

**THE GOVERNMENT OF
THE HONG KONG SPECIAL ADMINISTRATIVE REGION
AGRICULTURE, FISHERIES AND CONSERVATION DEPARTMENT
TENDER FOR THE PROVISION OF SERVICES**

Tender Ref. : AFCD/Cap3532023/2

TENDER FORM

Contract No. :

LODGING OF TENDER

To be acceptable as a Tender, this form, properly completed in triplicate and enclosed in a sealed plain envelope marked

“Tender for the Provision of Services for Deployment and Overhaul of Boundary Buoys in Wong Chuk

Kok Hoi Fish Culture Zone and Mirs Bay Fish Culture Zones (Tender Ref.: AFCD/Cap3532023/2)”

and addressed to the Chairman, Tender Opening Committee, Government Logistics Department

must be deposited in the Government Logistics Department

Tender Box situated on Ground Floor, North Point Government Offices,
333 Java Road, North Point, Hong Kong.

before **12:00 noon** (time) on **20 December 2023** (date) (Hong Kong time). Late tenders will not be accepted.

**PART I — INTERPRETATION
PART II — TERMS OF TENDER
PART III — CONDITIONS OF CONTRACT
PART IV — SCHEDULES
ANNEXES
PART V — OFFER TO BE BOUND
PART VI — MEMORANDUM OF ACCEPTANCE**

This invitation to tender is covered by the Agreement on Government Procurement of World Trade Organization.

Dated this 10 day of November 2023



(MAK Chu-wa)
Government Representative

**Tender for the Provision of Services for Deployment and Overhaul of Boundary
Buoys in Wong Chuk Kok Hoi Fish Culture Zone and Mirs Bay Fish Culture Zones
(AFCD/Cap3532023/2)**

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**PART I
INTERPRETATION**

1. In the documents issued by the Government in connection with this Invitation to Tender and the Contract that is made pursuant to this Invitation to Tender, unless otherwise defined or the context otherwise requires, the following expressions shall bear the same meanings as set out below:-

“Accepted Pro- means those proposals and their specifications, subject to innovation Proposals negotiations if any, accepted by the Government; and ESG Proposals”

“AFCD” means the Agriculture, Fisheries and Conservation Department of the Government;

“Appendix” means an appendix attached to the Tender Form;

“Charges” means the amount payable by the Government to the Contractor for the Services provided in a particular Work Order and calculated in accordance with Clause [21] of the Conditions of Contract subject to and after any deductions in respect of that Work Order;

“Commencement Date” means 1 February 2024 or such other date as may be specified by the Government Representative in the Letter;

“Contract” means the contract between the Government and the Contractor for the supply of the Services on the terms and conditions set out in the Tender Documents, the Tender submitted by Contractor (to the extent accepted by the Government), the memorandum of Acceptance issued by the Government to that Contractor, and the attachments to any of the above;

“Contract Deposit” means the sum of money deposited by the Contractor by cash or in the form of banker’s guarantee referred to in Clause [19] of the Terms of Tender and Clause [39] of the Conditions of Contract;

“Contract Manager” means the contract manager appointed by the Contractor in accordance with Clause [12] of the Conditions of Contract and approved by the Government Representative to be the duly authorized representative of the Contractor and to liaise with the Government Representative for all purpose connected with the Contractor;

“Contract Period” means the period of the Contract and any extension thereof as specified in Clause [1] of the Conditions of Contract;

“Contractor” means in relation to a Contract the Tenderer whose Tender for the Contract has been accepted by the Government for the provision of the Services under the Contract;

“Electronic Tendering”	means the making and submission of a Tender through the e-Tender Box whether through the use of a digital certificate or through the use of an Identification Code;
“Equipment”	means the machinery, equipment and appliances to be used in the performance of the Services as set out in Clause [2] of the Conditions of Contract;
“Estimated Total Contract Value”	means the estimate total contract value as quoted in Schedule 1 – Price Schedule of Part IV;
“ESG Proposal”	means a proposal proposed by the Tenderer in its Tender to be assessed under assessment criterion (3b) of the Marking Scheme;
“Essential Requirement”	means a requirement specified in the Tender Documents which is identified as an requirement and a requirement in relation to which it is stated in the Tender Documents that the non-compliance by a Tender or a Tenderer as at the Tender Closing Time will lead to that Tender or Tenderer not being considered further (or the Tender or Tenderer being disqualified);
“e-Tender Box” or “ETB”	means the electronic tendering platform of the information technology system known as “Procurement and Contract Management System” or “PCMS” of the GLD for ETB Users to view tender notices and tender documents, and prepare and submit tenders electronically whether through the use of a digital certificate or an Identification Code;
“ETB User”	means a person who has registered with the PCMS whether as a GLD supplier, or a GLD subscriber, or a person who is for the time being just an applicant to become a GLD supplier up to the time of the notification of the result of its application;

- “Force Majeure Event” means any of the followings:
- (a) any supervening outbreak of war affecting Hong Kong and/or any other parts of the People’s Republic of China, hostilities (whether war be declared or not), invasion, acts of foreign enemies, rebellion, revolution, military or usurped power, overthrow (whether by external or internal means) of the Government and/or the government of the People’s Republic of China, civil war, riot, civil disturbances, fire if not caused or contributed to by the Contractor, its related persons (as defined in Clauses 14.6 and 14.7 of the Terms of Tender) or any employee or agent or ex-employee or ex-agent thereof, civil commotion and acts of God;
 - (b) any supervening catastrophic event which is similar to the foregoing if not caused or contributed to by the Contractor, its related persons (as defined in Clauses 14.6 and 14.7 of the Terms of Tender) or any employee or agent or ex-employee or ex-agent thereof; or
 - (c) any supervening epidemic outbreak in Hong Kong and/or any other part of the People’s Republic of China;
- and which, in any case of (a), (b) and (c) 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 shall not be treated as a Force Majeure Event;
- “Good Industry Practice” means the standard, practices, methods and procedures conforming to law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances;
- “Government” means the Government of the Hong Kong Special Administrative Region of the People’s Republic of China;
- “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 Logistics Department” or “GLD” means the Government Logistics Department of the Government;

“Government Representative”	means the Director of Agriculture, Fisheries and Conservation acting for and on behalf of Government or any officer authorized by the Director of Agriculture, Fisheries and Conservation to act on his behalf 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;
“Hong Kong”	means the Hong Kong Special Administrative Region of the People's Republic of China;
“Hong Kong dollars”	means the lawful currency of Hong Kong;
“Hong Kong Waters” or “waters of Hong Kong”	has the meaning given it in Section 3 of the Interpretation and General Clauses Ordinance (Cap. 1);
“Identification Code”	means a unique 8-character code generated by the ETB and sent to the email account registered by the ETB User with the PCMS (viz., “registered email account”) upon the request of the ETB User for the submission of a Tender through the use of such code;
“Innovative Suggestion”	means an innovative suggestion proposed by the Tenderer in its Tender to be assessed under Assessment Criteria No. 3 of the Marking Scheme;
“Intellectual Property Rights”	means patents, trademarks, service marks, trade names, design rights, copy right, domain names, database rights, rights in know-how, new inventions, designs, processes, and other intellectual property rights of whatever nature and wheresoever arising, whether now known or created in the future, in each case whether registered or unregistered, and include applications for the grant of any such rights;
“Invitation to Tender”	means this Government’s invitation to tender for the Contract on the terms and conditions set out in these Tender Documents;
“Materials”	means any and all works and materials (including their drafts and uncompleted versions) developed, written or prepared by the Contractor, its employees, agents or sub-contractors in relation to the Services (whether individually or collectively or jointly with the Government) including without limitation, any reports, summaries, models, questionnaires, analyses, papers, documents, records, plans, drawings, formula, tables, charts, data or information collected, compiled, produced or created by the Contractor in relation to the Services recorded or stored by whatever means;

“Marking Scheme”		means where the Technical Proposal and the Price Proposal of a Tender are to be evaluated separately, a scheme which collectively contain those procedures requirements and criteria for the evaluation of such Proposals separately;
“Non-collusive Tendering Certificate”		means a document known as such and in the form attached to the Tender Form for completion and submission by the Tenderer as part of its Tender under Clause 26.2 of the Terms of Tender;
“Original Closing Date”	Tender	means the latest date and time specified in the Lodging of Tender as the latest date and time before which Tenders must be deposited with the Government, regardless of whether the date and time has been extended subsequently;
“Paper-based Tendering”		means the making and submission of a Tender in paper form in accordance with the “Lodging of Tender” section of the Tender Form;
“Pro-innovation Proposal”		means a proposal proposed by the Tenderer in its Tender to be assessed under assessment criterion (3a) of the Marking Scheme;
“Services”		means the provision of deployment and overhaul services to boundary buoys to the Agriculture, Fisheries and Conservation Department and includes all other duties, tasks and obligations ancillary or incidental thereto in accordance with the Service Specifications and Contract Schedule 1 and subject to all the terms and conditions of the Contract;
“Tender”		means an offer to provide the Services as submitted by a Tenderer in response to this Invitation to Tender;
“Tender Closing Date”		means the latest date and time specified in the Lodging of Tender as the latest date and time before which Tenders must be deposited with the Government, as the same may be extended by the Government from time to time pursuant to any applicable provision in the Tender Documents;
“Tender Documents”		means the documents as specified in Clause 1 of the Terms of Tender and any addendum issued by the Government for the purpose of the Invitation to Tender prior to the Tender Closing Date;
“Tenderer”		means a person which or who has capacity to contract and has submitted a Tender in response to the Invitation to Tender; and
“Tender Period”	Validity	means the period of time stipulated in Clause [4] of the Terms of Tender during which the tender is to remain open;

“Total Estimated Contract Price”	means the amount quoted as such by the Contractor in Contract Schedule 1 – Price Schedule as the estimated total amount of payment for the provision of the Services, to be payable by the Government to the Contractor by way of Charges in accordance with the provisions of the Contract for the purpose of tender evaluation and calculation of Contract Deposit;
“Unit Price”	means the unit prices assigned to the provision of the Service on a per occurrence basis as quoted in Contract Schedule 1 – Price Schedule;
“Work Boat”	means the work boat to be used or proposed to be used for the provision of the Services meeting the specifications set out in Clause [2] of the Conditions of Contract;
“Work Order”	means the different kinds of work to be carried out by the Contractor as set out in Schedule 1 – Price Schedule;
“WTO GPA”	means the Agreement on Government Procurement of the World Trade Organization;

2. In this document, unless the context otherwise requires, the following rules of interpretation shall apply:-
 - 2.1 references to statutes or statutory provisions shall be construed as references to those statutes or statutory provisions as replaced, amended, modified or re-enacted from time to time, and shall include all subordinate legislation made under those statutes;
 - 2.2 words importing the singular includes the plural and vice versa; words importing a gender shall include all other genders; references to any person shall include any individual, firm, body corporate or unincorporate (wherever established or incorporated);
 - 2.3 headings are inserted for ease of reference only and shall not affect the construction of the Tender Documents or the Contract;
 - 2.4 references to a document shall:
 - (a) include all schedules, appendices, annexes and other materials attached to such document; and
 - (b) mean the same as from time to time amended or supplemented in accordance with the terms of the Tender Documents or the Contract;
 - 2.5 references to “Tenderer” or “Contractor” shall include its permitted assigns, successors-in-title, or any persons deriving title under them;
 - 2.6 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;

- 2.7 references to a Clause, Sub-clause, Section or Paragraph in or a Schedule, Appendix or any other attachment to a document are to a clause, sub-clause, section or paragraph in or a schedule, appendix or attachment to that document;
- 2.8 references to “law” and “regulation” shall 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;
- 2.9 any word or expression to which a specific meaning has been attached in any part of the Tender Documents shall bear such meaning whenever it appears in the same and other parts of the Tender Documents;
- 2.10 references to time and dates in the Tender Documents shall be construed as Hong Kong time and dates;
- 2.11 references to a day refers to calendar day; and reference to a working day means any day other than Saturdays and Public Holidays as defined in the Interpretation and General Clauses Ordinance (Cap. 1);
- 2.12 references to a month or a monthly period mean a calendar month;
- 2.13 any negative obligation imposed on any party shall be construed as 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 shall be construed as if it were also an obligation to procure that the act or thing in question be done;
- 2.14 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;
- 2.15 words importing the whole shall be treated as including a reference to any part of the whole;
- 2.16 the expressions “include” and “including” shall be construed without limitation to the words following;
- 2.17 words and expressions extend to their grammatical variations and cognate expressions where those words and expressions are defined in the Tender Documents or by reference to any other definition;
- 2.18 references to “in writing” include manuscript, typewriting, printing, lithography, 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;
- 2.19 reference to “original signature” or “originally signed” includes a digital image of a hand-written signature (viz., a scanned signature); and
- 2.20 where a general obligation in the Tender Documents or the Contract is followed by more specific obligations, the general obligation shall not be construed

restrictively by reference to the specific obligations or deemed to be fully performed by reason only that the specific obligations have been performed.

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.
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, final and conclusive.
5. Unless otherwise expressly stated, all provisions of the Tender Documents shall apply regardless of whether Paper-based Tendering or Electronic Tendering is used for the submission of the Tender or formation of the Contract.

PART II TERMS OF TENDER

1. Tender Documents

1.1 These Tender Documents identified as AFCD/Cap3532023/2 consist of one complete set of the documents in a bound booklet comprising:

1. Tender Form;
2. Part I – Interpretation;
3. Part II – Terms of Tender;
4. Part III – Conditions of Contract;
5. Part IV – Schedules
 - (i) Schedule 1 – Price Schedule;
 - (ii) Schedule 2 – Details of Tenderer (Section A), Work Boat and Equipment (Section B), Tenderer’s Experience in Providing Deployment and Overhaul Services for Boundary Buoys (Section C), Contract’s Manager’s Experience in Providing Deployment and Overhaul Services for Boundary Buoys (Section D) and Information Required under Clause 15.1 of the Terms of Tender (Section E);
 - (iii) Schedule 3 – Execution Plan;
 - (iv) Schedule 4 – Election of Mode of Payment of Contract Deposit; and
 - (v) Schedule 5 – Essential Requirements and Checklist.
6. Annexes
 - (i) Annex 1 – Marking Scheme and Assessment Criteria;
 - (ii) Annex 2 – Form of Bank Guarantee;
 - (iii) Annex 3 – Non-collusive Tendering Certificate;
 - (iv) Annex 4 – Registration Form for the Tender Briefing;
7. Part V – Offer to be Bound; and
8. Part VI – Memorandum of Acceptance.

1.2 Unless otherwise defined, each of the above documents constituting the Tender Documents or the Contract (as the case may be) shall be referred to in the Tender Documents or Contract using the terms of references appearing in quotation marks.

2. Invitation to Tender

2.1 Tenders are invited for the execution of the whole of the Services (including but not limited to the deployment and overhaul of the boundary buoys in Wong Chuk Kok Hoi and Mirs Bay Fish Culture Zones) more particularly described in the Conditions of Contract and the Schedules, subject to and in accordance with the terms and conditions set out in the Contract.

2.2 Each Tenderer should read the Tender Documents carefully prior to submitting a Tender and ensure that it understands all requirements of the Tender Documents.

2.3 Each Tenderer should obtain such independent advice from its own advisers as it considers appropriate.

- 2.4 Each 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.
- 2.5 Each 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 a Tenderer to obtain any information or clarification relating to the provision of the Services to the Government in accordance with the Contract.
- 2.6 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.
- 2.7 Information, statistics and forecasts set out in the Tender Documents are provided for a Tenderer's reference only. The Government does not warrant or represent that the information, statistics and forecasts are complete, true or accurate. The Government does not bind itself to adhere to such information, statistics and forecasts.
- 2.8 Without prejudice to Clause 2.7 above, the estimated requirement of the Services specified in the Price Schedule or Service Specifications is/are estimate(s) of the quantity of the Services that may be required by the Government. They are given for a Tenderer's reference only and are not figures to which the Government binds itself to adhere. The Government's actual requirements may vary depending on the actual need of the Government and the successful Tenderer must accept any increase or decrease of the stated estimates.
- 2.9 The provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Invitation to Tender and a Tender submitted by a Tenderer in response to this Invitation to Tender.

3. Tender Preparation and Submission

- 3.1 Unless otherwise specified in the Terms of Tender, the Tenderer must bid for all items specified in the Price Schedule by submitting the Rate for each such item. **Where a Tenderer fails to do so, its Tender will not be considered further.**
- 3.2 Unless funding approval has been secured by the Government, the Government will not award a contract and will not indicate the successful bidder. The Government is not responsible for Tenderer's costs for preparing the bids.

- 3.3 The Tenderer must submit all of the following in its Tender before the Tender Closing Time:
- (a) (i) (applicable for Paper-based Tendering) a duly signed Part V “Offer to be Bound” of the Tender Form in English or Chinese containing an original signature by or on behalf of the Tenderer. The Offer to be Bound to be submitted (other than the signature on the Offer to be Bound which must be original) shall be Part V of the Tender Form or a printed copy from a softcopy of Part V of the Tender Form or a photocopy or a scanned copy of such hardcopy or printed copy. Any manner of reproduction of Part V of the Tender Form (including copy-typing) to be submitted as the Offer to be Bound shall not be acceptable and the Tender with the non-conforming Offer to be Bound will not be considered further; or
 - (ii) (applicable for Electronic Tendering) the box signifying the Tenderer’s agreement with Part V “Offer to be Bound” of the Tender Form must have been checked;
 - (b) the price quotations for all items in the Schedule 1 - Price Schedule;
 - (c) Schedule 2 containing details of the Work Boat and Equipment and Contractor Personnel to be deployed for the Services, including licence of the Work Boat, Contractor Personnel’s certificates and other documents relevant to the Work Boat and Equipment, two colour photographs in 3R size showing full view of the Work Boat and Equipment as referred to in Schedule 2, and the documents required to be submitted under Schedule 2 in relation to the Contractor Personnel, including Tenderer and Contract Manager;
 - (d) (i) (if the Tenderer is the registered owner of the Work Boat and Equipment) a copy of certificate of ownership issued pursuant to section 10 of the Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation (Cap. 548D) or other applicable laws should be submitted for evidencing its ownership; or
 - (ii) (if the Tenderer is not the registered owner of the Work Boat and Equipment)
 - (1) a copy of the purchase agreement or lease agreement whereby the Tenderer is to acquire the property in or the right to use the Work Boat and Equipment for, inter alia, carrying out the Services during the Contract Period, or a legally binding agreement to enter into such purchase agreement or lease agreement; and
 - (2) a copy of the certificate of ownership issued pursuant to section 10 of the Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation (Cap. 548D) or other applicable Laws evidencing the ownership;

- (e) Appendix to Schedule 5 containing an undertaking for renewing the licence throughout the Contract Period stated at Clause 1.1 in the Conditions of Contract;
 - (f) “Deployment and Overhaul of Boundary Buoy Service Plan” under Execution Plan of Technical Proposal in accordance with Appendix to Annex 1 provided;
 - (g) Non-collusive Tendering Certificate (Annex 3) duly completed and signed; and
 - (h) such other items and documents as specified in the Terms of Tender whereby it is provided that failure to submit any of them before the Tender Closing Time will immediately lead to the Tender not being considered further.
- 3.4 Any failure to complete or submit the documents and/or information required under Clause 3.3 may, at the absolute discretion of Government, render a Tender non-conforming and not to be further considered. **However, a Tenderer should note that its Tender will not be considered further if, by the Tender Closing Date, the Tenderer fails to submit:-**
- (a) The Offer to be Bound which must be duly signed by the Tenderer in accordance with Clause 3.3(a)(i) or Clause 3.3(a)(ii) above;
 - (b) Schedule 1 containing the price quotation for the Services;
 - (c) Schedule 2 containing the details of the Tenderer (Section A), Work Boat and Equipment (Section B), Tenderer’s Experience in Providing Deployment and Overhaul Services for Boundary Buoys (Section C), Contract Manager’s Experience in Providing Deployment and Overhaul Services for Boundary Buoys (Section D) and Information Required under Clause 15.1 of the Terms of Tender (Section E); and
 - (d) Schedule 3 containing the details of Deployment and Overhaul of Boundary Buoy Service Plan, Contractor Personnel Management Plan and innovative suggestions under Execution Plan of the technical proposal in accordance with Appendix to Annex 1.
- 3.5 The Tenderer shall complete and submit all Schedules in either English or Chinese and in accordance with other requirements of the Tender Documents. Where a supporting document in its original form is in a language other than English or Chinese, the Tenderer shall provide translation of that supporting document from the language into English.
- 3.6 A two-envelope system shall be adopted for this Tender. The Tenderer shall submit its Tender in two (2) separate proposals, one as the Technical Proposal and another as the Price Proposal. A Tenderer shall submit, in one of the following manners, its completed Tender. A Tender submitted through a method other than Paper-based Tendering or Electronic Tendering will not be considered.

