the Contract or by any forbearance granted by the Government to the Contractor as to payment, time, performance or otherwise whether or not such arrangement, change or forbearance may have been or is made or granted with or without knowledge or assent of the Guarantor.
- (5) Without prejudice to Clause 4 above, the obligations of the Guarantor under this Guarantee shall remain in full force and effect and shall not be affected or discharged in any way by, and the Guarantor hereby waives notice of:
- (a) any suspension of, variation or amendment or supplement to the Contract (including without limitation extension of time for performance) or any concession or waiver by the Government, in whole or in part, in respect of the

Contractor's obligations under the Contract;

- (b) any provision of the Contract being or becoming illegal, invalid, void, voidable or unenforceable;
 - (c) the termination of the Contract for any reason;
 - (d) any forbearance or waiver of any right of action or remedy that the Government may have against the Contractor and/or the negligence, failure, omission, indulgence or delay by the Government in enforcing any right, power, privilege to or remedy available to the Government in relation to the obligations of the Contractor set out in the Contract;
 - (e) the voluntary or involuntary liquidation, bankruptcy, dissolution, sale of assets, receivership, general assignment for benefit of creditors, insolvency, reorganisation arrangement, composition, or other proceedings of or affecting the Contractor or its assets, or any change in the constitution or membership or shareholding of the Contractor (as the case may be);
 - (f) any assignment or sub-contracting by the Contractor of any or all of its obligations set out in the Contract, whether or not such assignment or sub-contracting has been consented to; and
 - (g) without prejudice to the generality of the foregoing, any fact or event (whether similar to any of the foregoing or not) which in the absence of this provision would or might constitute or afford a legal or equitable discharge or release of or defence to the Guarantor, other than an express release of its obligations by the Government.
- (6) This Guarantee shall extend to all obligations of the Contractor under the Contract as the same may from time to time be amended or supplemented and the Guarantor hereby prospectively consents to whatever amendment, variation or supplement which may be made to the Contract.
- (7) This Guarantee shall have immediate effect upon execution and is a continuing security. This Guarantee 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 three (3) months after the expiry or earlier termination of the Term; or
 - (b) in the case if at the time of expiry or earlier termination of the Term, there is any outstanding right or claim which has accrued to the Government prior to the expiry or earlier termination of the Term (whether arising from antecedent breach(es) by the Contractor of the Contract or otherwise), the date falling thirty-six (36) months after the expiry of the Warranty Period;

whichever is the applicable.

- (8) This Guarantee is in addition to and shall not merge with or otherwise prejudice or affect any contractual or other right or remedy or any guarantee, indemnity, lien, pledge, bill, note, charge or any other security which the Government may at any time hold (collectively “Other Security”) and this Guarantee may be enforced by the Government without first having recourse to any of the Other Security or taking any steps or proceedings against the Contractor, and notwithstanding any release, waiver or invalidity of the Other Security.
- (9) Any demand, notification or certificate given by the Government specifying amounts due and payable under or in connection with any of the provisions of this Guarantee shall be conclusive and binding on the Guarantor.
- (10) The obligations expressed to be undertaken by the Guarantor under this Guarantee are those of primary obligor and not as a surety.
- (11) This Guarantee shall be governed by and construed according to the laws for the time being in force in the Hong Kong Special Administrative Region of the People’s Republic of China (“Hong Kong”) and the Guarantor agrees to submit to the exclusive jurisdiction of the courts of Hong Kong.
- (12) All documents arising out of or in connection with this Guarantee shall be served:-
 - (a) upon the Government, at the Office of Government Chief Information Officer of 19/F., West Wing, Central Government Offices, 2 Tim Mei Avenue, Tamar, Hong Kong, marked for the attention of Government Chief Information Officer, facsimile number 3153 2666;
 - (b) upon the Guarantor, at _____, marked for the attention of _____, facsimile number _____.
- (13) Documents to be served under this Guarantee shall be deemed to have been duly served by one party if sent by letter or facsimile addressed to the other party at the address stated above or to the facsimile number set out above. The documents so served shall be effective (a) on the date of delivery if hand-delivered; (b) on the date of transmission if sent by facsimile (as evidenced by confirmed transmission report); and (c) if despatched by mail (whether registered or not), on the day on which they are tendered for delivery by the postal authority in Hong Kong.
- (14) Notwithstanding anything herein to the contrary, the aggregate amount of the Guarantor’s liability under this Guarantee shall not exceed _____.