Tender Submission:

(a) Paper-based Tendering

The Technical Proposal and the Price Proposal shall be completed in writing on hardcopy and shall be placed inside two (2) separate envelopes clearly marked in the following manner and shall be submitted in triplicate:-

- (i) Documents relating to the price information (i.e. the original and two copies of “Schedule 1”, fully completed, signed, chopped and dated) must be enclosed in a sealed envelope clearly marked “Tender for the Provision of Services for Deployment and Overhaul of Boundary Buoys in Wong Chuk Kok Hoi Fish Culture Zone and Mirs Bay Fish Culture Zones - Price Proposal (Tender Ref.: AFCD/Cap3532023/2)”; and
- (ii) Documents relating to the technical information (i.e. the original and two copies of all other remaining information, forms, schedules and documents required by this Invitation to Tender but without any indication on the prices for Provision of Services) must be enclosed in another sealed envelope clearly marked “Tender for the Provision of Services for Deployment and Overhaul of Boundary Buoys in Wong Chuk Kok Hoi Fish Culture Zone and Mirs Bay Fish Culture Zones - Technical Proposal (Tender Ref.: AFCD/Cap3532023/2)”.
- (iii) The Tender comprising both “Price Proposal” and “Technical Proposal” should be enclosed in a sealed envelope marked “Tender for the Provision of Services for Deployment and Overhaul of Boundary Buoys in Wong Chuk Kok Hoi Fish Culture Zone and Mirs Bay Fish Culture Zones (Tender Ref.: AFCD/Cap3532023/2)” and addressed to the person specified in the “Lodging of Tender” section of the Tender Form and deposited to the Tender Box on or before the date and time stipulated in the Tender Form.

(b) Electronic Tendering

- (i) The Tenderer shall submit the Technical Proposal and the Price Proposal as separate attachment files through e-Tender Box before the Tender Closing Time.
- (ii) Transmission of a Tender through e-Tender Box shall be successfully completed in accordance with the requirements of the e-Tender Box before the Tender Closing Time. Save as otherwise provided for in the Tender Documents, a Tender will not be considered if the relevant proposal, document or information is not successfully and completely transmitted through the e-Tender Box before the Tender Closing Time.
- (iii) If a Tenderer submits a tender by Electronic Tendering, the Tenderer shall, in addition to compliance with the Tender Documents, observe and comply with all terms and conditions of use and participation of the e-Tender Box and through the e-Tender Box through the use of any one type of digital

certificates recognised by the e-Tendering System or through alternative authentication method.

- 3.7 The Government may not consider a Tender (or will not consider a Tender where it is expressly so stated) if:
- (a) false, inaccurate or incorrect information is given in the Tender; or
 - (b) any proposal, document or information requested in the Tender Documents is not furnished in full in the Tender.
- 3.8 When completing the Tender Documents (including the Offer to be Bound section of the Tender Form), each 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;
 - (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 current business registration certificate of the Tenderer issued under the Business Registration Ordinance (Cap. 310); or
 - (c) if the Tenderer is incorporated, formed or established outside Hong Kong, a document equivalent to that described in Clause 3.8(a)(i), (a)(ii), (a)(iii) or 3.8(b) above (as the case may be) issued by a governmental or competent authority of the place where the Tenderer is incorporated, formed or established.
- 3.9 Execution and Submission of Tenders
- (a) Paper-based Tendering
 - (i) A Tender submitted through Paper-based Tendering will be regarded to have been submitted by a Tenderer or authorised to have been submitted by a Tenderer (as the case may be) if the submitted Part V “Offer to be Bound” of the Tender Form is signed in the following applicable manner:
 - (1) 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;
 - (2) 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

- (3) 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) Electronic Tendering

- (i) A Tender submitted through Electronic Tendering will be regarded to have been submitted by a Tenderer or authorised to have been submitted by a Tenderer (as the case may be) if it is submitted in any one of the following ways:

- (1) submission of the Tender via the e-Tender Box through the use of an Identification Code; or
- (2) submission of the Tender via the e-Tender Box through the use of such type of digital certificate recognised by the ETB, and uploaded by the Tenderer to the ETB. Save in the case where the Tenderer is a partnership, a Tenderer shall use a digital certificate which is issued in its name as appearing in the applicable document mentioned in Clause 3.8(a), (b) or (c) above; otherwise the Tender will not be considered further. In the case that the Tenderer is a partnership, the Tenderer may use a digital certificate issued in the name of one of its partners (or a general partner in the case of a limited partnership), or a digital certificate issued in the name of the partnership; otherwise the Tender will not be considered further.

- (ii) If any attachment to a Tender submitted by a Tenderer via the e-Tender Box:

- (1) does not comply with the terms and conditions of use of the PCMS and the e-Tender Box;
- (2) is found to be contaminated with Virus; or
- (3) is corrupted or otherwise not readable or printable into readable text by the Government,

and such non-compliance of file format, Virus contamination, or file corruption has resulted in failure to submit the relevant proposal, document or information as described in Clause 3.3(a)(ii), (b), (c), (d), (e), (f), (g) or (h) above by the Tender Closing Time, the Tender will not be considered further and its Tenderer will be notified of such.

- (iii) In the case where the Tenderer uses a digital certificate for the submission of Tender via the e-Tender Box, the Government will verify the validity of a Tenderer's digital certificate with the relevant certification authority which has issued such digital certificate. If the directory service or

revocation list service of that certification authority or its contractor is/are not available for any reason, the Government may postpone the verification process until such time when the directory service or revocation list service (as the case may be) of the certification authority or its contractor is/are resumed or when the Tender is opened, whichever is the later. If the verification process is postponed, the Tenderer will be informed of this through an on-screen message and an on-line acknowledgement of the Tender.

- (iv) A Tender will not be considered further if the digital certificate used by a Tenderer for submission of Tender via the e-Tender Box is found invalid (i.e. expired, revoked, or it is not a digital certificate recognised in the e-Tender Box for submission of Tenders) upon verification.

3.10 Tender Closing Time

(a) (i) Paper-based Tendering

A Tender must be deposited in the Specified Tender Box before the Tender Closing Time. A Tender deposited in the Specified Tender Box at or after the Tender Closing Time, or a Tender not deposited in the Specified Tender Box, will not be considered.

(ii) Electronic Tendering

Transmission of a Tender through the e-Tender Box shall be successfully completed in accordance with the requirements of the e-Tender Box before the Tender Closing Time. Save as otherwise provided for in the Tender Documents, a Tender will not be considered if the relevant proposal, document or information as described in Clause 3.3(a)(ii), (b), (c), (d), (e), (f), (g) or (h) above is not successfully and completely transmitted through the e-Tender Box before the Tender Closing Time.

- (b) In case 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 duration between 0900 and 1200 hours on the date specified in the “Lodging of Tender” section of the Tender Form, the latest date and time before which Tenders are to be deposited in the Specified Tender Box and at the e-Tender Box will be extended to 1200 hours on the next working day.
- (c) In case of blockage of the public access to the location of the Specified Tender Box at any time between 0900 and 1200 hours on the Tender Closing Date, the Government will announce extension of the 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>).

- 3.11 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 releases on the website of Information Services Department (<http://www.info.gov.hk/gia/general/today.htm>).

3.12 If a Tenderer submits a Tender by Electronic Tendering, the Tenderer shall, in addition to compliance with the Tender Documents, observe and comply with all terms and conditions of use of the PCMS and the e Tender Box as set out in or referred to in the e-Tender Box.

3.13 Modification of Tender

(a) Before the Tender Closing Time, a Tenderer who has lodged a Tender may modify its Tender as considered necessary.

(b) Paper-based Tendering

Any modification to the submitted Tender considered necessary by the Tenderer shall be the subject of a separate letter accompanying the Tender. Figures and words shall not be altered or erased; any modification shall be effected by striking the incorrect figure or word and inserting the correct figure or word in manuscript above the original figure or word. All such amendments shall be initialled by the Tenderer in manuscript.

(c) Electronic Tendering

In case of modification to the submitted Tender, the Tenderer shall submit either a complete set of the revised Tender superseding the original Tender, or just the revisions to the original Tender. Either way, this shall be stated clearly in the submission.

3.14 Apart from Part V “Offer to be Bound” of the Tender Form (which, in the case of Paper-based Tendering, must be originally signed by or on behalf of the Tenderer as required under Clause 3.3(a)(i) above), wherever there is any provision in the Tender Documents requiring that the original of any document or the document as mentioned in Clause 3.14(a)(i) or (ii) below to be submitted as part of the Tender,

(a) in the case of Paper-based Tendering, (i) the Tenderer may submit a photocopy certified to be true and complete by the person(s) specified in Clause 3.8(a)(i) above; (ii) in the case of any certificate which is required to be issued by a specified body (for example an Independent Accredited Laboratory or a recognised certification body (if applicable)), the photocopy certificate must be certified as true and complete by that specified body or a lawyer duly qualified to practise in Hong Kong or the laws of the place of incorporation, formation or establishment of the Tenderer; and (iii) if only a photocopy without any certification has been submitted, the Government reserves the right to request a certified true copy as required in (i) or (ii) above (whichever is applicable) (“certified true copy”) after the Tender Closing Date. The Tender may not be

considered further if the certified true copy is not provided; and

- (b) in the case of Electronic Tendering, the Tenderer shall first submit the certified true copy as described in Clause 3.14(a)(i) or (ii) above (whichever is applicable) in electronic format as part of its Tender via the e-Tender Box. Subsequently, the Government reserves the right to request a certified true copy (hardcopy) after the Tender Closing Date. If only a photocopy without any certification has been submitted in electronic format as part of its Tender via the e-Tender Box, the Government reserves the right to request a certified true copy (hardcopy) after the Tender Closing Date. The Tender may not be considered further if the certified true copy (hardcopy) is not provided.

4. Tenders to Remain Open

- 4.1 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.
- 4.2 It is an essential requirement of this Invitation to Tender that a Tender shall remain valid and open for a period of **one hundred and fifty (150) days** after the Tender Closing Date (“Tender Validity Period”).
- 4.3 If a Tenderer offers in its Tender a period that is shorter than the applicable Tender Validity Period specified in Clause 4.2 above, or if it rejects the Tender Validity Period prescribed in Clause 4.2 above, its Tender will not be further considered.

5. Prices / Charges

- 5.1 Unless otherwise provided for in the Tender Documents, the Tenderer shall quote the prices for each item in the Price Schedule (Schedule 1) in Hong Kong dollars only. The prices quoted by the Tenderer for an item shall be all-inclusive of all amounts chargeable for the performance by the Tenderer of all obligations as stated in the Contract for or concerning or in relation to such item. Under no circumstances will the Government compensate the Contractor for any loss incurred in the fluctuation of the currency in which the prices are quoted.
- 5.2 Prices quoted by a Tenderer shall only be shown in the Price Schedule.
- 5.3 A Tenderer must quote fixed prices for all items and the same price for the same item regardless of the quantity. A Tender with any price variation clause, including one based on foreign exchange market fluctuation, will not be considered further.
- 5.4 Each Tenderer shall make sure that all prices and other proposals offered in its Tender are accurate and complete before it submits the Tender. The Tenderer shall be bound by all prices and other proposals offered in its Tender if the Tender is accepted by the Government. The Tenderer may not initiate any request for amendment to its Tender after the Tender Closing Date on any ground (including any mistake made in the Tender). On the other hand, in the event of any apparent arithmetical or typo mistake or inconsistency in a Tender, pursuant to Clause 6 of the Terms of Tender,

the Government may, but is not obliged to, ask the Tenderer to clarify, or to confirm another figure to replace the original figure. Where the Tenderer's clarification is not provided or not satisfactory, or the Tenderer refuses to confirm such other figure, or where the Government does not elect to seek clarification or confirmation from the Tenderer, the Government reserves the power to proceed to evaluate the Tender on an as is basis (i.e., in the form as originally submitted prior to the Tender Closing Date) or disqualify the Tenderer on ground that it has provided erratic or inconsistent proposals or quotations for proper evaluation.

- 5.5 Without prejudice to the generality of the 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 and completing the Contract. The Government may reject the Tender if the Tenderer fails to so justify and demonstrate to the Government's satisfaction.

6. Request for Information

- 6.1 Notwithstanding anything herein to the contrary, in the event that the Government Representative determines that:

- (a) clarification in relation to any part of the Tender is necessary; or
- (b) certain document or a piece of information, other than those specified in Clause 3.4 of the Terms of Tender or those which failure of submission will result in automatic disqualification, is missing from any Tender,

it may, but is not obliged to, request the Tenderer concerned to make the necessary clarification, or submit the required document or information. The Tenderer shall 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.

- 6.2 Any excess proposal or information submitted by a Tenderer which goes beyond what has been requested by the Government pursuant to Clause 6.1 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.

7. Tenderer's Counter-Proposals

- 7.1 The Tenderer must not submit any proposal that has the effect of varying or modifying (a) any essential requirements specified in Schedule 5 of 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.

- 7.2 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 Schedules.

- 7.3 If a Tenderer fails to comply with Clause 7.1 or 7.2 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.
- 7.4 Counter-proposal to other provisions of the Tender Documents not specified in Clause 7.1 or 7.2 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 7.1 or 7.2 above (“Counter-Proposals”), the Counter-Proposals shall be submitted in the following manner:
- (a) (i) for Paper-based Tendering, the Counter-Proposals shall be attached to Part V “Offer to be Bound” of the Tender Form; or
 - (ii) for Electronic Tendering, the Counter-Proposals shall be attached as a separate attachment and identified as such;
 - (b) the original provisions which the Counter-Proposals relate to shall be fully recited before the proposed alteration or deletion;
 - (c) the proposed alteration to the original provisions shall be underlined and shall bear the corresponding clause number of the original provisions unless it is an addition;
 - (d) if it is an addition, the additional provisions shall be underlined;
 - (e) words to be deleted shall be crossed out by a single line only; and
 - (f) an explanation shall be given below the alteration or deletion and put in square brackets “[]”.
- 7.5 Unless the Government otherwise agrees, Counter-Proposals that are not submitted in accordance with Clause 7.4 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.
- 7.6 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.

8. Essential Requirements

Tenderer must meet all the essential and other requirements in Schedule 5. Failure to comply with any of the essential requirements in Schedule 5 will render the Tender invalid and the Tender will not be considered further.

9. Tenderer's Enquiries

9.1 Any enquiries from the 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 10 of the Terms of Tender.

9.2 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 the 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.

9.3 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 potential Tenderer shall be for information only. No such statement shall constitute a representation or warranty by the Government of any nature whatsoever (whether expressed 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.

10. Communication with the Government

10.1 All communications in relation to the Invitation to Tender shall be conducted directly between the Government and the Tenderer unless the Government elects to contact any proposed sub-contractor or customer or client of the Tenderer directly.

10.2 Without prejudice to the requirements set out in Clause 12 of the Terms of Tender concerning notification of acceptance of Tender, 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 47 of the Conditions of Contract at the address, facsimile number or email address specified in the Appendix, save that in the case of lodging any enquiries under Clause 9.1 of the Terms of Tender, the Tenderer shall lodge such enquiries by facsimile or by email only. The Tenderer shall complete its postal address, facsimile number and email address in the Appendix to the Terms of Tender and 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.

11. Tender Assessment

- 11.1 Tenders will be evaluated based on price as well as technical competence of the Tenderer, understanding of the Government's requirements, relevant job experience and quality of work.
- 11.2 The Tenders will be assessed using the Marking Scheme and assessment criteria in Annex 1.

12. Acceptance

- 12.1 The successful Tenderer will be notified within one hundred and fifty (150) days from the Tender Closing Date (such notification is referred to as "Conditional Acceptance of Tender"). Upon receipt of such Conditional Acceptance of Tender, the successful Tenderer shall, within twenty one (21) days of the notification (or such later date as the Government may allow), be obliged to:
- (a) deliver the Contract Deposit as required in Clause 19 below to the Government;
 - (b) deliver copies of the insurance policies required in Clause 25 of the Conditions of Contract and receipts evidencing payment of premium thereunder to the Government;
 - (c) comply with other conditions as the Government may specify therein.
- 12.2 Only upon completion of the actions specified in Clause 12.1 from the successful Tenderer in accordance with that Clause, and the Government being satisfied with these actions, the Government will enter into the Contract with the successful Tenderer by issuing the Memorandum of Acceptance pursuant to Clause 12.3 below. The Contract will incorporate 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). In the event that the successful Tenderer fails to complete the actions as mentioned in Clause 12.1 (unless and save to the extent they are waived by the Government, if any), the Conditional Acceptance of Tender may be declared void and of no further force by the Government, and the Government may disqualify the Tenderer concerned. Whereupon it may, but not obliged to, award the Contract to another Tenderer. Without prejudice to other rights and claims of the Government at law, the disqualified Tenderer shall be responsible for the difference in the Tender price submitted by that Tenderer and the eventual Contractor who will be awarded the Contract whether appointed pursuant to this Invitation to Tender exercise or another subsequent invitation exercise.
- 12.3 The successful Tenderer who has complied with Clause 12.1 above to the satisfaction of the Government will receive as an indication of unconditional acceptance the Memorandum of Acceptance in the form set out in Part VI from the Government. This Memorandum of Acceptance shall constitute a binding Contract. Tenderers who do not receive any notification within the Tender Validity Period shall assume that their Tenders have not been accepted. A copy of each of the documents constituting the Contract will be attached to the Memorandum of Acceptance for record.

12.4 Without prejudice to the rights and powers under these Terms of Tender, unless and until the Government has issued the Memorandum of Acceptance indicating its unconditional acceptance pursuant to Clause 12.3 above to the successful Tenderer, there is to be no binding Contract with that Tenderer.

13. Offer to be Binding

13.1 All parts of these Tender Documents submitted and offered by the Tenderer shall be binding on the Tenderer. A Tenderer is deemed to have satisfied itself as to the correctness of its Tender. In the event that a Tenderer discovers an error in its Tender after the Tender has been deposited, the Tenderer may correct the same in a separate letter before the Tender Closing Date. No request for adjustment or variation whatsoever shall be allowed or entertained after the Tender Closing Date.

13.2 In event that, upon examination by the Government after the Tender Closing Date, a Tenderer has made manifest errors in the figures stated in its tender, the Government shall have the right to inform the Tenderer of such errors. The Tender shall be requested to provide written confirmation of its willingness to abide by the corrected figures.

13.3 By signing the Part V – Offer to be Bound, a Tenderer confirms that its offer has been made subject to the terms and conditions contained in these Tender Documents, and any variation or adjustment agreed with the Government and upon acceptance by the Government will be incorporated into and form part of the Contract.

14. Negotiation

The Government reserves the right to negotiate with any Tenderer about the terms of its Tender and the Contract.

15. Government Discretion

15.1 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 any time prior to the Contract award or an order is made or a resolution is passed for the winding up or bankruptcy of the Tenderer or a related person 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 infringes 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 15.6 and 15.7 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 judgment (i.e. judgment not subject to any appeal to a higher court prior to the Contract award) in respect of one or more serious offences including conviction of offences involving bribery, false accounting, corruption, dishonesty or employment handed down any time during a period of five (5) years preceding the Tender Closing Date and thereafter up to the time of Contract award;
- (f) in the event of the professional misconduct or acts or omissions having been committed during a period of five (5) years preceding the Tender Closing Date and up to the time of Contract award 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 of the related person of the Tenderer; professional misconduct includes any breach of the Good Industry Practice; or
- (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

The grounds specified in Clauses 15.1(a) to 15.1(g) above are separate and independent, and shall not be limited by reference to or inference from the other of them.

15.2 For the purposes of Clause 15.1 above, each Tenderer shall 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 and those information in relation to its related person or its director or management staff (which it has knowledge and is reasonably relevant to facilitate the Government's determination as to whether to exercise its right of disqualification), including but not limited to the following:

- (a) details of any petition or proceeding mentioned in Clause 15.1(a) above;
- (b) details of all infringement claims, allegations, rulings, judgments, decisions or settlement agreements as mentioned in Clause 15.1(c) above;
- (c) details of all Contract Defaults as mentioned in Clause 15.1(d) above;
- (d) details of conviction as mentioned in Clause 15.1(e) above in Hong Kong or any overseas jurisdiction;
- (e) details of any professional misconduct or act or omission as mentioned in Clause 15.1(f) above; and
- (f) details of any failure to pay taxes as mentioned in Clause 15.1(g) above.

If none of the events as mentioned in Clauses 15.1(a) to 15.1(g) 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 the Information Schedule at the time of submission of its Tender. If found missing, the Government reserves the right to seek clarification pursuant to Clause 15.3 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.

15.3 In addition to the information mentioned in Clause 15.2 above, the Government reserves the right (but not obligation) to request from a Tenderer or a related person of the Tenderer or director or management staff of the Tenderer or those of the related person of the Tenderer or other independent sources, such other information that is reasonably relevant to facilitate the Government's determination as to whether to exercise its right of disqualification under Clause 15.1 above.

15.4 If the Tenderer fails to comply with the request made by the Government pursuant to Clause 15.3 above within such time as required by the Government, the Government may disqualify the Tenderer pursuant to Clause 6 of the Terms of Tender. If the Tenderer has submitted false, inaccurate or incomplete information, the Government may disqualify the Tenderer pursuant to Clause 15.1(b) above.

15.5 In providing the information required under Clauses 15.2 and 15.3 above, the Tenderer may show cause to satisfy the Government that in relation to any of the

events as mentioned in Clause 15.1 above, even if it has occurred, it 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.

- 15.6 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 (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 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).

- 15.7 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; or
 - (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.
- 15.8 References to related persons of the Tenderer, directors and management staff of the Tenderer or those of a related person in any of the applicable Sub-clause of Clause 15.1 above include persons who were in such capacity at such time of the event referred to in that Sub-clause.
- 15.9 Notwithstanding anything to the contrary in the Tender Documents, the Government reserves the right to disqualify a Tenderer on the grounds that the Tenderer has engaged, is engaging, or is reasonably believed to have engaged or be engaging in acts or activities that are likely to cause or constitute the occurrence of offences endangering national security or otherwise the exclusion is necessary in the interest of national security, or is necessary to protect the public interest of Hong Kong, public morals, public order or public safety.

16. Provision of Services

The Contractor does not have any exclusive right to provide the Services by virtue of the Contract.

17. Tender Addenda

Should the Government require any amendments, clarifications or adjustments to be made to the Tender Documents before the Tender Closing Date, the Government may do so by issuing numbered addenda giving full details of such amendment, clarification or adjustment. The Tenderer shall acknowledge receipt of these addenda. These addenda if comprising an amendment, clarification or adjustment to any provisions of the Contract, shall form a part of the Contract and shall take priority over the documents previously issued.

18. New Information Relevant to Qualified Status

Tenderers should inform the Government in writing immediately of any factor which might affect their qualified status as an enlisted service provider with the Government, or as a qualified service provider for a particular service. The Government reserves the right to review their qualified status in the light of any new information relevant to their qualification.

19. Contract Deposit and Financial Vetting

19.1 If the Estimated Total Contract Value payable by the Government to the successful Tenderer exceeds HK\$1.4 million but is less than or equals to HK\$15 million, the successful Tenderer shall deposit with the Government a Contract Deposit of an amount equivalent to two percent (2%) of the Estimated Total Contract Value specified in Schedule 1 for the entire Contract Period specified in Clause 1.1 of the Conditions of Contract as security for the due and faithful performance of the Contract by the successful Tenderer.

19.2 If the Estimated Total Contract Value exceeds HK\$15 million, the successful Tenderer shall submit the following documents for financial vetting to demonstrate their financial capability:

- (a) Originals (or copies certified by its auditors) of the audited accounts of the Tenderer, and the audited consolidated accounts of the group if the Tenderer is a subsidiary of another company for the three (3) financial years prior to the Tender Submission Date. The audited accounts must comply with the following requirements:
 - (i) The audited accounts must be prepared in accordance with accounting principles generally accepted in Hong Kong and the disclosure requirements of the Companies Ordinance (Cap. 622);
 - (ii) The latest audited accounts must be for the period ending no more than eighteen (18) months before the Tender Closing Date;

- (iii) The audited accounts must contain the Director's Report, Auditor's Report, Balance Sheet, Income Statement (or commonly referred to as Profit & Loss Account), Statement of Changes in Equity, Cash Flow Statement and Notes to the Accounts;
 - (iv) All such accounts must have been audited by a certified public accountant (practising) or a corporate practice as registered in the Professional Accountants Ordinance (Cap. 50) or for a non-Hong Kong company, by auditors recognized by its local law;
 - (v) If any such accounts are prepared in a language other than Chinese or English, translations, certified as accurate by the respective consulate or a notary public registered in Hong Kong, must be provided; and
 - (vi) If the Tenderer is a joint venture or partnership, audited accounts for each of the members/participants of the joint venture or partnership must be submitted if the members are incorporated bodies;
- (b) Management accounts up to a period of not more than three (3) months before the Tender Closing Date should be provided if this has not been covered by the latest audited accounts;
 - (c) Unaudited accounts are acceptable only if the Tenderer is an unincorporated business where audited accounts are not mandatorily required or the Tenderer is a newly established company where the first accounts are not yet available;
 - (d) The management accounts or unaudited accounts mentioned in Sub-clauses (b) and (c) hereof must be certified by the sole proprietor, partners, directors of the Tenderer or by certified public accountants or other accountants acceptable to the Government;
 - (e) Projected profit and loss accounts and cash flow statements of the contract and for each contract year and the pre-operating period (if applicable) complying with the following requirements:
 - (i) For a company, they should be certified by the company's director or company secretary. For a joint venture or partnership, separate certification from each of the director of the members/participants of the joint venture or a partner of the partnership is required;
 - (ii) The assumptions used in preparing the projections should be reasonable and must be clearly stated. All the supporting schedules and detailed calculations should also be provided;
 - (iii) The projections should at least include the projected revenue, details of operating expenses, capital expenditure including the initial investments and sources of finance, and other particulars showing how the Tenderer will deal with the Contract; and
 - (iv) The assumptions by the Government included in the Tender Document must be reflected in the Tenderer's projections;

- (f) Copy of the latest annual return filed with the Companies Registry if the Tenderer is a corporate entity or similar statutory filings showing the authorized and issued share capital, name of shareholders and directors if the Tenderer is an overseas company; and
 - (g) Tenderers shall upon the request in writing by the Government provide any other financial and corporate information as required by the Government for assessment of the financial capability of the Tenderer to undertake the Contract on or before such date as stated in the written notification by the Government.
- 19.3 If the Estimated Total Contract Value exceeds HK\$15 million, the successful Tenderer shall deposit with the Government a Contract Deposit of an amount equivalent to not more than two percent (2%) of the Estimated Total Contract Value (if it passes the financial vetting as stipulated in Clauses 19.2 above) or not more than five percent (5%) of the Estimated Total Contract Value (if it is unable to submit adequate financial information for a meaningful assessment or fails in the financial vetting as stipulated in Clauses 19.2 above) as security for the due and faithful performance of the Contract by the successful Tenderer.
- 19.4 The Contract Deposit shall be payable within twenty one (21) days from the date of the Conditional Acceptance of Tender and either in cash or in the form of a bank guarantee in the form attached at Annex 2 issued by a bank holding a valid banking licence under the Banking Ordinance (Cap. 155) (“Bank Guarantee”).
- 19.5 If a Tenderer elects to provide a Bank Guarantee,
- (a) the Tenderer shall submit an original letter from a licensed bank within the meaning of the Banking Ordinance (Cap. 155) confirming that it will provide to the Government within the time specified in Clause 19.4 above a Bank Guarantee in the format set out at Annex 2;
 - (b) the Bank Guarantee duly executed shall be submitted to the Government in accordance with Clause 19.4 above; and
 - (c) the Bank Guarantee must remain in force from the commencement date until seven months after the expiry of the Contract Period or the date upon which all of the Contractor’s obligations shall have been performed and discharged to the satisfaction of the Government, whichever is the later.
- 19.6 A Tenderer is required to elect the method of providing a Contract Deposit it prefers by completing the Offer to be Bound at Part V. In the event that a Tenderer fails to elect which method of providing a Contract Deposit it prefers, it will be assumed that the Tenderer will pay the Government the Contract Deposit by way of cash.

20. Documents of Unsuccessful Tenderers

Documents of unsuccessful Tenderers will be destroyed not less than three (3) months after the date the Contract has been awarded.

21. Complaints About Tender Process or Contract Award

- 21.1 This invitation to tender is governed by the World Trade Organization (WTO) Agreement on Government Procurement (GPA), and all relevant provisions of the WTO GPA shall apply to this Invitation to Tender. Tenderers are hereby notified that the Government has established a Review Body on Bid Challenges under the WTO GPA (“Review Body”) to address challenges made against alleged breaches of the WTO GPA.
- 21.2 Tenderers are advised that the procedures for handling bid challenges are set out in the Rules of Operation of the Review Body (“Rules”), which are available for inspection at the Secretariat of the Review Body located at the Trade and Industry Department, or which may be obtained upon request.
- 21.3 In the event that a Tenderer believes that a breach of the WTO GPA has occurred, the Tenderer may lodge a challenge to the Review Body within ten (10) working days after the Review Body knew or reasonably should have known the basis of the challenge. The challenge that filed later than thirty (30) working days shall not be considered. However, Tenderers are encouraged to seek resolution of their complaints in consultation with AFCD before lodging a complaint with the Review Body. In such instances, AFCD shall give impartial and timely consideration to any such complaint, in a manner that is not prejudicial to obtaining corrective measures through the Review Body.

22. Personal Data Provided

- 22.1 A Tenderer’s personal data (if he is an individual) and the personal data of any individual contained in the Tender submitted by that Tenderer (collectively, “personal data”) will be used for the purposes of this Invitation to Tender, and all other purposes arising from or incidental to this Invitation to Tender including without limitation for the purposes of Tender evaluation, Contract award, and resolution of any dispute arising from this Invitation to Tender. If insufficient and inaccurate information is provided, the Tender may not be considered.
- 22.2 A Tenderer acknowledges and consents and has ensured that the relevant individual to whom the personal data has acknowledged and consented that the personal data provided in the Tender may be disclosed to other government departments or public bodies or such other person as the Government considers appropriate having due regard of the purposes mentioned in Clause 22.1 above.
- 22.3 Tenderers (or the individual to whom the personal data belongs) have the right of access and correction with respect to personal data as provided for in Sections 18 and 22, and Principle 6 of Schedule 1 of the Personal Data (Privacy) Ordinance (Cap. 486). The right of access includes the right to obtain a copy of the Tenderer’s personal data provided in the Tender.
- 22.4 Enquiries concerning the personal data collected by means of this Invitation to Tender, including the making of access and corrections should be addressed to Personal Data Privacy Officer of AFCD.

23. Consent to Disclosure

23.1 The Government shall have the right to disclose, without further reference to the successful Tenderer, whenever it considers appropriate or upon request (written or otherwise) by any third party information on the awarded Contract, the name and address of the successful Tenderer, particulars of the Services awarded to the successful Tenderer, the Rates quoted in its Tender and the date of award of the Contract. In submitting a Tender, each Tenderer irrevocably and unconditionally authorizes the Government to make and consents to the Government making any of the disclosure aforesaid.

23.2 Nothing in Clause 23.1 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 specified in Clause 23.1) 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;
- (d) the disclosure of any information in circumstances where such disclosure is required pursuant to any laws 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 23.1, to the extent the information relates to a Tenderer, with the prior written consent of that Tenderer.

24. Contractors' Performance Monitoring

If a Tenderer is awarded a Contract, its subsequent performance will be subject to monitoring and may be considered during the evaluation of its future tenders.

25. Costs of preparing the Tender

A 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, including all costs and expenses relating to (a) communication or negotiations with or providing presentation to the Government; and (b) attending the briefing session, whether before or after the Tender Closing Date.

26. Offering Gratuities

The Tenderer shall not and shall ensure that its agents and employees shall not offer or give any advantage as defined in the Prevention of Bribery Ordinance (Cap. 201) to any agent or employee of the Government. Any breach of or non-compliance with this Clause by the Tenderer shall, without affecting the Tenderer's liability for such breach or non-compliance, invalidate its Tender, and result in Contract termination, if any awarded.

27. Anti-collusion

27.1 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 Clause 3 of the Non-collusive Tendering Certificate referred to in Clause 27.2 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.

27.2 The Tenderer shall complete and submit to the Government a Non-collusive Tendering Certificate (in the form set out in Annex 3) as part of its Tender.

27.3 In the event that a Tenderer is in breach of any of the representations and/or warranties in Clause 27.1 above or in the Non-collusive Tendering Certificate submitted by it under Clause 27.2 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 Tender; and
- (c) if the Government has entered into the Contract with the Tenderer, forthwith terminate the Contract.

27.4 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 and/or warranties and/or undertakings in Clause 27.1 or in the Non-collusive Tendering Certificate submitted by it under Clause 27.2.

27.5 A breach by a Tenderer of any of the representations and/or warranties and/or undertakings in Clause 27.1 may prejudice its future standing as a Government contractor or tenderer.

27.6 Clause 27.1 shall have no application to the Tenderer's communications in strict confidence with its own insurers or brokers to obtain an insurance quotation for computation of the prices quoted in its Tender, or with its professional advisers, consultants or sub-contractors to solicit their assistance in preparation of its Tender.

27.7 The rights of the Government under Clauses 27.3 to 27.5 are in addition to and without prejudice to any other rights or remedies available to it against the Tenderer.

28. Briefing Session

28.1 A Tender briefing session will be held. Tenderers are strongly advised to attend the Tender briefing session before submitting their Tenders in order to fully acquaint themselves with the requirements of the Government and to determine the scale and costs of the Services to be provided. Details of the briefing session are as follows:

Time: 14:30

Date: 14 November 2023 (Tuesday)

Venue: Room 702

7/F., Cheung Sha Wan Government Office

303 Cheung Sha Wan Road,

Kowloon.

Tenderers wishing to attend the briefing session must complete and return by facsimile (fax no. 2314 2866) the registration form at the Annex 4 on or before 13 November 2023.

28.2 Each Tenderer is advised to send no more than two representatives to attend the Tender briefing session due to limited seating capacity.

28.3 In case 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 duration between 9:00 a.m. (Hong Kong time) and 5:00 p.m. (Hong Kong time) on the Tender Briefing session as originally scheduled, the Tender briefing session will be cancelled, and rescheduled to later date and time. The tenderer will be notified of the new schedule of Tender briefing session. The Government shall not be held liable for any loss or damage incurred as a result of the rescheduling of the tender briefing session caused by above-mentioned adverse weather event.

PART III CONDITIONS OF CONTRACT

1. Contract Period

- 1.1 The Contract shall be for a term of 36 months commencing from 1 February 2024 to 31 January 2027, both dates inclusive, or such other date as specified in the Memorandum of Acceptance, unless or until earlier terminated or extended in accordance with Clause 1.2.
- 1.2 The Government shall have the option to extend the Contract Period for additional period(s) of not more than six (6) months in aggregate. The Government shall be entitled to exercise such option, not less than one (1) week prior to the expiry of the original Contract Period (as last extended, as the case may be) by giving the Contractor a written notice to that effect specifying in such notice the period of extension.
- 1.3 There is no limit on the number of times the Government exercises its option to extend or the period of each extension pursuant to Clause 1.2 provided that the maximum extended period(s) (excluding the original period of 24 months) do not exceed 6 months.
- 1.4 Upon the Contract Period is extended pursuant to Clause 1.2, the Contract shall continue to be in full force and effect (including this Clause 1) on and subject to the same terms and conditions.

2. Contractor's Obligations

- 2.1 The Contractor shall throughout the Contract Period perform the Services pursuant to a Work Order issued by the Government Representative. The Work Order comply with all specifications and requirements set out in Schedule 1 and all applicable laws and regulations. A Work Order shall specify the Work Order (s) required, the location at which will be performed, the date for performing the Services, and the deadline for completion of the Services. The Work Order shall be issued not less than 3 days prior to the scheduled commencement of the Services.
- 2.2 The Contractor shall provide at least such frequency for performing each Work Order as set out in Schedule 1 in accordance with the instructions of the Government Representative and the officers on board of the Work Boat. The frequency for performing each Work Order as set out in Schedule 1 is an estimate only, and shall not be binding on the Government. All specifications and requirements set out in a work order shall be deemed to form part of the Contract.
- 2.3 The Contractor shall deploy Work Boat(s) or other similar vessels (hereinafter referred to, "Work Boat") and machinery, equipment and appliances (hereinafter referred to, "Equipment") that are necessary to perform the Services. The Work Boat and Equipment shall comply the specifications and requirements set out in Schedule 5 and all applicable law and regulations, including the Merchant Shipping (Local Vessels) (Works) Regulation (Cap. 548I).

- 2.4 The Contractor shall bear sole responsibility to obtain any permits or licences required for the Services. All Work Boat and Equipment shall be operated by competent persons with valid permits or licenses.
- 2.5 The Contractor shall maintain the Work Boat in a clean, tidy and efficient operational condition to the satisfaction of the Government Representative and shall at its cost be responsible for the procurement all labour, spare parts, consumables, and fuel to be used in navigating, operating and maintaining the Work Boat.
- 2.6 The Contractor shall maintain the Equipment in an effective operational condition to the satisfaction of the Government Representative and shall at its cost be responsible for the procurement all labour, spare parts and fuel to be used in operating and maintaining the Equipment.
- 2.7 The Contractor shall carry out all necessary repairs or other works, and if any of the Work Boat and Equipment are no longer fit for Services, replace them with another one which complies with all requirements and specifications set out in Schedule 5, in accordance with Clauses 22 below.
- 2.8 The Government as lessee shall be entitled to unrestricted usage of the Work Boat to supervise the Services and determine the deployment locations of boundary buoys.
- 2.9 The Contractor shall not extend the provision of Services beyond the requirements explicitly stated in the Contract, unless otherwise directed in writing by the Government Representative. However, the Government Representative reserves the right to, at any time during the Contract Period, issue a written notice requiring the Contractor to modify, amend, omit, add to, or otherwise alter any aspect of the Services and / or the Contract Period. The Contractor shall promptly execute such variations and shall be bound by the same terms and conditions, to the extent applicable, as if the aforementioned variations were expressly incorporated into the Contract.
- 2.10 In case of any variation made to the Contract, the quantification of the amount to be added to or deducted from the Charges shall be ascertained in accordance with the Unit Price specified in Schedule 1, to the extent that is applicable. In the event that the Unit Prices are not expressly provided in Contract Schedule 1 or are not applicable, the adjustment shall be determined by an amount deemed reasonable under the prevailing circumstances.

3. Service Level and Service Specifications

- 3.1 The Contractor shall diligently and professionally render the Services, in accordance with the accepted industry standards for similar Services, as well as the specific requirements outlined in this Contract.
- 3.2 The Contractor explicitly acknowledges and agrees that: -
 - (a) it has been furnished with an adequate amount of information necessary to facilitate the provision of the Services. The Contractor shall not be entitled to any supplementary remuneration or exemption from any contractual obligations due to any misinterpretation by the Contractor, whether intentional or unintentional, regarding any aspect or factual element

- pertaining to the Service Specifications any other stipulations outlined in the Contract;
- (b) the Government places reliance upon the expertise and discernment of the Contractor in delivering the Services and fulfilling its obligations as stipulated in the Contract.
- 3.3 The Contractor shall perform its obligations as stipulated in the Contract: -
- (a) utilise personnel who possess the requisite experience, qualifications and training, and exercising all necessary care, skill and diligence;
- (b) adopt the prevailing standards of Good Industry Practice;
- (c) adopt timely provision of the Services; and
- (d) comply with all relevant and applicable laws.
- 3.4 Irrespective of any stipulation in the Contract, the proper provision of any Services to the Government shall not be deemed to have occurred unless the Government has formally accepted such Services.

4. Normal Working Time and Outside Normal Working Time

- 4.1 During the Contract Period, the Contractor shall keep the Work Boat and Equipment ready for use by the Government throughout the period specified in the Work Order. “Normal working time” means a continuous nine (9) hours duration, from 0830 to 1730, from Mondays to Saturday, except any period during which strong monsoon signal, rainstorm black warning signal and tropical cyclone warning signals number three are valid.
- 4.2 Notwithstanding, the Government’s actual requirements of the Services may vary depending on the actual need, including but not limited to the requirements of work, the urgency of the work or the operational necessities. The Contractor may be required to perform the Services outside the aforementioned normal working hours on an occasional basis or under special circumstances, without receiving any additional compensation, whether in cash or in any kind.
- 4.3 Should the Work Boat and Equipment be required by the Government for Services outside the normal working time, four (4) hours advance notice of the requirement will be given by the Government Representative to the Contractor and such Services must be performed and carried out by the Contractor as specified in the notice (except that the Services are consecutively provided before or after the normal working time). Services required under this clause shall commence and complete at such times as the Government Representative may direct. Suitable relieving of Contractor’s employees, agents, sub-contractors and those employees and agents of the aforementioned sub-contractors (collectively “Contractor Personnel”) should be arranged by the Contractor without causing the delay of Government Representative.