IN WITNESS whereof the Guarantorhas caused its [Common Seal/
Seal* to be hereunto affixed] [lawful attorney to execute this Guarantee as a deed] the day and
year first above written.

The [Common Seal/Seal*] of the said)
Guarantor was hereunto affixed)
and signed by)
.....)
[Name and Title]
duly authorised by its board of directors:)
.....)
.....)

@ Signed Sealed and Delivered)
for and on behalf of and as)
lawful attorney of the Guarantor)
under power of attorney dated)
..... and deed of delegation)
dated)
by)
[Name and Title]
and in the presence of.....)
.....)
.....)
[Name and Title]

* Please delete as appropriate.

@ See Powers of Attorney Ordinance, Chapter 31 of the Laws of Hong Kong.

Note: When the bank guarantee is executed under power of attorney, a photocopy
of the power of attorney, certified on each page by a Hong Kong solicitor
that it is a true and complete copy of the original must be submitted.

PART V

STANDING OFFER DEED

THIS DEED made on the _____ day of _____, 2022

BETWEEN:

- (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; and
- (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 Services as specified in the Tender Documents with the reference number GCIO 5/2 (T26).
- (2) A tender was submitted by the Contractor which has been accepted by the Government.
- (3) The Government wishes to acquire the Services if so desires from different Contractors to serve various Government bureaux and departments in Hong Kong.

NOW THIS DEED WITNESSES AS FOLLOWS:

1. All terms and expressions defined in the Tender Documents published by the Government in connection with the Invitation to Tender have the same meanings when used herein (including the recitals).
2. The SOA Contract between the Government and the Contractor is hereby deemed constituted and shall comprise the following documents which are:
 - (i) Part IV - Conditions of Contract;
 - (ii) Part III - Contract Schedules, where applicable, in the respective forms as submitted by the Contractor, and which form part of its tender and incorporating such amendments as the Government stipulates or as the parties may subsequently have agreed;
 - (iii) Part VI – Specifications;
 - (iv) Part I – Terms of Tender including the interpretation; and
 - (v) Part V – this Standing Offer Deed.

All of the above items are annexed to these Standing Offer Deed for identification purposes.

3. In consideration of one dollar (HK\$1) (receipt whereof is hereby acknowledged), the Contractor hereby binds itself to perform all Services, which are to be performed or provided on demand under the terms of the Contract, on and subject to the terms and conditions set out in the Contract. Charges for such Services shall be payable on and subject to the terms and conditions set out in the Contract.
4. For the purposes of Clause 31 of Part IV, the address and facsimile number of the Contractor are as follows:

[Name of the Contractor]

[Address]

Facsimile number:

Email Address:

Attention: [Post title]

In witness whereof the parties hereto have entered into this Standing Offer Deed on the day and year first above 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 the issue of a Service Request (Competitive Bidding) in accordance with the procedure set out in clause 4 of this Part, the Contractor is required:

- (a) to *propose* eligible candidates fulfilling the essential qualification requirements as set out in clause 2.1.1 of this Part, as well as any other essential requirements and specific requirements as specified by the Government in a Service Request (Competitive Bidding), 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. The professional team who performs such supervision and management shall include the Contract Manager, Key Operations Contact Person and Technical Support Officer as nominated in Contract Schedule 2A of Part III.

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 and specific requirements as specified by the Government. Candidates who do not meet all essential requirements and specific requirements will not be considered.

2. Qualification and Experience Requirements

2.1 General Requirements

All of the following general requirements set out in clause 2.1.1 and clause 2.2 below concerning qualifications and experience apply to all staff categories of Relevant Employee or such staff categories as therein specified. All qualifications and experience of a nominee Relevant Employee proposed in response to a Service Request (Competitive Bidding) shall be determined as at the date of the submission of proposal in response to a Service Request (Competitive Bidding).

2.1.1 All Relevant Employees presented for selection must fulfil the following requirements concerning qualifications (collectively, “essential qualification requirements”).