5. Contractor's Warranties and Undertakings

5.1 The Contractor warrants and undertakes to the Government that throughout the Contract Period:-

- (a) the Contractor and Contractor Personnel shall carry out the Services with all due diligence and in a proper, skilful and professional manner and shall perform the Services to the satisfaction of the Government Representative;
- (b) the Work Boat and Equipment shall comply with all requirements and specifications set out in Schedule 5, and all applicable laws and regulations;
- (c) the Contractor shall keep the Government Representative informed of all matters relating to the Services and shall answer all reasonable enquiries made by the Government Representative;
- (d) the Contractor shall comply with all applicable laws and regulations in the provision of the Services, including the paying of all fees or levies and obtaining and renewing all necessary authorisations, approvals, consents, licences, permits, exemptions and other authority in any relevant jurisdiction, which are required to authorise the Contractor to perform its Services under the Contract. Such requirements are in full force and have been obtained duly and unconditionally;
- (e) the Contractor shall secure, obtain and maintain at its own expense, all necessary governmental authorizations, approvals, permits, or licenses throughout the entire duration of the Contract, as required for the performance of the Contract;
- (f) the Contractor shall comply with all reasonable instructions and directions in all matters relating to the Contract as the Government Representative may from time to time issue to the Contractor;
- (g) in the event of any of Contractor Personnel suffering any injury or death in the course of or arising out of the Services and whether there be a claim for compensation or not, the Contractor shall within seven (7) working days give notice in writing of such injury or death to the Government Representative;
- (h) the appointment or replacement of any Contractor Personnel by the Contractor to perform any portion of the Services shall not absolve the Contractor from any liability or obligation stipulated in this Contract. The Contractor shall bear full responsibility for the actions, omissions, defaults, and negligence of any such employee, as if they were the actions, omissions, defaults, or negligence of the Contractor itself;
- (i) the Contractor shall comply with the Employment Ordinance (Cap. 57), the Mandatory Provident Fund Schemes Ordinance (Cap. 485), the Employees' Compensation Ordinance (Cap. 282), the Immigration Ordinance (Cap. 115) and other applicable laws in the employment of its staff for the performance of the Contract or other Government contracts;

- (j) the Contractor shall comply with the Occupational Safety and Health Ordinance (Cap. 509) and other applicable law in the health and safety of its staff for the performance of the Contract or other Government contracts;
 - (k) in relation to the Work Boat provided by the Contractor for performing the Services, the Contractor is either the beneficial owner with valid certificate of ownership issued pursuant to the Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation (Cap. 548D), or the lessee under valid and subsisting lease agreement granted by the lawful owners of the Work Boat;
 - (l) the Contractor shall not involve in any claims, litigation, arbitration or administrative proceedings that could materially affect its ability to fulfil its obligations under the Contract. To the best of its knowledge, there are no such proceedings pending or threatened against the Contractor or any of its assets. The Contractor shall not receive any notice or communication related to such proceedings that could impact its ability to perform its obligations under the Contract;
 - (m) the Contractor shall not be subject to any proceedings for winding up, dissolution or the appointment of a receiver, liquidator, manager or similar office in relation to any of its assets or revenue and no such proceedings have been discharged; and
 - (n) the Contractor shall not omit the information which 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.
- 5.2 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.
- 5.3 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.

6. Acceptance or Refusal for a Work Order

- 6.1 All Services rendered in accordance with each Work Order under this Contract shall be subject to inspection and shall not be considered as accepted unless certified in writing by the Government Representative.
- 6.2 Without prejudice to the rights and authority of the Government under this Contract or any applicable law, the Government Representative reserves the right to reject any Services, or any portion thereof, that do not strictly adhere to the Conditions of Contract.
- 6.3 Upon receiving written notification from the Government regarding the refusal of any Services under a Work Order, the Contractor shall promptly take necessary measures within 24 hours to rectify advanced preparation of the rejected Services.

- 6.4 For the avoidance of doubt, any actions taken by the Contractor in accordance with the terms of this Contract, as well as any acts or omissions on the part of the Government, shall not be interpreted as acceptance of the Services under any Work Order, or any part thereof, unless the Government provides written certification of acceptance in accordance with Clause 6.1 stated above.

7. Boundary Buoy Deployment and Overhaul Service Plan

- 7.1 The Contractor shall prepare a deployment and overhaul of boundary buoy service plan, which shall provide sufficient time for each boundary buoy to be properly overhauled during the Contract Period. The plan shall include but not limited to the information regarding: -

- (i) specifications of boundary buoy(s) and mooring components to be deployed (comply with the essential requirements as stipulated in Schedule 5);
- (ii) schedule for deployment and overhaul of boundary buoys;
- (iii) specifications of Work Boat(s) and Equipment required (comply with the essential requirements as stipulated in Schedule 5);
- (iv) number and type of Work Boat(s) required;
- (v) number and type of Equipment required (i.e., mechanical scaling, chipping and wire brushing equipment); and
- (vi) number of supervised labours required.

A copy of the deployment and overhaul of boundary buoy service plan shall be provided to the Government Representative at the commencement of the Contract and the first year of the Contract Period.

8. Service Area and Reporting Place

- 8.1 The Government may require the Work Boat and Equipment to be navigated or transported in Wong Chuk Kok Hoi Fish Culture Zone and Mirs Bay Fish Culture Zones or any navigable areas within Hong Kong Waters as the Government Representative or his nominee may specify from time to time (including the officer on board of the Work Boat). The Service area, the craft anchorage and the number of boundary buoys required are provided in Appendix I.

- 8.2 The Contractor shall ensure, at the commencement of any Work Order of the Services that the Work Boat and Equipment required for the execution of the Services are available at the designated storage locations of boundary buoys provided by the Contractor or other locations specified by the Government Representative.

9. Mooring Components Identification

As and when required by the Government Representative, the Contractor shall be responsible for providing and affixing identification tags made of brass, aluminium, or other non-corrosive materials to mark each mooring component that is either used or to be used in connection with the Services. The identification tagging procedures are required when components are received into stock or removed from the water and placed into stock.

10. Paint Quality

The Contractor shall use high-quality paints that fully conform to the specifications set out in Appendix II of this Contract. The paints to be utilised shall be directly supplied from internationally recognised paint manufacturers or their authorised distributors, who possess a positive track record and are capable of providing a back-up technical assistance with respect to the proper preparation and application of their products.

11. Time Allowed for Completion of the Services

The Government Representative shall specify the time frame for completion of each Work Order of the Services in writing to the Contractor. The Contractor shall execute the requested Work Order of the Services within the stipulated time frame.

12. Contract Manager

12.1 The Contractor shall, no later than one week prior to the commencement of the Contract Period, designate a Contract Manager who shall assume responsibility for the provision of the Services and possess full authority to make all necessary decisions in relation thereto, as well as to receive all instructions from the Government Representative. The designation shall include the name, the details of contact including telephone number and other direct means of communication. The Contractor shall bear the expenses associated with providing the Contract Manager with a mobile phone to ensure constant availability throughout the Contract Period.

12.2 The Contract Manager shall promptly address any inquiries raised by the Government Representative and, upon request, accompany the Government Representative to designated locations as directed.

12.3 The Contractor shall not replace or substitute the Contract Manager without obtaining prior consent from the Government.

13. Work Supervisor

13.1 Pursuant to the requirements of the Merchant Shipping (Local Vessels) (Works) Regulation (Cap. 548I), the Contractor shall appoint a work supervisor, who shall possess knowledge of the type of Work Order necessary to perform the Services and demonstrate proficiency in both English and Chinese (Cantonese) languages, with the ability to effectively communicate matters to the deployment and overhaul of boundary buoys.

13.2 The work supervisor shall attend the briefing session organised by the Licensing and Registration Section, Agriculture, Fisheries and Conservation Department at 0830 hours on the scheduled date of the Services specified in the Work Order. The Government Representative reserves the right to approve or disapprove any change of work supervisor requested by the Contractor.

14. Contractor Personnel

14.1 Each of the Work Boat shall be manned on all voyages with a coxswain who shall be assisted by a minimum of one of competent, duly qualified and trained Contractor Personnel to ensure that all necessary assistance and services are provided to the

Government efficiently. In the event that the Government Representative or his nominee is not reasonably satisfied with the conduct and/or performance of the coxswain or any Contractor Personnel of the Work Boat, the Government Representative or his nominee may give notice thereof to the Contractor requiring the Contractor to arrange for the substitution or replacement of the coxswain or the Contractor Personnel concerned and upon receipt of such notice, the Contractor shall use at its own expense and as soon as practicable arrange to substitute or replace the coxswain or the Contractor Personnel concerned.

14.2 The Contractor warrants that all coxswain and/or the Contractor Personnel deployed for performing this Contract possess the qualifications and/or experience given in Schedule 2 – Section C and D and Schedule 3 throughout the Contract Period. The Contractor shall show that the appointment or replacement of any coxswain and/or the Contractor Personnel for the Work Boat has no lesser qualifications and/or experience than the outgoing coxswain or Contractor Personnel.

15. Occupational Safety and Health

15.1 The Contractor must comply with the Government Representative's prevailing policies, guidelines and procedures safeguarding occupational safety and health of the Contractor Personnel deployed for the Services. The Contractor must ensure that whenever it is so required, comprehensive assessment and management of risks to occupational safety and health of the Contractor Personnel deployed for the Services will be undertaken. Based on such assessment, adequate measures must be taken to guard against such risks. The Contractor must only provide experienced supervisory staff to give proper training, supervision and instructions to its Contractor Personnel. The Contractor must ensure that all Contractor's Employees provided by it to execute the Services:

- (a) are properly trained, competent and efficient in carrying out the duties as stipulated in the deployment and overhaul of boundary buoys service plan;
- (b) must be fully aware of any potential risks that may exist through the undertaking of their duties and to follow policies and guidelines that may be in force from time to time concerning occupational safety and health;
- (c) take all reasonable measures to avoid causing danger to the Contractor Personnel in the discharge of their duties;
- (d) stay alert, listen to and observe all relevant bulletins regarding the weather and the state of the Hong Kong Waters;
- (e) is mandatory for all incidents and dangerous occurrences to be reported promptly to the Government Representative.

15.2 In the event that the Contractor fails to comply with Clause 15.1 or with the reasonable requests of the Government Representative, it may be asked to vacate the Government Premises pending an inquiry to be conducted by the Government Representative.

15.3 In the event that the Contractor fails to comply with Clause 15.1 or is unable to meet any relevant safety standards, it may be disqualified from participating in any future tender or quotation exercises conducted by the Government.

16. Custody of Work Boat and Equipment

In the event that any Work Order cannot be completed within a single working day, and Work Boat and Equipment are remained on-site, the Contractor shall have sole responsibility for the safety and risk associated with the said Work Boat and Equipment.

17. Contacts for Emergency

The Contractor shall provide the Government Representative with an updated list of staff's contact names and telephone numbers. The list shall be readily available in the event of any emergency situation that occurs outside of normal working hours. The Contractor shall ensure that sufficient staff can be mobilized promptly to adequately address any such emergency situation.

18. Reporting Procedures on the Completed Services

The Contractor shall be responsible for providing a set of itemised bills and mooring reports within ten (10) days upon completion of the Work Order. The reports shall demonstrate the quantities and Work Order Number of all Services executed, as stated in Schedule 1. The Contractor shall prepare the standard mooring reports, drawings and bills, agreed to by the Government Representative in writing.

19. Receipt of Components

The Contractor shall be obligated to sign the check-out record for all Equipment that are obtained from the designated storage location of boundary buoys provided by the Contractor, and shall sign the check-in record for all Equipment that are returned.

20. Boundary Buoys within the Designated Storage Location

20.1 The Contractor shall be responsible for ensuring that all boundary buoys within the designated storage location provided by the Contractor are securely lashed and inspected to the satisfaction of the Government Representative, as set out in Schedule 1. The Contractor shall also be responsible for providing all necessary lashing equipment for the Services.

20.2 The Contractor shall be responsible for maintaining a clean and hygienic state of the designated storage location provided by the Contractor to maintain boundary buoys and Equipment. The Contractor shall ensure that adequate safety precautions and standards are adhered to.

21. Payment

21.1 The Contractor shall submit (i) a proper invoice; (ii) number of Work Order; (iii) Work Order with description of the completed Services; and (iv) mooring report to the Government Representative within ten (10) working days after the Government's acceptance of the completed Services pursuant to the Work Order. Payment shall be made upon receipt of the abovementioned documents, and subject to certification by

the Government Representative that the Services have been completed in accordance with the terms and conditions of the Contract to the satisfaction of the Government Representative, unless otherwise provided.

- 21.2 In consideration of and subject to the provision by the Contractor of the Services strictly in accordance with the terms and conditions of the Contract to the satisfaction of the Government Representative, provided that (i) a proper invoice; (ii) number of Work Order; (iii) Work Order with description of the completed Services; and (iv) mooring report, has been issued. Subject to the rights to make deductions or set-off, the payment payable by the Government shall be paid within thirty (30) days after receipt by the Government of the abovementioned documents in respect thereof, or the due date stipulated separately, whichever is later. The Government shall pay the Contractor the payment at the applicable Unit Price of such Work Order as specified in Schedule 1. All abovementioned documents shall be addressed and despatched in the manner specified in Clause 47. Payment will be made in Hong Kong Dollars.
- 21.3 The expenses for the Contract shall encompass all charges, expenditures, fees, costs incurred by the Contractor in fulfilling the terms and conditions under the Contract, including but not limited to the deployment or provision of boundary buoys, Contractor Personnel, Work Boat and Equipment required under the Contract; the expenses incidental to the attendance of meetings; and all fees associated with obtaining any licenses, authorizations, or permits from the Government or other relevant authorities. Under no circumstances whatsoever shall be the Government be liable for any payment to the Contractor or any other party beyond the Charges that have been agreed upon.
- 21.4 Notwithstanding any provision of the Contract, the Government reserves the right to withhold payment of all or any part of Charges and any other sum payable by the Government to the Contractor under the Contract if:
- (a) the Contractor fails to adhere to or perform any provision of the Contract;
 - (b) the Government disputes, on reasonable ground, its obligation to the amount in question;
 - (c) the Government has reasonable grounds to believe that the Contractor is or will be liable to the Government under any provision of the Contract for loss or damage suffered by the Government; or
 - (d) withholding of payment is required by any applicable law.
- 21.5 Any payment made by the Government under the Contract shall not prejudice or imply any effect whatsoever on any rights, causes of action which accrued or may accrue, or any remedies available to the Government in the event of a breach of the Contract by the Contractor.
- 21.6 For the avoidance of doubt, the Contractor shall not be entitled to any payment other than those set out in Clauses 21.1 to 21.5.

22. Inspection and Replacement

- 22.1 The Government Representative or his nominee may inspect any of the Work Boat and Equipment at any time and may require the Contractor to replace the same at no extra cost to the Government if it is considered in his opinion to be unsuitable for this Contract in any respect or to be withdrawn from Service subject to maintenance, dry docking or licensing. The Contractor shall allow and facilitate such inspection free of charge as the Government Representative or his nominee may require. The Government Representative or his nominee may inspect the replacement Work Boat and Equipment at any time when replacement is needed. The Contractor shall, ensure that the replacement Work Boat and Equipment meets all the requirements and specifications set out in Schedule 5, allow and facilitate such inspection free of charge as the Government Representative or his nominee may require.
- 22.2 Where the Government Representative is satisfied that in any particular case that the Contractor has failed to provide the Services in accordance with any terms and conditions or any provisions of the Contract, the Government Representative may (without prejudice to any rights or remedy that the Government has or may have against the Contractor) require the Contractor by either verbal or written instructions to remedy or rectify the failure in order to comply fully therewith. The Contractor shall take immediate and necessary action to rectify such rejected Services within such time as may be specified in the Government notification, unless otherwise justified by the Contractor within such stipulated time period and agreed to by the Government Representative in writing.
- 22.3 Without prejudice to the above, the Government shall also have the right to reject the Services or any part thereof that is performed by the Contractor and to withhold payment of the costs and expenses until the failures or defects have been rectified by the Contractor.
- 22.4 If the Contractor shall fail to rectify such rejected Services in accordance with Clause 22.3, the Government may, without prejudice to any other rights and remedies available to the Government, carry out and complete such Services by its own resources or by engaging other contractors. All costs and expenses whatsoever which may be incurred by the Government thereof shall be recoverable in full from the Contractor forthwith. All costs and expenses shall be settled within fourteen (14) days of the date of the bill.

23. Failure to deliver Accepted Pro-innovation Proposals / ESG Proposals

- 23.1 The Contractor warrants that it shall perform the Contract in full compliance with all Accepted Pro-innovation Proposals / ESG Proposals. In the event that the Contractor fails to deliver any of the Accepted Pro-innovation Proposals / ESG Proposals, the Contractor shall, subject to Clauses 23.2 and 23.3, pay to the Government a sum of money calculated according to the following formula as liquidated damages for EACH of such Accepted Pro-innovation Proposal / ESG Proposal which it fails to deliver:

$$C \times W(T) \times \frac{M(P)}{M(TP)} \times \frac{P}{CP}$$

- where
- C = the Estimated Total Contract Value
- W(T) = the weighting, expressed as a percentage, of the technical assessment in the overall Marking Scheme
- M(P) = the marks that would be given to one (1) Pro-innovation Proposal / ESG Proposal in accordance with the Marking Scheme (regardless of whether marks are actually given to the relevant Accepted Pro-innovation Proposals / ESG Proposals that the Contractor fails to deliver)
- M(TP) = the maximum technical marks for the Technical Proposal in the Marking Scheme
- P = length of time expressed in number of days during which the Contractor fails to comply with the relevant Accepted Pro-innovation Proposals / ESG Proposals
- CP = Contract Period expressed in number of days

The amount calculated in accordance with the above formula represents a reasonable sum proportionate to the Government's legitimate interest in the enforcement of the relevant Accepted Pro-innovation Proposals / ESG Proposals.

- 23.2 For any given point of time within the Contract Period, the number of Accepted Pro-innovation Proposals / ESG Proposals which the Contractor fail to deliver and upon which liquidated damages are payable under Clause 23.1 shall not exceed the maximum number of Pro-innovation Proposals / ESG Proposals to which marks could be awarded to a Tenderer in the Tender evaluation process.
- 23.3 The aggregate amount of liquidated damages payable pursuant to Clause 23.1 may not exceed 5% of the Estimated Total Contract Value.
- 23.4 The Contractor is contractually obliged to perform the Pro-innovation Proposals / ESG Proposals submitted by it and accepted by the Government. Any failure on the Contractor's part to perform such obligation would be deemed a breach of the contractual obligation, and the Government would be entitled to terminate the Contract immediately, in addition to the liquidated damages mentioned in Clause 23.1 above.

24. Liability and Indemnities

- 24.1 Neither the Government nor any of its Contractor Personnel 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 Contractor Personnel however caused (whether by any Negligence of the Government or any of its Contractor Personnel or otherwise); or
 - (b) any injury to or death of the Contractor (in the case where the Contractor is a natural person) or any of its Contractor Personnel, save and except any such

injury or death caused by the Negligence of the Government or any of its employees (in the course of employment).

24.2 Without prejudice to any other provision of the Contract, the Contractor shall indemnify each of the Government, its assigns, successors-in-title, and authorised users (including the employees and agents of the Government) (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 Personnel;
- (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;
- (v) the non-compliance by the Contractor Personnel with any applicable law, or regulation, order or requirement of any government agency or authority;
- (vi) any act or omission of the Contractor Personnel, 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 24.1 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 the Contractor Personnel.

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.

- 24.3 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.
- 24.4 For the purposes of this Clause 14, “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 (Cap. 71).
- 24.5 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.

25. Policy of Insurance and Compensation

- 25.1 The Contractor shall ensure that the owner of the Work Boat and Equipment shall, effect and keep in force, and renew immediately upon expiry, throughout the continuance of the Contract Period at its sole costs policies of insurance in relation to the use of the Work Boat and Equipment by the Contractor for performing the Services in accordance with the requirements of the Merchant Shipping (Local Vessels) Ordinance (Cap. 548) and its subsidiary legislation (in particular section 23D of the said Ordinance and the Merchant Shipping (Local Vessels) (Amount of Insurance Cover) Notice (Cap. 548K) and on such other terms and conditions as shall be required and other applicable laws and approved by the Government Representative from time to time.
- 25.2 The Contractor shall ensure that Contractor Personnel shall, effect and keep in force, and renew immediately upon expiry, throughout the continuance of the Contract period at its sole costs policies of insurance in relation to the use of labour by the Contractor for performing the Services. The policies of insurance shall include a level of coverage that is deemed sufficient with regards to all risks that may be incurred by the Contractor for performing the Services. The coverage must include, but not limited to, death, personal injury, loss or damage to property, or any other loss. The insurance company selected shall be authorised under the Insurance Ordinance (Cap. 41).
- 25.3 The Contractor shall maintain the employees’ compensation insurance policy in compliance with the Employees’ Compensation Ordinance (Cap. 282).
- 25.4 Upon expiry of any of the policies of insurance required under Clause 25 during the Contract Period, the Contractor shall renew the same on and subject to the original terms and conditions or otherwise such revised terms and conditions as the Government Representative may stipulate. Upon issuance of the renewed insurance policy, the Contractor shall forthwith furnish a copy to the Government Representative for keeping.

- 25.5 Under no circumstances whatsoever shall the Government be responsible for the premium payable under any of the policies of insurance required under Clause 25 or the premium payable for the renewal thereof. The Contractor shall bear the cost of all excesses (deductibles), exclusions or limitations applying under the said policies.
- 25.6 The Contractor shall conform to the terms and conditions of any of the policies of insurance required under Clause 25 and all reasonable requirements of the insurers in connection with the settlement of claims, the recovery of losses and the prevention of accidents. The Contractor shall not do or permit or suffer to be done any act or omission whereby any of the policies of insurance required under Clause 25 shall be rendered void or voidable, or which would otherwise amount to a breach of such policy(ies). The Contractor shall bear the economic consequences of, and indemnify the Government in full from and against any loss and liability which may arise from any failure of the Contractor to observe and comply with this Clause.
- 25.7 If any of the policies of insurance required under Clause 25 provides that the payment of certain amount of compensation shall be borne by the insured parties, the Contractor shall be solely responsible for such payment.
- 25.8 The Contractor shall lodge all claims with the insurance company and shall deal with the said company upon receipt from the Government or otherwise of a report on any injury, death, loss or damage.
- 25.9 If the Contractor fails to effect and keep in force any of the insurance policies required under Clause 25, or any other insurance which it may be required to effect under the terms of this Contract then and in any such cases without prejudice to the liability of the Contractor under the Merchant Shipping (Local Vessels) Ordinance (Cap. 548), its subsidiary legislation and other applicable laws, the Government may effect and keep in force any such insurance and pay such premium or premiums as may be necessary for that purpose and from time to time deduct the amount so paid by the Government as aforesaid from any monies due or which may become due to the Contractor or recover the same as a debt due from the Contractor.
- 25.10 No provision within any insurance policy or the amount of coverage provided therein shall serve to absolve the Contractor of any liability under the Contract. It is the sole responsibility of the Contractor to determine the level of insurance coverage that are sufficient for the Contractor in fulfilling any liability that may arise under the Contract.

26. Termination

- 26.1 The Government may forthwith terminate the Contract but without prejudice to any other rights which the Government has or may have if:
- (a) the Contractor fails to carry out the whole or any part of the Services or to observe or perform any of the terms and conditions of the Contract, or to pay any of the sums payable by the Contractor under the Contract, or is in breach of its warranties or undertakings under the Contract or (in the case of a breach capable of being remedied) the Contractor has failed within fourteen (14) days or such period as the Government may allow after the receipt of a request in writing from the Government Representative (such request to contain a

warning of the Government's intention to terminate the Contract) so to do, to remedy the breach;

- (b) the Contractor goes into liquidation or a petition is filed for the bankruptcy or the winding up of the Contractor's business otherwise than for the purpose of a reconstruction or amalgamation that is previously approved by the Government in writing or the Contractor becomes insolvent or makes any composition or arrangement with creditors;
- (c) the Contractor assigns or purports to assign any or all the burden or benefits of the Contract without the prior written consent of the Government;
- (d) the Contractor is found to have made false declaration or untruthful revelation in, including but not limited to, its record of convictions of offences under the Employment Ordinance (Cap. 57), the Employees' Compensation Ordinance (Cap. 282), the Immigration Ordinance (Cap. 115), the Criminal Procedure Ordinance (Cap. 221) or the Mandatory Provident Fund Schemes Ordinance (Cap. 485) as stated in the Tender submitted by the Contractor during the tendering process;
- (e) the Contractor is found to have employed any person who is not lawfully employable or to have aided and abetted another person to breach his condition of stay;
- (f) the Contractor is in breach of any of the representations, warranties and/or undertakings hereby given or any conditions and/or requirements;
- (g) the Contractor, any officer (including director) and Contractor Personnel commits an offence under the Prevention of Bribery Ordinance (Cap. 201) or any law of a similar nature in relation to the Contract or any other contract made by the Contractor with the Government; or
- (h) the Contractor fails to perform the Services within the deadline specified in the Work Order.

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

- (a) the Contractor has engaged or is engaging in acts or activities that are likely to constitute or cause the occurrence of offences endangering national security or which would otherwise be contrary to the interest of national security;
- (b) the continued engagement of the Contractor or the continued performance of the Contract is contrary to the interest of national security;
- (c) 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, the Contractor shall be deemed to be in default;
- (d) if the Contractor is a body corporate, a shareholders' or member's meeting is convened to consider a resolution for its winding-up or a resolution for its

winding-up is passed (other than voluntarily for the purpose of bona fide reconstruction or solvent amalgamation), the Contractor shall be deemed to be in default;

- (e) a petition is presented for the winding-up of the Contractor, which is not dismissed within 14 days after the petition is presented;
- (f) the Contractor becomes insolvent;
- (g) the Contractor suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business, the Contractor shall be deemed to be in default; or
- (h) the Government reasonably believes that any of the events mentioned above is about to occur.

26.3 The Government may terminate the Contract by giving seven (7) days' notice to the Contractor if the Contractor has failed to provide the valid Certificate of Survey and Operating License at any time during the Contract Period as required in the Undertaking set out in Appendix to Schedule 3.

26.4 Without prejudice to the foregoing, the Government Representative shall be entitled to terminate the Contract without entitling the Contractor to any compensation whatsoever by giving one (1) month's notice in writing to the Contractor.

27. **Termination Consequences**

27.1 If the Contract is terminated, the Government shall:

- (a) cease to be under any obligation to pay any fee to the Contractor until all costs, loss and/or damage resulting or arising out from the termination of the Contractor's engagement have been calculated and provided such calculation shows a sum or sums due to the Contractor;
- (b) not be responsible for any losses or expenses suffered or incurred by the Contractor due to the termination of the Contract;
- (c) be entitled to repossess any of the Government's materials, clothing, equipment or other goods loaned to the Contractor and to have a lien on any of the materials, clothing, equipment or other goods belonging to the Contractor for any sum due hereunder or otherwise from the Contractor to the Government; and
- (d) have, without prejudice to any claims made or to be made by the Government for breach of the whole or any part of Contract, the right to assign the uncompleted Services to another contractor or other contractors whereupon the Contractor shall be liable for any amounts in excess of the Estimated Total Contract Value.

27.2 The above rights of the Government are in addition to and without prejudice to any other rights the Government may have whether against the Contractor directly or pursuant to any guarantee or indemnity.

- 27.3 Any termination of the Contract howsoever occasioned shall not affect any accrued right or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision thereof which is expressly or by implication intended to come into or continue in force on or after such termination.
- 27.4 If the Contract is terminated or expired for any reason, the Contractor shall:
- (a) forthwith return to the Government all documents containing confidential information, personal data, and any other information, property and materials that are in the possession or under the control of the Contractor and the Contractor Personnel and which were obtained or produced in the course of providing the Services;
 - (b) provide full assistance and cooperation to the Government in order to facilitate an orderly transition of the provision of the Services to the individual(s) specified by the Government Representative, and/or the timely completion of any ongoing work;
 - (c) Within a period of 28 days from the date of termination, the Contractor shall diligently compile and submit to the Government a comprehensive report containing all pertinent information, facts, data, findings and conclusions pertaining to the Services rendered up until the effective date of termination; and
 - (d) The Contractor shall promptly provide the Government with all information pertaining to the provision of the Services that may reasonably be requested, for the purposes of enabling a complete understanding of the manner in which the Services have been rendered, or for the purpose of allowing the Government or a replacement contractor for conducting in due diligence.

28. Government Property

When Government Property is issued to the Contractor under the Contract, the Contractor shall be responsible for the due return of all such property. Should any such property be lost or damaged from any cause whatsoever while in the possession or control of the Contractor or the Contractor Personnel, the Contractor shall pay an amount equal to its replacement costs plus all administrative costs incurred by the Government for replacing such lost or damaged property. A count of the articles or material in the possession of the Contractor may be made at any time by the Government Representative and the Contractor shall render such assistance as is necessary for this purpose.

29. Government Premises / Contractor Premises

- 29.1 The Contractor shall ensure that all persons engaged by him in carrying out this Contract remain at such parts of Government premises as are necessary for the due discharge of the Contractor's obligations under the Contract.
- 29.2 Where the Services are carried out on the Contractor's premises such premises shall be open to inspection by the Government Representative at all reasonable times.

29.3 The safety of any craft, vessel and vehicle used by the Contractor (including the Work Boat) and brought alongside or onto Government premises, piers or wharves, as the case may be, shall be the responsibility of the Contractor, who shall indemnify the Government in respect of any loss or damage to such Government premises, piers or wharves in accordance with Clause 24.2.

30. Illegal Workers

The Contractor undertakes not to employ illegal workers in the execution of any Government contracts including this Contract. Should the Contractor be found to have employed illegal workers in breach of this undertaking, the Government may terminate the Contract pursuant to Clause 26.1(e).

31. Probity

31.1 The Contractor acknowledges it has been reminded that:

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

31.2 The Contractor shall inform its officers, employees (whether permanent or temporary) and the Contractor Personnel that the soliciting or accepting of advantages (as defined in the Prevention of Bribery Ordinance, Cap. 201) is not permitted. The Contractor shall also caution its Contractor Personnel against soliciting or accepting any excessive hospitality, entertainment or inducement which may impair their impartiality in relation to the selection of its sub-contractors, if any, or the supervision of the work of the sub-contractors.

31.3 The Government may terminate the Contract immediately pursuant to Clause 26 hereof if the Contractor or the Contractor Personnel is convicted of an offence under the Prevention of Bribery Ordinance (Cap. 201), the Theft Ordinance (Cap. 210) or the Crimes Ordinance (Cap. 200).

32. Heat Stroke Prevention

32.1 The Contractor shall adopt measures by making reference to Labour Department's latest "Guidance Notes on Prevention of Heat Stroke at Work" which shall cover at least the following: -

- (a) making suitable work arrangement such as rescheduling work to cooler periods and cooler places;
- (b) conducting risk assessments of heat stress for the specific work taking account of the environmental (including but not limited to airflow, temperature), work (such as physical workload) and personal factors (such as heat acclimatization of employees);

- (c) implementing, as far as reasonably practicable, appropriate heat stroke prevention measures (including but not limited to install temporary covers / shelters; providing ventilation equipment, and providing sheltered / ventilated resting places) based on the risk assessment results;
- (d) providing potable water at all times during work; and
- (e) providing uniforms with dry-fit properties.

32.2 The Contractor has a duty under this contract to provide portable fans or both portable fans and cooling arm sleeves / towels to specified workers upon request, the Contractor shall also inform such workers of the availability of portable fans / cooling towels or both portable fans and cooling arm sleeves / towels accordingly for their use upon their request.

33. Publicity

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

34. Confidentiality

34.1 The Contractor shall not disclose and shall treat as proprietary to the Government and confidential all Government data, any other information report, document, plan, record, data (including any personal particulars records and personal data (as defined in the Personal Data (Privacy) Ordinance (Cap. 486), database, code or particulars (i) furnished or disclosed by or on behalf of the Government or by any other person to the Contractor or any of Contractor Personnel; or (ii) otherwise is accessible by or available to the Contractor or any of the Contractor Personnel in the course of performing the Services (collectively "confidential information"), provided that the restrictions on disclosure contained in this Clause 34.1 shall not apply to the disclosure of any confidential information:

- (a) to any person employed, used or engaged by the Contractor in the conduct of the Services in circumstances where such disclosure is necessary for the performance of the Contractor's duties and obligations under the Contract, provided that the Contractor has imposed on the said person employed, used or engaged an absolute and legally binding obligation to the Contractor to refrain from disclosing the said information to a third party;
- (b) already known to the recipient other than as a result of disclosure by the Contractor or anyone of the Contractor Personnel or their respective associates or associated persons;

- (c) which is or becomes public knowledge other than as a result of disclosure by the Contractor or anyone of the Contractor Personnel or their respective associates or associated persons;
 - (d) in circumstances where such disclosure is required pursuant to any laws of Hong Kong or an order of a court of Hong Kong; or
 - (e) with the prior consent in writing of the Government.
- 34.2 Any disclosure permitted under Clause 34.1 (excluding Clause 34.1(d) above) shall be in strict confidence and shall extend only so far as may be necessary for the purposes specified in Clause 34.1 and the Contractor shall ensure the confidentiality of any such disclosure by taking appropriate action to restrain or restrict any further disclosure.
- 34.3 The Contractor shall not, and shall procure and ensure each one of the Contractor Personnel, and their respective associates and associated persons, shall not disclose, make use of or reproduce any confidential information other than to the extent necessary for the performance of the Contractor's obligations under the Contract or with the prior written consent of the Government.
- 34.4 The Contractor shall ensure that all of the Contractor Personnel and any other persons engaged in any work in connection with the Contract are aware of and comply with the provisions of this Clause 34 and the Official Secrets Ordinance (Cap. 521) and the Contractor shall indemnify and keep the Government, its authorised users, assigns and successors-in-title fully and effectively indemnified on the terms set out in Clause 24 as a result of any breach of confidence (whether actionable based on this Contract or at law) by any such persons.
- 34.5 The Contractor shall promptly notify the Government of, and give the Government all reasonable assistance in connection with, any proceedings which the Government may institute against any person pursuant to any of the provisions in this Clause 34.
- 34.6 The Contractor acknowledges that any unauthorised disclosure or use of the Confidential Information can cause irreparable harm and significant injury to the Government, the degree of which may be difficult to ascertain or that damages may not be an adequate remedy. Accordingly, the Contractor agrees that the Government shall have the right to obtain and be immediately granted an injunction prohibiting any breach of this Clause 34 and/or specific performance ensuring the compliance of this Clause 34 in light of any threatened or actual breach of this Clause 29, without prejudice to its other rights and claims including those available under the Contract or at law arising from such breach.
- 34.7 Without prejudice to the generality of the foregoing provisions, the Contractor further undertakes that it will not at any time itself or through any Contractor Personnel use, sell, license, sub-license, create, develop or otherwise deal in any Confidential Information.
- 34.8 The Government may request the Contractor in writing at any time that any Confidential Information disclosed pursuant to the terms of this Clause 34 and any copies, analyses, compilations and extracts thereof whether in hardcopies, 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 and medium. The Contractor shall comply with any such request from the Government within seven (7) days of receipt of such request.

35. Force Majeure

- 35.1 Within 3 days after the occurrence of a Force Majeure Event, the Contractor must notify the Government in writing of the full particulars of the Force Majeure Event including its nature, extent and likely duration of its effect on the Contractor's ability to perform its obligation under the Contract. In the occurrence of a Force Majeure Event, the Government may on its own issue a notice to the Contractor noting the occurrence of the Force Majeure Event and requiring the Contractor to suspend all or any of the obligations under the Contract. A notice issued by the Contractor or the Government pursuant to this Clause is hereinafter referred to as the "Suspension Notice".
- 35.2 Following the issue of a Suspension Notice by the Contractor or the Government, the Contractor must keep the Government informed at reasonable intervals, and upon the request of the Government, of:
- (a) the likely duration of the relevant Force Majeure Event and of its effect on the Contractor's ability to perform its obligations under the Contract;
 - (b) the actions taken or proposed to be taken by the Contractor to mitigate or minimise the effects of that Force Majeure Event;
 - (c) any other matters relevant to that Force Majeure Event or the Contractor's performance affected by that Force Majeure Event; and
 - (d) 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 suspended obligations, and to that extent, all terms and conditions of the Contract shall continue to apply and be in full force and effect.
- 35.3 To the extent that the performance of obligations by the Contractor under the Contract is prevented by a Force Majeure Event, the Contractor's performance of such obligations will, subject to Clause 35.4, be suspended to that extent from the date the Contractor or the Government gives a Suspension Notice in respect of that Force Majeure Event until the Contractor ceases to be so prevented ("Cessation Date"). Notwithstanding anything in the Contract to the contrary, as soon as the Government issues a Suspension Notice to the Contractor, the Contractor must forthwith suspend the performance of the obligations to the extent specified in the Suspension Notice.
- 35.4 During the suspension of any obligations under Clause 35.3:
- (a) the Contractor must use its best endeavours (including incurring any reasonable expenses and re-deploying its manpower and resources) to remove

or mitigate the effect of each Force Majeure Event on the Contractor's performance of the obligations under the Contract;

- (b) the Government may make alternative arrangements for the performance of any suspended obligations, whether by another person or otherwise; and
- (c) the Contractor will not be entitled to any cost, fee or charge or such pro rata portion thereof in respect of the suspended obligations for the suspended period.

35.5 As soon as the relevant Force Majeure Event has ended, the Contractor must forthwith notify the Government of the cessation date, or the Government may on its own, after consultation with the Contractor, by notice in writing to the Contractor, determine the appropriate cessation date. The Contractor must immediately after the cessation date resume performance of the suspended obligations in accordance with the terms and conditions of the Contract. In the event of any disagreement between the Government and the Contractor on the appropriate cessation date, the Government's decision will be final in the absence of manifest error.

35.6 Should suspension of the performance by the Contractor of its obligations under the Contract persist or be likely to persist as a result of a Force Majeure Event, the Government will be entitled to terminate the Contract forthwith.

36. Disclaimer

36.1 The Contractor acknowledges to the Government that it has not relied on or been induced to enter into the Contract by any warranty, representation, forecast, estimate, or projection given by the Government or any of its officers, employees, agents or advisers.

36.2 The Contractor shall not in any way be relieved from any obligation under the Contract nor shall it be entitled to claim against the Government on grounds that any information, whether obtained from the Government or otherwise (including information made available by the Government), is incorrect or insufficient and shall make its own enquiries as to the accuracy and adequacy of all such information.

37. Set-off

Whenever under the Contract any sum of money shall be recoverable from or payable by the Contractor, the same may be deducted from any sum then due or which at any time thereafter may become due to the Contractor under the Contract or any other Government contracts.

38. Relationship of the Parties

38.1 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. The Contractor shall not (without the consent in writing of the Government) commit the Government to any obligation whatsoever.

- 38.2 The Contractor enters into this Contract with Government as an independent contractor only and shall at all times remain as an independent contractor throughout the Contract Period.
- 38.3 For the avoidance of doubt, the Contractor shall not represent itself as an employee agent or servant of Government.

39. Contract Deposit

- 39.1 The Contract Deposit, if in the form of cash, will be retained by the Government, or if in the form of a Bank Guarantee, must remain in force, in either case, from the date of the commencement of the Contract (a) until seven months after the expiry or early termination of the Contract Period (unless (b) is applicable), or (b) in the case if at the time of expiry or early termination of the Contract Period, all or any of the Contractor's obligations and liabilities under or in relation to the Contract shall not have been performed, completed and discharged to the satisfaction of the Government Representative, or there is any right or claim which has accrued to the Government arising from antecedent breach(es) by the Contractor of the Contract or otherwise accrued to the Government prior to the expiry or termination of the Contract, the date falling twenty-four months after the early termination or expiry of the Contract.
- 39.2 Notwithstanding the early termination or expiry of the Contract, only upon the expiry of the aforementioned, the Contract Deposit (if in the form of cash and if any is remaining) will be refunded to the Contractor, in the form of a cheque and without interest, no later than seven (7) months; or, if in the form of a Bank Guarantee shall be discharged or released but in the case of Bank Guarantee, strictly in accordance with the terms thereof.
- 39.3 The Government Representative shall have the right to deduct from time to time from the Contract Deposit or call on the Bank Guarantee (irrespective of whether or not a demand for payment has been made against the Contractor) any amount due or payable by the Contractor to the Government under the Contract but which remains outstanding, in such order as the Government in its absolute discretion deems fit. The Contract Deposit (whether in cash or in the form of the Bank Guarantee) may be deducted or called on, without the Government first having recourse to any other security or rights or taking any other steps or proceedings against the Contractor or any other person, or may be enforced for any balance due after resorting to any one or more other means of obtaining payment or discharge of the monies, obligations and liabilities owing by the Contractor to the Government.
- 39.4 If any deduction shall be made by the Government from the Contract Deposit or a call shall be made on the Bank Guarantee during the continuance of the Contract, the Contractor shall, within fourteen (14) days on demand in writing by the Government, deposit a further sum or provide a further Bank Guarantee, in a sum equal to the amount so deducted or so called which further sum shall be added to the residue of and form part of the Contract Deposit.
- 39.5 If the Contractor fails to replenish the Contract Deposit in accordance with Clause 39.5, the Government reserves the right to terminate the Contract forthwith by providing written notice to the Contractor, without prejudice to any other rights that the Government may have against the Contractor.