- I. Each Relevant Employee in staff categories 0 to 6 as specified in clause 2.3 of Part I must have:

- (a) a bachelor's degree awarded by a post-secondary institution in Hong Kong, including but not limited to the eight University Grants Committee funded universities in Hong Kong, or a bachelor's degree awarded by an overseas university or a polytechnic in the UK, the USA, Canada, New Zealand or Australia¹ ;

or an accredited associate degree or a higher diploma in information technology from a Hong Kong or overseas tertiary education institute;

or

- (b) an accredited associate degree or a higher diploma from a Hong Kong or overseas tertiary education institute in subjects other than information technology;

or a diploma from a Hong Kong or overseas tertiary education institute (only the diploma awarded after the said institute is duly registered as a tertiary education institute will be counted);

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

or Level 2 / Grade E or above in five subjects, including Chinese Language and English Language (Syllabus B before 2007), in the Hong

¹ For the degrees awarded by overseas universities or polytechnics in countries other than the UK, the USA, Canada, New Zealand or Australia, they will not be considered as meeting the essential requirement unless upon request by the Government, which the Government is not obliged to make, the Contractor can provide supplementary information as requested by the Government to prove to its satisfaction that the degrees awarded meet the level of a Bachelor degree under the Hong Kong Qualifications Framework.

Kong Certificate of Education Examination (HKCEE), or overseas 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 overseas 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 (collectively, “essential experience requirements”) are those demanded **on top of** the essential qualification requirements specified in clause 2.1.1 above. In addition, the Government at the time of issuing the Service Request (Competitive Bidding) will specify the skills and/or 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 (collectively, “essential specific requirements”). The essential experience 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 Request (Competitive Bidding) as part of the aforesaid essential specific requirements.

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 at least **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 at least **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 at least **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 at least **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 at least **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 at least **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 at least **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 at least **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 at least **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 below 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 below 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 below 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 below 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 below 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 below 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 below 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 below 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 below 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 below 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 below 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 Except in the case of variation or extension of the Period of Service (RE) under clause 5.5(b) of Part IV, 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 and provided that the Individual Rate proposed shall not exceed the Contract Ceiling Rate for the relevant Categories to which these Relevant Employees belong.
- 4.2 Regardless of the type of service request (viz., Service Request (Competitive Bidding) and Service Request (Extension) as further defined below), (i) Contract Ceiling Rates and (ii) Individual Rates are relevant in that the Individual Rate chargeable shall not exceed the Contract Ceiling Rate prevailing at the time when the Contractors bid for service request.
- 4.3 As and when the Service of one or more Relevant Employee(s) is requested through competitive bidding approach, the Government (acting through any Government bureau or department) shall request all SOA Contractors to propose eligible Relevant Employee of the requested Categor(ies) for selection by that Government bureau or department (“Service Request (Competitive Bidding)”). For extension or variation of the Period of Service (RE) under clause 5.5(b) of Part IV, a service request will equally be issued by the relevant Government bureau or department (“Service Request (Extension)”). For both types, they can also be known as “service request” (in upper or lower case). In both types of the service request, the Government shall specify the Period of Service (RE) of each Relevant Employee to be proposed or period for extension of service of the Relevant Employee. The Government is not under any obligation to make any service request. The Government may or may not make any service request under the Contract. However, once a Service Request (Competitive Bidding) is issued, all SOA Contractors shall be required to propose the requested number of nominee Relevant Employee of such specified Categories complying with the essential qualification requirements, the applicable essential experience requirements as well as those essential specific requirements set out in the Service Request for the Government’s selection. Alternatively, in lieu of making any selection of the Relevant Employees being proposed upon the issue of a Service Request (Competitive Bidding), the Government, where applicable, may elect to deploy a serving Relevant Employee by extending the Period of Service (RE) of a serving Relevant Employee in accordance with clause 5.5 of Part IV.
- 4.4 In each Service Request (Competitive Bidding), the relevant Government bureau or department shall notify all SOA Contractors of relevant details such as the

required staff category, number, any essential specific requirements concerning skills and experience of each Relevant Employee to be proposed and the tentative Period of Service (RE) and invite all SOA Contractors to submit the details of these nominee Relevant Employees by the time as indicated in the service request and make available eligible nominee Relevant Employee for selection by the relevant Government bureau or department accordingly. Under normal circumstances, the Contractor shall be given no less than five working days to respond to the service request. In proposing eligible Relevant Employee for selection by the relevant Government bureau or department, the Contractor shall also quote the Individual Rate for each of the proposed Relevant Employees provided that the Individual Rate shall not exceed the Ceiling Rate for the Category to which the Relevant Employee belongs. Unless otherwise specified by the relevant Government bureau or department, 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 relevant Government bureau or department will verify the information submitted and only qualified bids will be accepted.