40. Assignment

- 40.1 The Contractor shall not, without the prior written consent of the Government Representative, assign, transfer, sub-contract or otherwise deal with any of its interests, rights, benefits or obligations under the Contract, or any part share or interest therein, and the performance of the Contract by the Contractor shall be deemed to be personal to it. Acceptance of the Tender does not signify the Government's acceptance of any sub-contracting proposal set out in the Tender.
- 40.2 In the event that the Contractor intends to appoint a sub-contractor, it shall be obligated to submit the proposed sub-contract to the Government for consideration and approval. The Government reserves the sole discretion to grant permission for sub-contracting and to determine the terms and conditions thereof. A certified copy of the sub-contract shall be provided to the Government within 7 days of the effective date of the sub-contract.
- 40.3 The Contractor shall remain fully liable and shall not be relieved from any of its obligations hereunder by entering into any sub-contract for the performance of any part of the Contract. Notwithstanding any prior written consent, the Contractor shall be responsible for all acts, omission, and defaults of its Contractor Personnel (of whatever tier) as if they were its own acts, omissions or defaults.

41. Entire Agreement and Amendment

- 41.1 The Contract supersedes all prior agreements, arrangement and undertakings between the parties and constitutes the entire Contract between the parties relating to the subject matter hereof. No addition to or modification of any provision of the Contract shall be binding upon the parties unless made by a written instrument signed by a duly authorised representative of each of the parties hereto for and on its behalf.
- 41.2 Save and to the extent expressly provided for in the Contract which enables the Government to on its own make such supplement or amendment to the Contract pursuant to such provision, no variation of the Contract shall be valid unless it is in writing and signed by each of the Government and the Contractor.

42. Order of Precedence

- 42.1 In the event of, and only to the extent of, any conflict or inconsistency amongst or between any provisions of the Contract, the following order of precedence shall be applied, but only in so far as is necessary to resolve that conflict or inconsistency:
- (a) the Conditions of Contract;
 - (b) the Memorandum of Acceptance;
 - (c) Schedule 1;
 - (d) Schedule 2;
 - (e) Schedule 3;
 - (f) the Terms of Tender;

- (g) the Offer to be Bound;
- (h) Non-collusive Tendering Certificate;
- (i) Undertaking for renewing the Operating Licence of Work Boat; and
- (j) the Interpretation.

43. Severability

In the event that any provision of the Contract or any part of any such provisions shall at any time be adjudged to be invalid, unlawful, illegal, voidable or otherwise howsoever unenforceable under any applicable law of Hong Kong, such provision or such part of such provision, as the case may be, to but only to the extent required by such law, shall be severed from the Contract and rendered ineffective so far as possible without modifying the remaining provisions thereof.

44. Rights and Remedies Cumulative

Notwithstanding anything herein to the contrary, all rights and powers of the Government under the Contract are cumulative, and may be exercised at the same time or separately. They do not exclude any other rights, powers and remedies provided by applicable laws and regulations.

45. Waiver

45.1 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.

45.2 Without prejudice to the generality of Clause 45.1 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.

46. Admission of Contractor Personnel to Government Premises

46.1 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 Personnel 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.

- 46.2 The Contractor shall ensure that while any of the Contractor Personnel is on the Government's premises they will conform to the Government's normal codes of staff and security practice.
- 46.3 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.
- 46.4 In the event that the Contractor fails to comply with this Clause 46 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 26 hereof.

47. Notices

- 47.1 Each notice, demand, invoice, correspondence or other communication given or made under the Contract by a party shall be in writing and delivered or sent to the other party at the applicable postal address, facsimile number or email address stated below (or such other replacement postal address, facsimile number or email address as the addressee has by no less than seven (7) working days' prior written notice specified to the other party):

To the Contractor: at the correspondence address, facsimile number and email address as specified in Section A of Schedule 2.

To the Government: Director of Agriculture, Fisheries and Conservation
8/F, Cheung Sha Wan Government Office,
303 Cheung Sha Wan Road, Kowloon
Fisheries Enforcement and Special Projects Division
Licensing and Registration Section
(Attn: Mr. MAK Chu-wa)
Facsimile: (852) 2314 2866
Email: daniel_cw_mak@afcd.gov.hk

- 47.2 Such notices, demands, invoice, correspondence or other communications shall be addressed as provided in Clause 47.1 above and, if so addressed, shall be deemed to have been duly given or made as follows:
- (a) if sent by personal delivery during normal business hours on a working day, upon delivery at the address of the relevant party;
- (b) if sent by post (regardless of whether during or outside normal business hours), two (2) working days (for any place in Hong Kong) and seven (7) working days (for any place outside Hong Kong) after the date of posting which is a working day;

- (c) if sent by facsimile during normal business hours on a working day, when despatched with confirmed receipt as evidenced by the transmission report generated at the end of the transmission of such facsimile by the facsimile machine used for such transmission; or
- (d) if sent by email during normal business hours on a working day, upon despatch unless the sender has received a non-delivery notification from his own computer system.

47.3 Notice, demand, invoice, correspondence or other communication to the Contractor from the Government in the prescribed manner specified in Clause 47.2 above shall be deemed to have been served provided that the notice, demand, invoice, correspondence or other communication has been sent to the correct applicable contact of the Contractor as specified in Clause 47.1 above.

47.4 Nothing in this Clause 47 shall affect the validity of any notice, demand, invoice or communication despatched by personal delivery or by fax or by email outside normal business hours whether on a working day or a non-working day. Any such notice, demand, invoice, correspondence or other communication fulfilling the conditions specified in Clause 47.2 above shall be deemed to have been duly given or made on the next working day following from the date of personal delivery or fax or email. Where posting is not done on a working day, it shall be deemed to have been done on the next working day after such day.

48. Governing Law

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

49. Retention of Records

The Contractor must keep and maintain the records until 6 years after the expiry of the Contract, or such longer period as may be agreed by the parties. Full and accurate records of the Contract include 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 must 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.

50. Assistance in Legal Proceedings

50.1 Whenever requested by the Government Representative, the Contractor must provide the Government with all relevant information, documents (including documentation and statements from staff) and any other assistance in connection with any inquiry, investigation, arbitration, tribunal hearings or court proceedings in which the Government may be involved, as well as any internal disciplinary hearing of the Government that arises from or in connection with the Contract or the Contractor's presence at the Government's premises. If requested by the Government, the

Contractor must make arrangements for the relevant staff to give evidence at such inquiries, investigations, arbitrations, hearings or proceedings.

50.2 Where the Contractor or any Contractor Personnel become aware of an incident, accident or any 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 must notify the Government Representative immediately in writing giving full details of such incident, accident or matter as the Government Representative may require.

51. Contracts (Right of Third Parties) Ordinance

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 or for the purposes of the Contracts (Rights of Third Parties) Ordinance (Cap. 623).

52. United Nations Convention on Contracts for the International Sale of Goods not applicable

The Parties hereby agree that the provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract.

Appendix I

Boundary Buoys for Fish Culture Zones and Craft Anchorage

Fish Culture Zones	Sub-Zones	No. of Boundary Buoys	Name of Boundary Buoys	Coordinates (WGS 84)	
				Northing	Easting
Wong Chuk Kok Hoi Fish Culture Zone (WCKH FCZ)		4	WCKH 1	22° 30.542N	114° 18.933E
			WCKH 2	22° 30.645N	114° 19.358E
			WCKH 3	22° 30.407N	114° 19.427E
			WCKH 4	22° 30.301N	114° 18.993E
Mirs Bay Fish Culture Zones (MB FCZ)	Mirs Bay (North) Fish Culture Zone (MB(N) FCZ))	4	MB(N) 1	22° 28.656N	114° 22.651E
			MB(N) 2	22° 28.359N	114° 23.152E
			MB(N) 3	22° 27.902N	114° 22.838E
			MB(N) 4	22° 28.200N	114° 22.337E
	Mirs Bay (South) Fish Culture Zone (MB(S) FCZ))	4	MB(S) 1	22° 27.270N	114° 22.245E
			MB(S) 2	22° 27.268N	114° 23.461E
			MB(S) 3	22° 26.479N	114° 23.461E
			MB(S) 4	22° 26.481N	114° 22.243E

Remarks:

1. The Contractor shall be responsible for procuring fourteen (14) boundary buoys, including twelve (12) boundary buoys for the demarcation of Fish Culture Zone Boundary and two (2) for the backup purpose. The boundary buoys and mooring components comply in all respects with the requirements and specifications set out in Schedule 5.
2. The Contactor shall be responsible to provide designate locations for storage of boundary buoys.

Appendix II**SPECIFICATIONS FOR BOUNDARY BUOY PAINTINGS****1. General Specifications**

- 1.1. The Contractor shall provide paints for the Services that are (i) compliance with international recognised limits of volatile organic compounds and heavy metals; and (ii) marine grade of ablative antifouling paint and water-based coat adopted for marine applications.
- 1.2. The paints to be utilised for the Services shall be directly supplied by internationally recognised paint manufacturers or their authorised distributors, who possess a positive track record and are capable of providing technical assistance with respect to the proper preparation and application of their products.
- 1.3. The Contractor shall be required to submit product data to the Government Representative for approval prior to utilising the paints.
- 1.4. The colour of the paints utilised for the Services set out in this Contract shall adhere to the colour code specified in B.S. 381C or equivalent standards:

Colour	B.S. 381C Colour Code
White	00E55
Black	00E53
Blue	104
Red	537
Green	221
Yellow	355
Orange (International)	592

- 1.5. The Contractor shall strive to utilise paints provided by a single paint manufacturer to the extent possible. In the event that the Contractor desires to use paints from different manufacturers, the Contractor shall be required to obtain prior written approval from the Government Representative.

2. Preparation for New Boundary Buoys before Utilisation

- 3.1 Above Waterline - Apply one (1) to two (2) full coat of acrylic resin-based coating to 40 – 60 micron dry film thickness, according to colour of the boundary buoy, or as per direction given in work orders. Sharp corners, edges, and other hard-to-coat areas shall be striped before full coat is applied.
- Apply one (1) to two (2) full coat of non-slip coating on the top side of the boundary buoy.
- 2.2. Below Waterline - Apply two (2) to three (3) full coats of Tin-free anti-fouling – 80 - 100 micron dry film thickness in each coat. Sharp corners, edges, and other hard-to-coat areas shall be striped before full coat is applied.

3. Preparation for EXISTING Boundary Buoys before Utilisation

3.1. In the preparation of boundary buoy before painting, all marine growth and rusty scales on the surface of boundary buoys shall be removed by hand and / or powered equipment. All bare surface shall be further cleaned up by scraping and wire-brushing to the standard of ISO 8501-1:2007 St 3 or equivalent. Scraping is performed first in one direction and then at right angles. After dusting, the surface shall have a pronounced metallic sheen.

3.2 (i) Overall - Touch up all bare metal areas with Hi-build chlorinated rubber based primer coating to 80 – 100 micro dry film thickness.

Apply two (2) to three (3) full coat Hi-build chlorinated rubber based primer – 80 – 100 micron dry film thickness on each coat.

(ii) Above Waterline - Apply one (1) to two (2) full coat of acrylic resin-based coating to 40 – 60 micron dry film thickness, according to colour of the boundary buoy, or as per direction given in work orders. Sharp corners, edges, and other hard-to-coat areas shall be striped before full coat is applied.

Apply one (1) to two (2) non-slip coating on the top side of the buoy.

(iii) Below Waterline - Apply two (2) to three (3) full coats of Tin-free anti-fouling – 80 - 100 micron dry film thickness in each coat. Sharp corners, edges, and other hard-to-coat areas shall be striped before full coat is applied.

3.3. Day Mark Wings (if fitted):

(i) Apply one (1) filler coat Hi-build chlorinated rubber based primer (20% dilution by thinner);

(ii) Apply one (1) full coat Hi-build chlorinated rubber based primer to 80 – 100 micron dry film thickness;

(iii) Apply two (2) to three (3) full coats of acrylic resin based enamel coating – 40 – 60 micron dry film thickness on each coat, according to the colour of the buoy, or as per direction given in work orders.

Tender for the Provision of Services for Deployment and Overhaul Boundary Buoys in Wong Chuk Kok Hoi Fish Culture Zone and Mirs Bay Fish Culture Zones

Schedule 1 Price Schedule

Explanatory notes:

1. Tenderers shall quote for all items by filling in all the unshaded boxes in the table.
2. “Unit Price” means the price for providing the Service for one time.
3. Tenderers shall quote the “Unit Price” for each item of the Services and multiply it by the “Estimated Frequency of Service Requirement” figure to obtain the “Total Price for Work Order”.
4. The figures indicated in the table for “Estimated Frequency of Service Requirement” are estimated quantities for the entire Contract Period. Payments will be made based on the actual number of times the Services have been requested and carried out in compliance with the terms and conditions of the Contract.
5. The term “a team of qualified divers” in this Contract refers to one (1) operational diver and the required number of standby divers as stipulated in the Code of Practice “Safety and Health at work for Industrial Diving” issued by the Labour Department.
6. The term “Work Boat” in this Contract refers to the Work Boat as defined in Part I – Interpretation.
7. The term “Normal Working Time” refers to a continuous nine (9) hours duration, on irregular hours and ad hoc basis, from Mondays to Saturday.
8. If a Tenderer intends to offer a certain Service item free of charge, the Tenderer shall indicate such intention in writing, instead of leaving the space blank, by using wording such as “N/A”, “free of charge” or “FOC”.

Number of Work Order (WO)	Description of Service	Unit Price (HK\$)	Estimated Frequency of Service Requirement	Total Price for Work Order (HK\$)
		(I)	(II)	(III) = (I) x (II)
WO 1	Deploy a set of boundary buoy including one (1) boundary buoy, the mooring components attached to the buoy and one (1) mooring block (hereinafter “Setup”) according to the following procedure: - <ul style="list-style-type: none"> ● Provide and operate one (1) Work Boat, along with all necessary Equipment that meet the specifications stipulated in the Contract to deploy one (1) boundary buoy and mooring components from designated location for storage 		16	

	<p>of boundary buoy to the deployment location within Hong Kong specified by the Government Representative;</p> <ul style="list-style-type: none"> ● Deploy the Setup at the position as required by the Government Representative. 			
WO 2	<p>Overhaul a Setup according to the following procedure: -</p> <ul style="list-style-type: none"> ● Provide and operate one (1) Work Boat and all necessary Equipment that meet the specifications stipulated in the Contract to collect a replacement buoy and backup mooring components from the designated location for storage to the deployment location within Hong Kong specified by the Government Representative; ● Lift one (1) existing boundary buoy, the associated mooring chain and mooring components from the water onto the Work boat, and proceed to disconnect the boundary buoy from the mooring chain; ● Remove any marine growth present on the mooring chain and its associated components; ● Conduct an inspection of the mooring chain and associated components to verify their conditions; ● Lift the mooring block and associated components from the water onto the Work Boat for overhaul as required by the Government Representative; ● Replace any associated components as required by the Government Representative; ● Re-deploy the mooring block at the same location as confirmed by the Government Representative; ● Reconnect the replacement buoy to the mooring components on Work Boat and 		6	

	<p>re-deploy the buoy at its designated location; and</p> <ul style="list-style-type: none"> ● Transport the replaced buoy and its associated components to the designated location for storage. 			
WO 3	<p>Relocate a Setup according the following procedure: -</p> <ul style="list-style-type: none"> ● Provide and operate one (1) Work Boat and all necessary Equipment that meet the specifications stipulated in the Contract to the designated location of Setup; ● Lift the Setup from the water onto the Work Boat; ● Remove any marine growth present on the mooring chain and its associated components; and ● Re-deploy the Setup at the location as required by the Government Representative. 		3	
WO 4	<p>Retrieve, without replacement, a Setup according to the following procedures: -</p> <ul style="list-style-type: none"> ● Provide and operate one (1) Work Boat and all necessary Equipment that meet the specifications stipulated in the Contract to the designated location of Setup; ● Lift the Setup from the water onto the Work Boat; ● Remove any marine growth present on the mooring chain and its associated components; and ● Re-deploy the Setup at the location as required by the Government Representative. 		6	
WO 5(a)	<p>Prepare and paint one (1) boundary buoy according to the following procedure: -</p> <ul style="list-style-type: none"> ● Remove any marine growth present on the buoy; ● Use power tools to clean the external surface of the buoy to the standard of ISO 8501- 		6	

	<p>1:2007 St3 or equivalent. The treatment process shall involve thorough scraping, wire brushing and dusting. Scraping and wire brushing shall be performed first and in the same direction, and then at proper angles. Dusting is the second step of the treatment process, ensuring the surface with a pronounced metallic sheen;</p> <ul style="list-style-type: none"> ● Remove any grease and thoroughly clean all external surfaces of the boundary buoy before applying paint; ● Apply approved paint to coat the surface of the boundary buoy in accordance with the specifications stipulated in Appendix II of the Service Specifications; and ● Mark the boundary buoy with the specific identification number and name. 			
WO 6	<ul style="list-style-type: none"> ● Provide and operate for one (1) day, during normal working hours, the following Services for one (1) day as required by the Government Representative regarding the overhaul of boundary buoys, which are not specified in this Schedule: - 			
WO 6(a)	One (1) Work Boat;		3	
WO 6(b)	One (1) team of qualified divers.		3	
WO 7	Provide a launch that can accommodate at least ten (10) individuals to transport government representative and other government staff for supervising the deployment of boundary buoys from the designate storage location to the location of buoy deployment, as well as to oversee on-site overhaul operations:-			
WO 7(a)	Wong Chuk Kok Hoi and Mirs Bay		3	
WO 7(b)	Other Hong Kong Coastal Area		3	
WO 8	Provide the necessary labour and materials to remove and re-fit the following components for a boundary buoys in accordance with			

	the specifications outlined in the Marine Department Drawings: -			
WO 8(a)	One (1) set of top mark		3	
WO 8(b)	One (1) forelock		3	
WO 8(c)	One (1) piece of eye ring		3	
WO 9	Provide and install sufficient lashings to secure all Government property, including but not limited to backup boundary buoys, related to this Contract, wherever they may be located and whenever required. The price should include transportation fee for the laborers. This Service is typically required when Typhoon Signal No. 3 is in effect.		3	

Total Estimated Contract Price (i.e. (IV) = total of (III) for all Work Orders) HK\$	_____ (IV)
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Signature of the Tenderer/ an authorised signatory for an on behalf of the Tenderer : _____

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

Name of Tenderer : _____

Phone / Fax : _____ / _____

Date : _____

**Tender for the Provision of Services for Deployment and Overhaul
Boundary Buoys in Wong Chuk Kok Hoi Fish Culture Zone and Mirs
Bay Fish Culture Zones**

Schedule 2
Section A - Details of Tenderer

(a)	Name of the Tenderer in English:	
(b)	Name of the Tenderer in Chinese:	
(c)	Principal place of business of the Tenderer (in address form):	
(d)	Business Address in Hong Kong (if different from above):	
(e)	Type of business entity of the Tenderer:	a company / a sole proprietorship / a partnership / a statutory company / others * (*Please delete whichever is not applicable).
(f)	Shareholders / partners / proprietor of the Tenderer and their percentage of ownership:	
(g)	Length of business experience (in years):	
(h)	Names of the following:	
	1. Managing director and other directors;	
	2. Partners; or	
	3. Sole proprietor	
(i)	Place and date of incorporation or formation:	
(j)	Business profile information of the Tenderer including the number and the location of full time / contract employees, core business strategies and strength and industry expertise:	
(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:	
(l)	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 documents issued by the place of business of the Tenderer:	Please attach if applicable

(m)	(if the Tenderer is a company) a copy of the Memorandum (if any) and Articles of Association, Certificate of Incorporation, Certificate of Change of Name (if any) or equivalent documents issued by the authority of the place of incorporation of the Tenderer:	Please attach if applicable
(n)	(if the Tenderer is a company incorporated in Hong Kong or is registered as a 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:	Please attach if applicable
(o)	Employees Compensation Insurance Policy:	
	Name of insurance company:	
	Name of insurer:	
	Insurance Policy No.:	
	Expiry date:	
(p)	A certified extract of board resolution or other documentary evidence acceptable to the Government demonstrating authorisation and approval for the submission of its Tender. This requirement shall always be applicable to a Tenderer which is a company regardless of the mode of submission of Tender. In the case that a Tenderer is a sole proprietorship or a partnership, documentary evidence acceptable to the Government demonstrating authorisation and approval for the submission of its Tender shall also be required if (a) (in the case of Paper-based Tendering), the signatory of the Offer to be Bound, or (b) in the case of Electronic Tendering using an Identification Code, the person submitting the Tender, is not the sole proprietor or a partner (or a general partner in the case of a limited partnership) (as the case may be)	Please attach if applicable
(q)	Name of the Contact Person:	
(r)	Telephone No.:	
(s)	Facsimile No.:	
(t)	Email Address:	

*delete where inapplicable

Name of Tenderer : _____

Date : _____

**Tender for the Provision of Services for Deployment and Overhaul
Boundary Buoys in Wong Chuk Kok Hoi Fish Culture Zone and Mirs
Bay Fish Culture Zone**

Schedule 2

Section B - Details of Work Boat and Equipment

Part A – Proposed Work Boat for the proper and efficient performance of the Services

Part B – Provision of Equipment necessary for performing the Service

The Tenderer certifies and warrants that the Work Boat particularized below be provided for the Services under the Contract and that each of the Work Boat and Equipment complies in all respects with the requirements and specifications set out in Schedule 5 as at the date of submission of its Tender and will comply with such requirements and specifications throughout the Tender Validity Period and the Contract Period:

	<u>Work Boat</u>	<u>Equipment</u>
Certificate of Ownership Number:		
Validity Period of Operating Licence:		
Charter party agreement / legally binding agreement to substantiate its claim of the right of use of the proposed items:		

Remarks:

Please attach to this Schedule 2 two colour photographs in 3R size showing full view of the proposed Work Boat, photocopies of the Work Boat's licences, certificates of ownership of abovementioned items and other documents relevant to the proposed Work Boat and Equipment.

Name of Tenderer : _____

**Tender for the Provision of Services for Deployment and Overhaul
Boundary Buoys in Wong Chuk Kok Hoi Fish Culture Zone and Mirs
Bay Fish Culture Zones**

Schedule 2

**Section C – Details of the Tenderer’s Experience in Providing
Deployment and Overhaul Services for Boundary Buoys**

	Name of Contract (Ref. no.)	Client	Contract Period
<i>Example</i>	<i>Provision of Services to Deploy and Overhaul</i>	<i>The Government of the HKSAR</i>	<i>April 2021 – 31 March 2022</i>
1.			
2.			
3.			
4.			
5.			
6.			
7.			

Remarks:

1. Assessment will be based on the accumulated experience in providing deployment and overhaul services to boundary buoys in the past ten (10) years preceding the Original Tender Closing Date.
2. A Tenderer shall submit documentary evidence (e.g. a copy of the letter of acceptance) to substantiate its claim of the experience. Experience not substantiated will not be taken into account.

Name of Tenderer : _____

**Tender for the Provision of Services for Deployment and Overhaul
Boundary Buoys in Wong Chuk Kok Hoi Fish Culture Zone and Mirs
Bay Fish Culture Zones**

Schedule 2

**Section D – Details of the Contract Manager’s Experience in Providing
Deployment and Overhaul Services for Boundary Buoys**

	Contract Manager
Name:	
Position:	
Telephone number:	
Other means of direct communication:	

Relevant full-time working experience at management or supervisory level in overseeing deployment and overhaul services to boundary buoys contracts in the past ten (10) years preceding the Original Tender Closing Date:

	Name of Contract (Ref. no.)	Client	Contract Period	Position
<i>Example</i>	<i>Provision of Services to Deploy and Overhaul</i>	<i>The Government of the HKSAR</i>	<i>April 2021 – 31 March 2022</i>	<i>Manager</i>
1.				
2.				
3.				
4.				
5.				
6.				
7.				

Remarks:

A Tenderer shall submit documentary evidence (e.g. a copy of employment contract/referee’s letter) to substantiate its claim of the working experience of the Contract Manager(s). Working experience not substantiated will not be taken into account.

Name of Tenderer : _____

**Tender for the Provision of Services for Deployment and Overhaul
Boundary Buoys in Wong Chuk Kok Hoi Fish Culture Zone and Mirs
Bay Fish Culture Zones**

Schedule 2

**Section E - Information required under Clause 15.1
of the Terms of Tender**

* **(a)** I/We confirm that none of the events as mentioned in Clause 15.1(a) to 15.1(g) of the Terms of Tender has ever occurred.

* **(b)** I/We confirm that the following event(s) as mentioned in Clause 15.1(a) to 15.1(g) of the Terms of Tender has occurred:

Date	Details of the Event

Name of Tenderer : _____

**Tender for the Provision of Services for Deployment and Overhaul
Boundary Buoys in Wong Chuk Kok Hoi Fish Culture Zone and Mirs
Bay Fish Culture Zones**

**Schedule 3
Execution Plan**

1. Please provide the documents as required in Execution Plan, namely a Deployment and Overhaul of Boundary Buoy Service Plan, a Contractor Personnel Management Plan and Innovative Suggestions. Failure to provide Execution Plan will render a tender invalid and will not be further considered. Please refer to the Appendix to Annex 1 (Assessment Criteria and Marking Scheme) for details.
2. The submission for Execution Plan, excluding related annexes and documentary proof, shall not be more than 50 pages in A4 size paper for text (with margin not less than 25 mm and character font size not less than 12). For the avoidance of doubt, pages exceeding the specified limit will be considered in the tender evaluation but 0.5 mark will be deducted from the total technical marks for each excessive page, subject to a maximum of 5 marks.

**Tender for the Provision of Services for Deployment and Overhaul
Boundary Buoys in Wong Chuk Kok Hoi Fish Culture Zone and Mirs
Bay Fish Culture Zones**

Schedule 4
Election of Mode of Payment of Contract Deposit

Tenderers are requested to indicate their preferred mode of payment for the Contract Deposit, as per Clause 19 of the Terms of Tender, by selecting either cash or bank guarantee below. A Tenderer who fails to submit this Schedule or does not select their preferred mode of payment will be deemed to select payment in cash.

We, the Tenderer, agree to pay the Contract Deposit under Clause 18 of the Terms of Tender by *cash / *bank guarantee.

*(*delete as appropriate)*

Name of Tenderer : _____

Schedule 5

Essential and Other Requirements

1. Essential Requirements for the Work Boat

- (a) It is essential requirement that a Tenderer must complete this Schedule 5 and check all boxes and submit it as part of its Tender before the Tender Closing Date to prove compliance with the requirements as stipulated in paragraph 1(b)(i) to 1(b)(vii) below.
- (b) The Work Boat must have the below features:-

Essential Requirements for the Work Boat	Checklist result
(i) Be a flat-topped crane barge or a flat-topped derrick barge or other similar vessel;	
(ii) be equipped with lifting gear that meets the safe working load prescribed under the Merchant Shipping (Local Vessel) (Works) Regulation (Cap. 548I), which shall not be less than 35 tonnes when the main hoist is at full outreach;	
(iii) be accompanied with a tugboat when the work boat is not self-propelled. The tugboat shall be properly manned in accordance with the Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation (Cap. 548D);	
(iv) have vertical lift with at least 6.2 meters, as measured between the level of the Work Boat's weather deck and the lower lifting block of the main hoist;	
(v) have capacity to accommodate not less than 4 sets of boundary buoys, including their components and mooring blocks. The stowage of the buoys, component and mooring blocks on board the Barge must not be piled in stacks;	
(vi) capable of operating with a shallow draft under working conditions, including manoeuvring, operating and working at sea with a minimum water depth of 1.5 meters; and	
(vii) possess the capability to moor and maintain a stable position while laying and overhauling in confined water areas with fish culture farms.	

2. Essential Requirements for the Equipment and Setup

- (a) It is essential requirement that a Tenderer must complete this Schedule 5 and check all boxes and submit it as part of its Tender before the Tender Closing Date to prove compliance with the requirements as stipulated in paragraph 2(b)(i) to 2(b)(xviii) below.
- (b) The Equipment must have the below features:-

Essential Requirements for the proposed Equipment and Setup	Checklist result
(i) design for the deployment in the deep water areas (approximately 20 m);	
(ii) be equipped with a buoy body filled with foam core or divided by at least two equally spaced watertight compartments;	
(iii) compose with steel or plastic and was able to sustain possible impacts by other vessels to ensure that the boundary buoys remain in shape and afloat after such impacts;	
(iv) have not less than or equal to 2 metre in the diameter;	
(v) have not less than or equal to 3 metres in the focal height;	
(vi) have not less than or equal to 0.9 metres in the height between waterline and top of water tight compartment;	
(vii) have 10 mm in plate thickness for steel or equivalent strength for plastic;	
(viii) buoys' shape must not be conflict with that used for a lateral or safe water mark;	
(ix) be equipped with automatic identification system (AIS);	
(x) be equipped with the radar reflector;	
(xi) be equipped with Top mark, which is a single yellow cross positioned on top, with dimension of 500 x 45 x 6 mm;	
(xii) be equipped with watertight battery compartment;	
(xiii) be painted in yellow colour in surface finish;	
(xiv) be equipped with not less than 25 mm open link mooring chain;	
(xv) sinker with sufficient weight to hold the buoy in position with regard to the seabed, tidal and weather conditions likely to be experienced at the deployment location;	
(xvi) have a light with quick flashing yellow, with a range of 3 nautical miles at 0.74 atmospheric transmission factor;	
(xvii) light shall be the type approved by the International Association of Marine Aids to Navigation and Lighthouse Authorities;	
(xviii) the light's battery shall be water proof and leak-proof type.	

Appendix to Schedule 5

UNDERTAKING

To: The Government of the Hong Kong Special Administrative Region as represented by the Director of Agriculture, Fisheries and Conservation (“the Government”)

Agriculture, Fisheries and Conservation Department
8th Floor, Cheung Sha Wan Government Offices,
303 Cheung Sha Wan Road,
Kowloon

Re. Tender for the Provision of Services for Deployment and Overhaul of Boundary Buoys in Wong Chuk Kok Hoi Fish Culture Zone and Mirs Bay Fish Culture Zones (Tender Ref.: AFCD/Cap3532023/2)

The Tenderer hereby undertakes in favour of the Government the following:-

- (i) the Tenderer shall renew the Certificate of Survey and Operating Licence of the Work Boat and Equipment throughout the Tender Validity Period; and
- (ii) the Government shall be entitled to terminate the Contract by giving a 7 calendar days’ written notice under Clause 26 of “Part III - Conditions of Contract” if the Contractor failed to provide the valid Certificate of Survey and Operating License at any time during the Contract Period.

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 :

ANNEX 1

Marking Scheme and Assessment Criteria for Provision of Services for Deployment and Overhaul of Boundary Buoys in Wong Chuk Kok Hoi Fish Culture Zone and Mirs Bay Fish Culture Zones

1. A two-envelope approach with a technical to price weighting of 60:40 will be adopted for this Tender evaluation whereby the price assessment will be conducted separately and subsequent to the technical assessment.
2. For Tender evaluation, a tender assessment panel (“Tender Assessment Panel”) will be formed. The Tender Assessment Panel will evaluate the Tenders in five stages as set out below.

Stage I – Completeness Check

3. All Tenders received will be checked on whether all the documents and information required in **Clause 3.4 of Part II - Terms of Tender** have been submitted. **A Tender will not be considered further if, by the Tender Closing Date, the Tenderer fails to submit any of the following documents:**
 - (a) The Offer to be Bound as required in Clause 3.3 of the Terms of Tender;
 - (b) Schedule 1 containing the price quotation for the Services;
 - (c) Schedule 2 containing the details of the Tenderer (Section A), Work Boat and Equipment (Section B), Tenderer’s Experience in Providing Deployment and Overhaul Services for Boundary Buoys (Section C), Contract’s Manager’s Experience in Providing Deployment and Overhaul Services for Boundary Buoys (Section D) and Information Required under Clause 14.1 of the Terms of Tender (Section E); and
 - (d) Schedule 3 containing the details of Deployment and Overhaul of Boundary Buoy Service Plan, Contractor Personnel Management Plan and innovative suggestions under Execution Plan of technical proposal in accordance with Appendix to Annex 1.
4. Tenders which have passed Stage I evaluation will proceed to Stage II evaluation.

Stage II – Checking for Compliance with Essential Requirements

5. Tenders which have passed Stage I evaluation will be checked to ensure their compliance with the essential requirements as set out in Schedule 5. Information and documents submitted in a Tender to substantiate the Tenderer’s compliance of the essential requirements will be evaluated by the Tender Assessment Panel. Tenders which have passed this Stage II assessment will proceed to Stage III assessment.

Stage III – Technical Assessment

6. Technical proposals of Tenders which have passed Stages I and II evaluation will be further evaluated according to the Assessment Criteria and Marking Guidelines in **Appendix to Annex 1**.
7. **Any Tender which fails to score the passing mark (10 out of 40) under the assessment criterion (1) (Deployment and Overhaul of Boundary Buoy Service Plan) of the Assessment Criteria in Appendix to Annex 1 will not be considered further.**
8. The weighted technical score will be worked out for Tenders which have passed Stages I to III evaluation. The highest scoring Tender that has passed Stage III will be given the maximum weighted technical score of 60 and the remaining Tenders will be given a weighted technical score in accordance with the following formula:

$$60 \times \frac{\text{Total technical mark attained by the Tender being assessed}}{\text{Highest total technical mark among Tenders that have passed Stages I to III evaluation}}$$

Stage IV – Price Assessment

9. (a) The price proposals of those Tenders which have passed Stages I to III evaluation will be assessed.
- (b) The price assessment will be based on the Estimated Total Contract Value in Schedule 1 (Price Proposal).
10. The lowest Tender price submitted by a Tenderer amongst all the Tenderers whose Tenders have passed Stages I to III evaluation will be given the maximum weighted price score of 40 and the remaining Tenders will be given a weighted price score in accordance with the following formula:

$$40 \times \frac{\text{Lowest Estimated Total Contract Value among the Tenders that have passed Stages I to II evaluation and completed Stage III assessment}}{\text{Estimated Total Contract Value of the Tender being assessed}}$$

[Note: The weighted technical score and weighted price score of each Tender will be rounded to the nearest 2 decimal places. Figures with the value 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 value at the third decimal place below 0.005 will be rounded down by curtailing the third decimal place onward without changing the value at the second decimal place.]

Stage V – Calculation of Combined Score

11. (a) The weighted technical score and weighted price score of a Tender will be added up to calculate the Tender's combined score.
- (b) The Tenderer whose Tender attains the highest combined score (price and technical scores) will normally be recommended for the award of the Contract.

Appendix to Annex 1**Provision of Services for Deployment and Overhaul of Boundary Buoys in Wong Chuk
Kok Hoi Fish Culture Zone and Mirs Bay Fish Culture Zones****Assessment Criteria and Marking Guidelines for Stage III – Technical Proposal**

Assessment Criteria		Maximum Mark	Passing Mark*
(A) Execution Plan			
(1)	Deployment and Overhaul of Boundary Buoy Service Plan (see Note 1 and 3)	40	10
(2)	Contractor Personnel Management Plan (see Note 2 and 3)	21	--
(3)	Innovative Suggestions		
	(a) Pro-innovation Proposals – directly relevant to the Service (see Note 4)	15	--
	(b) ESG Proposals – measures to improve environmental protection, sustainability or governance or social responsibility which may but need (see Note 5)	9	--
Sub-total for (A)		85	--
(B) Experience, Certification and Qualifications			
(4)	Tenderer's Experience for Deployment and Overhaul of Boundary Buoy Services (see Note 6)	3	--
(5)	Experience of Contract Manager for Deployment and Overhaul of Boundary Buoy Services (see Note 7)	5	
Sub-total for (B)		8	--
(C) Other Specific Criteria			
(6)	An additional Work Boat for Facilitating the Provision of Deployment and Overhaul of Boundary Buoy Service (see Note 8)	7	
Sub-total for (C)		7	
Total Technical Mark		100	--

Remarks:

In accordance with Section (A) of the Assessment Criteria, the submission of the Execution Plan, excluding related annexes and documentary proof, shall not exceed 50 A4-size pages for text (with margin not less than 25 mm and character font size not less than 12). For the avoidance of doubt, pages exceeding the specified limit will be taken into account during the tender evaluation process, but 0.5 mark will be deducted from the total technical marks for each excessive page, subject to a maximum of 5 marks.

Explanatory Notes for Stage III – Technical Assessment**(A) Execution Plan****(The Execution Plan shall be put into the Technical Proposal Envelope.)**

A Tenderer shall submit an Execution Plan containing the following plans (“Plans”):

- (1) Deployment and overhaul of boundary buoy service plan (“Deployment and Overhaul of Boundary Buoy Service Plan”); and
- (2) Contractor personnel management plan (“Contractor Personnel Management Plan”).

Tenderers should provide detailed information in their Plans which shall meet Assessment Criteria (1) and (2) as specified in Notes 1 and 2 below respectively. The Plans should demonstrate the Tenderer’s ability to coordinate and deliver the Services promptly with quality assurance measures. Marks will be given according to the marking guidelines provided below. All information included in the Plans submitted by the Contractor and to the extent as accepted by the Government shall form part of the Contract.

Note 1: for Assessment Criterion (1) – Deployment and Overhaul of Boundary Buoy Service Plan (max. mark: 40)

The Deployment and Overhaul of Boundary Buoy Service Plan shall cover the following items:

1.1 Operational arrangement

- (a) programmes for optimal workflow of boundary buoy deployment and other supporting and overhauling functions;
- (b) measures to deal with unforeseen changes and situation, such as inclement weather encountered in the Services for the deployment and overhaul of boundary buoys, other than those stated in the Conditions of Contract;
- (c) a reviewing mechanism for the effectiveness of the Service;
- (d) communication channel during inclement weather conditions; and
- (e) measures to enhance security control for equipment / tools / users' personal belongings, etc. stored on the Work Boat during the deployment and overhaul service.

1.2 Contingency measures

- (f) arrangements to meet ad hoc urgent requests (e.g. mobilising sufficient manpower and appropriate Work Boat to cater for service needs outside normal working hour);
- (g) procedures and support for emergency situations (e.g. unforeseen problems such as engine failure, marine traffic accident, operations during typhoons and other natural disasters, breakage of mooring chain) and procedures for the provision of subsequent replacement Work Boat upon emergency situations; and
- (h) a duty team to oversee and execute contingency operations.

Marks will be given according to the marking guidelines provide in Note 3 below. **Any Tender which fails to score the passing mark of 10 under Assessment Criterion (1) (Deployment and Overhaul of Boundary Buoy Service Plan) will not be considered further.**

Note 2: for Assessment Criterion (2) – Contractor Personnel Management Plan (max. mark: 21)

The Contractor Personnel Management Plan shall cover the following items:

2.1 Relating to Maritime Navigation Safety

- (a) a training programme for Contractor Personnel to enhance maritime navigational safety awareness, navigational knowledge and good seamanship;
- (b) a programme for disseminating orders / messages to Contractor Personnel;
- (c) an “Accident and Incident Reporting and Investigation” mechanism to report and investigate accidents and incidents occurred with corrective actions proposal within a certain period (say, 3 days for accident involving casualty);
- (d) a mechanism to suspend Contractor Personnel’s service according to the Contractor Personnel offence incurred;
- (e) a mechanism to ensure the provision of heat stroke prevention for Contractor Personnel in a hot environment.

2.2 Relating to Staff Management

- (f) procedures and arrangements for disseminating orders/messages to Contractor Personnel;
- (g) supervisory measures and training programmes to enhance Contractor Personnel's performance, including politeness, good route knowledge, steering skills and manner, punctuality and readiness to assist; and
- (h) a mechanism for users to provide feedback on Contractor Personnel's performance and behaviour.

Marks will be given according to the marking guidelines provide in Note 3 below.

Note 3: Marking Guidelines for Assessment Criteria (1) and (2) in (A) Execution Plan

Assessment of the Proposed Plans

Marks (excluding those reserved for Pro-innovation Proposals / ESG Proposals) will be given for each Plan in accordance with the following five-grade approach:

<u>Percentage of Maximum Marks</u>	<u>Marking Standard</u>
100%	The proposed plan is practical with detailed information for all of the required items.
75%	The proposed plan is practical with detailed information for <u>6 – 7</u> required items and brief information for the remaining items.
50%	The proposed plan is practical with detailed information for <u>4 – 5</u> required items and brief information for the remaining items.
25%	The proposed plan is practical with brief information covering all of the required items.
0%	The proposed plan is impractical or fails to provide information on any of the required items.