- 4.5 All nominee Relevant Employees proposed by the SOA Contractors in response to a Service Request (Competitive Bidding) fulfilling all essential requirements and specific requirements (if any) will be considered by a selection board appointed by the relevant Government bureau or department concerned. The nominee Relevant Employees proposed by the SOA Contractors may be invited to selection interviews and is required to produce evidence on their qualifications, past performance records, skills and work experience. In shortlisting the eligible nominee Relevant Employees for consideration or selection interviews, the Individual Rate proposed by each of the SOA Contractors will be taken into account. Priority will be given to eligible candidates with the 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. Those nominee who do not comply with the essential qualification and experience requirements and/or any essential specific requirements will not be considered further.
- 4.6 A Notice of Service (RE) will be issued to the SOA Contractor whose nominee Relevant Employee(s) have been selected following from a Service Request (Competitive Bidding) and these Relevant Employees shall be deployed to provide the Service (RE) for the Service Period (RE) as confirmed in the Notice of Service (RE).
- 4.7 The Contractor shall ensure that Relevant Employees deployed to provide the Service (RE) to the Government are lawfully employable in Hong Kong (including if necessary the obtaining of all work permits required from the Immigration Department) prior to the commencement of the Service Period (RE) which work permits shall be renewed as necessary during the Service Period (RE) including all extensions.
- 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. Any candidate who indicated refusal to comply with specified requirements imposed by the Government in writing for safeguarding public interest at large, including matters relating to public health (including the vaccine pass requirements as specified in clause 36 of Part IV), social order and public safety, etc. prior to commencement of the Service Period (RE), the Government may cancel the service engagement with the Contractor in the first instance upon receipt of the candidate's refusal and the offer of service engagement will lapse simultaneously.

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. For the avoidance of doubts, if such on-call service is required, no over-time shall be chargeable to the relevant Government bureau or department concerned by the Contractor for the Relevant Employee providing such on-call service outside the normal office hours as specified in clause 5.8 of this Part;
- (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) and an average of eight and eight tenths (8.8) gross hours per day (i.e. including meal break) (whether weekly or daily, they will be referred to as "conditioned hours of work"). The Contractor shall specify these conditioned hours of work to be performed by 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 chargeable at the rate as set out in clause 10.2(d) of Part IV; 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 Subject to compliance with the requirements under the Employment Ordinance (Cap. 57), the Contractor shall take notice of clause 5 of Part IV and make available the Relevant Employee to perform the Service (RE) throughout the conditioned hours of work and throughout 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 but not limited to 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 fully comply with the specified requirements imposed by the Government Representative in writing for the purpose of safeguarding public interest at large in connection with its discharge of contractual obligations for the provision of services by the Relevant Employee. The Contractor shall, at its own cost, take all such actions as may be necessary for the compliance and execution of the specified requirements by the Government Representative.
- 5.7 The Contractor shall cover all Relevant Employees by valid insurance pursuant to the Employees' Compensation Ordinance (Cap. 282).
- 5.8 Apart from the Individual Rate and travelling expenses as further mentioned below, the Government will not pay any other money or compensation whether to the Contractor or its Relevant Employees including without limitation any meal allowance, sick leave allowance (even within the Employment Ordinance entitlement), rest days (even within the Employment Ordinance entitlement), on-

call allowance, or 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; or (iii) on specified situations as authorised by the Government in writing, the Government will reimburse the Contractor for the expenses, such as travelling expenses spent by the Relevant Employee on such journey(s) which is/are made by means of public land transport or other authorised expenses based on prior agreement given by the Government, 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.
- (c) When the Government has announced to the public that, due to certain extreme conditions, employees should be advised to stay in their places or safe locations for another two hours (or longer if extended) (“extreme conditions”) after the No. 8 or higher Tropical Cyclone Warning Signal has been cancelled or lowered to No. 3 or below, instead of heading for resuming work immediately, Relevant Employees should follow the advice, unless otherwise specified, as long as it is still in force.

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 the Service (RE). The Contractor shall pay the Relevant Employee for the total duration of such release in the same manner as if he has performed the Service (RE) as required by the Contract during such hours of release 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 on 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. The Contractor shall support testing and maintenance of the electronic interfaces during non-office hours upon request by the Government.