Note 4: for Assessment Criterion (3)(a) – Pro-innovation Proposals (Max. mark: 15)

- (a) Tenderers are encouraged to provide Pro-innovation Proposals for Assessment Criteria (1) and (2) to enhance the performance of the Services.
- (b) The Pro-innovation Proposals may not necessarily be technology-related. Pro-innovation proposals are technological means / arrangements / work process / solutions / equipment that can enhance efficiency, effectiveness and productivity of the service outcome. The emphasis is on output-based service delivery of which the contributions should be visible, and preferably be quantifiable and measurable. Tenderers may propose pro-innovation proposals involving application / adoption of new technology / inventions; and / or innovative application of existing / matured technology that may enhance service delivery while contributing to the development of Smart City and innovation and technology development. Marks will be given if the proposed Pro-innovation Proposals are directly relevant to, effective and practicable in improving the delivery of the Services as compared with how the Services are delivered under the existing contract or the conventional mode of service delivery adopted by the Government in general.

(c) Pro-innovation Proposals shall be proposed for the following Plans respectively:

(i) Pro-innovation Proposals for the Deployment and Overhaul of Boundary Buoy Service Plan (max. mark: 9)

The Tenderer should propose Pro-innovation Proposals that are directly relevant to the Deployment and Overhaul of Boundary Buoy Service Plan to enhance quality, effectiveness and efficiency for delivery of the Deployment and Overhaul service (e.g. underwater inspection system, differential global positioning system for identifying the position of boundary buoys and high pressure water blasting equipment).

<u>Marks</u>	<u>Marking Standard</u>
9	The proposed plan contains 3 or more effective and practicable Pro-innovation Proposals for the respective Plan.
6	The proposed plan contains 2 effective and practicable Pro-innovation Proposals for the respective Plan.
3	The proposed plan contains 1 effective and practicable Pro-innovation Proposal for the respective Plan.
0	The proposed plan does not contain any Pro-innovation Proposals for the respective Plan or no supporting documents provided.

(ii) Pro-innovation Proposals for the Contractor Personnel Management Plan (max. mark: 6)

The Tenderer should propose Pro-innovation Proposals that are directly relevant to: –

- (1) Maritime Navigation Safety to enhance the awareness of Contractor Personnel on maritime navigation safety during delivery of the deployment and overhaul service (e.g. provision of devices for real-time alerts of speeding, deceleration, acceleration, lane departure or collision); and/or
- (2) Staff Management to enhance performance and morale of staff, including Contractor Personnel and supporting staff (e.g. family-friendly employment practices).

(d) Distribution of marks for Pro-innovation Proposals meeting the requirements for each Plan under (c) above is as follows:

<u>Marks</u>	<u>Marking Standard</u>
6	The proposed plan contains 3 or more effective and practicable Pro-innovation Proposals for the respective Plan.
4	The proposed plan contains 2 effective and practicable Pro-innovation Proposals for the respective Plan.
2	The proposed plan contains 1 effective and practicable Pro-innovation Proposal for the respective Plan.
0	The proposed plan does not contain any Pro-innovation Proposals for the respective Plan or no supporting documents provided.

(e) Marks will not be given to any Pro-innovation Proposals / ESG Proposals which a Tenderer

will neither be capable of nor responsible for implementation in the opinion of the Government.

- (f) An innovative suggestion that scores marks under Pro-innovation Proposals will not earn marks again under ESG Proposals and vice versa. In case a Tenderer specifies the type of an innovative suggestion under both Pro-innovation Proposals and ESG Proposals and the Tender Assessment Panel considers that the same innovative suggestion could earn marks under both Pro-innovation Proposals and ESG Proposals, it will be taken as scoring marks under Pro-innovation Proposals only. Furthermore, Pro-innovation Proposals scores marks under one Plan will not earn marks again under another Plan. If the Tender Assessment Panel considers that the same Pro-innovation Proposal could score marks under more than one Plan, it will be taken as scoring marks under the first relevant Plan. For example, if a Tenderer proposes the same Pro-innovation Proposal which could earn marks under both Deployment and Overhaul of Boundary Buoy Service Plan and Contractor Personnel Management Plan, it will be taken as scoring marks under Deployment and Overhaul of Boundary Buoy Service Plan only.
- (g) Tenderers shall propose Pro-innovation Proposals / ESG Proposals by filling in the details in Schedule of Pro-innovation Proposals or ESG Proposals under this Appendix to Annex 1 to facilitate Tender evaluation.
- (h) Apart from the Schedule of Pro-innovation Proposals and ESG Proposals mentioned in (g) above, Tenderers shall submit the following information for demonstrating the effectiveness and practicability of the Pro-innovation Proposals and ESG Proposals. 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: –
- (1) If the innovative suggestion is concerned with a kind of technology, equipment, tool, system, material, facility and Work Boat, etc.: scope of the Services involved, details on how to implement, specifications, catalogues, features, functions, quantity, coverage, locations and outcome, etc. as appropriate;
 - (2) If the innovative 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
 - (3) If the innovative 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.
- (i) Tenderers may be requested to provide supporting documents or a demonstration to prove the practicability of their Pro-innovation Proposals and ESG Proposals. All proposed Pro-innovation Proposals and ESG Proposals will be assessed on the basis of the information provided in the Tender submissions and 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 Tender Assessment Panel to have a better understanding of the Pro-innovation Proposals and ESG Proposals proposed by the Tenderers. During the demonstration, Tenderers are also not allowed to provide additional information not contained in their original Tender submissions.

- (j) All effective and practicable Pro-innovation Proposals and ESG Proposals accepted by the Government shall form part of the Contract. Any failure to perform such Pro-innovation Proposals / ESG Proposals would be deemed a breach of the contractual obligation, and the Government would be entitled to take follow-up actions in accordance with the existing mechanism on the handling of breach of contractual obligations e.g. claiming damages and/or termination of the contract.

Note 5: for Assessment Criterion (3)(b) – ESG Proposals – measures to improve environmental protection, sustainability or governance or social responsibility which may but need not be directly relevant to the Services (Max. mark: 9)

- (a) Tenderers are also encouraged to provide ESG Proposals which may but need not be directly relevant to the performance of the Services but which can bring about positive values or benefits to the Government or the public at large.
- (b) The ESG Proposals may not necessarily be technology-related. Marks will be given if the proposed ESG Proposals are effective and practicable for the following areas:

- (1) measures for environmental protection (e.g. reduction in energy consumption, use of renewable energy, such as solar energy, in the execution of the contract, utilisation of environmental-friendly products and spare parts, waste management scheme for proper disposal and recycling of waste metal, lubricant oil, battery and refrigerator); or

Marks will be given as follows:-

<u>Marks</u>	<u>Marking Standard</u>
3	The proposed plan contains 3 or more effective and practicable ESG Proposals.
2	The proposed plan contains 2 effective and practicable ESG Proposals.
1	The proposed plan contains 1 effective and practicable ESG Proposal.
0	No ESG Proposals proposed or no supporting documents provided.

- (2) social responsibility (e.g. employment of people with disabilities and/or rehabilitated persons for the Contract); or

<u>Marks</u>	<u>Marking Standard</u>
3	The proposed plan contains 3 or more effective and practicable ESG Proposals.
2	The proposed plan contains 2 effective and practicable ESG Proposals.
1	The proposed plan contains 1 effective and practicable ESG Proposal.
0	No ESG Proposals proposed or no supporting documents provided.

- (3) governance.

Marks will be given as follows:-

<u>Marks</u>	<u>Marking Standard</u>
3	The proposed plan contains 3 or more effective and practicable ESG Proposals.

2	The proposed plan contains 2 effective and practicable ESG Proposals.
1	The proposed plan contains 1 effective and practicable ESG Proposal.
0	No ESG Proposals proposed or no supporting documents provided.

(c) Clauses (e), (f), (g), (h), (i) and (j) of Note 4 above are also applicable to this Note.

(B) Experience, Certification and Quantifications

Note 6: for Assessment Criterion (4) – Tenderer’s Experience for Deployment and Overhaul of Boundary Buoy Services (max. mark: 3)

(a) Marks will be given if the accumulated experience of the Tenderer for deployment and overhaul of boundary buoys reached a specified level. The duration of experience will be calculated based on the past ten (10) years prior to the Original Tender Closing Date.

Marks will be given as follows:-

<u>Marks</u>	<u>Marking Criteria</u>
3	An accumulated experience more than six (6) years.
2	An accumulated experience more than four (4) years but less than six (6) years.
1	An accumulated experience more than two (2) years but less than four (4) years.
0	An accumulated experience less than two (2) years or failing to produce documentary proof to support its claim of experience.

(b) A Tenderer shall submit documentary evidence, which includes but is not limited to, a copy of the agreement, to support substantiate its claim of experience. Unsubstantiated experience will not be considered.

(c) Local and / or foreign experience will be considered.

(d) The experience of the tenderer shall only be considered if the previous contract(s) was / were bided with the same name as that of the Tenderer. For the avoidance of doubt, the experience gained by a Tenderer in its capacity as a sub-contractor, or the experience of a parent company, subsidiary, or sub-contractor of the Tenderer, shall not be taken into consideration. The definitions of “parent company” and “subsidiary” shall follow the meanings as defined in the Companies Ordinance (Cap. 622).

(e) In the event that the Tenderer is a partnership, only the years of experience acquired by the partnership will be considered for the marking criteria. The individual experience of the participants within the partnership will not be taken into account.

(f) For the purpose of tender evaluation, an accumulated years of experience shall be measured in calendar days. Two (2) years of experience shall be equivalent to 730 days (i.e. 365 days x 2).

(g) The Tenderer’s experience for providing deployment and overhaul of boundary buoy service under different contacts during overlapping periods shall not be double-counted. The tenderer’s experience will be measured as illustrated by the following examples: -

Examples:

Overhaul Service Contract	Contract Period	Contract Period without Overlapping with an Earlier Contract	Number of Day Counted for Accumulated Experience
A	16.4.2019 – 15.4.2021	16.4.2019 – 15.4.2021	730
B	1.10.2020 – 31.3.2022	16.4.2021 – 31.3.2022	349 (28 days in Feb 2021)
C	1.1.2021 – 31.12.2022	1.4.2022 – 31.12.2022	274
Total:			1,353

Note 7: for Assessment Criterion (5) - Experience of Contract Manager for Deployment and Overhaul of Boundary Buoy Services (max. mark: 5)

- (a) Marks will be given if the accumulated experience of the Contract Manager for installation and overhaul of boundary buoys reached a specific level. The number of years of experience is calculated based on the past ten (10) years preceding the Original Tender Closing Date.

Marks will be given as follows:-

Marks	Marking Criteria
5	An accumulated experience more than eight (8) years.
2	An accumulated experience more than five (5) years but less than eight (8) years.
0	An accumulated experience less than five (5) years or failing to produce documentary proof to support its claim of experience.

- (b) A Tenderer shall submit documentary evidence, which includes but is not limited to, a copy of the agreement, to support substantiate its claim of the experience. Unsubstantiated experience will not be considered.
- (c) Local and / or foreign experience will be considered.
- (d) In the event that a Tenderer proposes multiple Contract Manager, the marks shall be awarded based on the experience of the Contract Manager who possess the greatest level of experience.
- (e) For the purpose of tender evaluation, an accumulated years of experience shall be measured in calendar days. Two (2) years' experience shall be equivalent to 730 days (i.e. 365 days x 2).

Note 8: for Assessment Criterion (6) – An Additional Work Boat for Facilitating the Provision of Deployment and Overhaul of Boundary Buoy Service (max. mark: 7)

	Assessment Items	Assessment Status	Marks Granted
(a)	Age of Work Boat	(i) Less than 10 years	1 mark
		(ii) 10 years or more	0 mark
(b)	Hull material of Work Boat	(i) Recyclable hull material upon vessel disposal	1 mark
		(ii) Non-recyclable or non-environmental friendly hull	0 mark

		material upon vessel disposal (e.g., glass reinforced plastic, non-recyclable wood)	
(c)	Engine of Work Boat	(i) IMO* Tier 1 / Tier 2 emission standard or equivalent	1 mark
		(ii) Without IMO* Tier 1 / Tier 2 emission standard or equivalent	0 mark
(d)	Speed of Work Boat	(i) 10 knots or above	1 mark
		(ii) Less than 10 knots	0 mark
(e)	Schedule 5 – Essential Requirements and Checklist – Item (ii):- Work Boat fitted with lifting gear of Safe Working Load not less than 30 tonnes when the main hoist is at full outreach	(i) Not less than 35 tonnes	1 mark
		(ii) Less than 35 tonnes	0 mark
(f)	Schedule 5 – Essential Requirements and Checklist – Item (v):- Work Boat or other acceptable arrangement shall be able to accommodate not less than 4 sets of boundary buoys with their component and mooring blocks	(i) Able to accommodate more than 4 sets of boundary buoys	1 mark
		(ii) Comply with the Service Specifications	0 mark
(g)	Schedule 5 – Essential Requirements and Checklist – Item (vi):- Work Boat capable of operating with a shallow draft, including manoeuvring, operating and working at sea with a minimum water depth of 1.5 meters	(i) Capable of manoeuvring, operation and working at sea with a minimum water depth of 1.2 meters or shallower	1 mark
		(ii) Comply with the Service Specifications	0 mark

***IMO: International Maritime Organisation**

Schedule of Pro-innovation Proposals and ESG Proposals

(Please refer to Notes 4 & 5 of the Explanatory Notes for Marking Scheme for details.)

Tenderers shall provide details of the proposed Pro-innovation Proposals / ESG Proposals in the following tables. If there is not enough space, please use supplementary sheets if necessary.

Pro-innovation Proposals – Directly Relevant to the Services

- **For the Deployment and Overhaul of Boundary Buoy Service Plan**

Proposed Pro-innovation Proposals	Brief description on improvements/benefits/positive values that can bring about	How to implement	Supporting documents (if any)

- **For the Contractor Personnel Management Plan**

Proposed Pro-innovation Proposals	Brief description on improvements/benefits/positive values that can bring about	How to implement	Supporting documents (if any)

ESG Proposals - Measures to Improve Environmental Protection, Sustainability or Governance or Social Responsibility which may not be Directly Relevant to the Services

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

Name of Tenderer

:

ANNEX 2**Form of
Bank Guarantee**

THIS GUARANTEE is made on the day of 20.....
BY.....
of, a licensed bank within the meaning of the Banking Ordinance (Cap. 155) (hereinafter called the "Guarantor")

IN FAVOUR OF

The Government of the Hong Kong Special Administrative Region of the People's Republic of China (hereinafter called the "Government") of the other part.

WHEREAS

(A) By a contract (hereinafter called the "Contract") dated the ___ of _____ 20___ made between _____ of _____ (hereinafter called the "Contractor") of the one part and the Government of the other part (designated as Agriculture, Fisheries and Conservation Department [Contract No.: AFCD/Cap3532023/2]), the Contractor agreed and undertook to provide the Services (as defined in the Contract) upon the terms and conditions of the Contract.

(B) The Guarantor has agreed to guarantee in the manner and on the terms and conditions hereinafter appearing, the due and faithful performance of the Contract by the Contractor.

Now this Guarantee executed as a deed witnesses as follows:-

(1) Where applicable, words and expressions used in this Guarantee (including the recitals) shall have the meaning assigned to them under the Contract.

(2) In consideration of the Government's acceptance of the bank named herein as the Guarantor under this Guarantee:-

- (a) The Guarantor hereby irrevocably and unconditionally guarantees, as a continuing obligation, the due and punctual performance and discharge by the Contractor of all of his, her or their obligations and liabilities under the Contract and the Guarantor shall pay to the Government on demand and without cavil or argument all monies and discharge all 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 incurred by the Government by reason or in consequence of any default on the part of the Contractor in performing or observing any of the obligations terms conditions stipulations or provisions of the Contract, notwithstanding any dispute between the Contractor and the Government or any other person.
- (b) The Guarantor, as a primary obligor and as a separate, continuing 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 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 fully or promptly any of his, her or their obligations terms conditions stipulations or provisions of the Contract.
- (c) The Government may place and keep any monies received by virtue of this Guarantee (whether before or after the insolvency or liquidation of the Guarantor or the Contractor) 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 in its constitution or where "the Contractor" is a company, any change of its member or shareholder or its officers or its constitution.
- (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 alteration in the obligations imposed upon the Contractor by the Contract or by any waiver or forbearance granted by the Government to the Contractor as to payment, time, performance or otherwise whether or not such arrangement, alteration, waiver 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 amended or affected or discharged in any way by, and the Guarantor hereby waives notice of or assents to:

- (a) any suspension, termination, amendment, variation, novation or supplement of or to the Contract from time to time (including without limitation extension of time for performance);
- (b) any provision of the Contract being or becoming illegal, invalid, void, voidable or unenforceable;
- (c) the termination of the Contract or of the engagement of the Contractor under the Contract for any reason;
- (d) any forbearance, variation, extension, discharge, compromise, dealing with exchange, waiver or renewal in respect of any right of action or remedy that the Government may have, now or after the day of this Guarantee, 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 of the Contractor;
- (f) any assignment, novation or sub-contracting by the Contractor of any or all of its obligations set out in the Contract; 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 the express release of its obligations.

(6) This Guarantee shall extend to any variation, novation of or amendment to the Contract and to any agreement supplemental thereto agreed between the Government and the Contractor and for the avoidance of doubt, the Guarantor hereby authorises the Government and the Contractor to make any such amendment, variation, novation or supplemental agreement without its notice or assent.

(7) This Guarantee shall have immediate effect on the same date as the Contract 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 end of three (3) months from the date of early termination or expiry of the Contract Period; or
- (b) if at the time of expiry or early termination of the Contract Period, there is any outstanding right or claim of the Government, or any outstanding obligation or liability of the Contractor, whether under or arising from or in relation to the Contract, the date on which all such rights and obligations, and claims and liabilities

have actually been carried out, completed and discharged (as confirmed by the Government in writing),

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 8/F, Cheung Sha Wan Government Offices, 303 Cheung Sha Wan Road, Kowloon, the Director of Agriculture, Fisheries and Conservation, marked for the attention of _____, facsimile number: (852) 2314 2866;

(b) upon the Guarantor, at _____, Hong Kong, 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 fax 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; 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) The aggregate amount of the Guarantor's liability under this Guarantee shall not exceed _____.

(15) This Guarantee may only be amended by an instrument in writing signed by the Guarantor and the Government as represented by the Government Representative.

IN WITNESS whereof the Guarantee was executed as a deed and the said Guarantor.....has caused its Common Seal/Seal to be hereunto affixed the day and year first above written.

* The [Common Seal/Seal] of the said)
Guarantor was hereunto affixed and)
signed by)
.....)
duly authorized by its board of directors
in the presence of

Name of witness:
Title of witness:
Signature of witness:

@ 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)
.....)
and in the presence of.....)

Name of witness:
Title of witness:
Signature of witness:

* Please delete as appropriate.

@ See the Powers of Attorney Ordinance (Cap. 31)

Note: When bank guarantees are 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.

ANNEX 3

NON-COLLUSIVE TENDERING CERTIFICATE

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

To: the Government

Dear Sir/ Madam,

Non-collusive Tendering Certificate

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 in relation to the Invitation to Tender:
- (a) My/Our Tender was prepared genuinely, independently and made with the intention to accept the Contract if awarded;
 - (b) My/Our Tender was not 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;
 - iv) an intention or decision to withdraw any Tender;
 - v) the submission of any Tender that does not conform with the requirements of the Invitation to Tender;
 - vi) the quality, quantity, specifications or delivery particulars of the products or services to which the Invitation to Tender relates; and
 - vii) the terms of my/our Tender,

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. Clause 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 subcontracting 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 26.1 of the Terms of Tender, the Government may exercise any of the rights under Clauses 26.3 to 26.5 of the Terms of Tender 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 the 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 :

ANNEX 4

Registration Form for the Tender Briefing**Provision of Services for Deployment and Overhaul of Boundary Buoys in Wong Chuk
Kok Hoi Fish Culture Zone and Mirs Bay Fish Culture Zones****(Tender Reference AFCD/Cap3532023/2)**

To: Director of Agriculture, Fisheries and Conservation
8/F, Cheung Sha Wan Government Office,
303 Cheung Sha Wan Road, Kowloon
Fisheries Enforcement and Special Projects Division
Licensing and Registration Section
(Attn: Mr. MAK Chu-wa)
Facsimile: (852) 2314 2866

We will attend the Tender briefing for the above Tender
on 14 November 2023, 14:30
at Room 702
7/F., Cheung Sha Wan Government Office
303 Cheung Sha Wan Road,
Kowloon.

Company Name _____

Person to attend:

Name _____

Position _____

Tel No. _____

Fax No. _____

Date _____

Note: 1. The registration form should be completed and returned by facsimile by 13 November 2023. Late registration will not be accepted.

Note: 2. Each company should register no more than 2 persons for the Tender briefing due to limited seating capacity.

Note: 3. Please provide a list of the company's questions, if any, together with this registration.

PART V — OFFER TO BE BOUND

1. Having read the Tender Documents, I/we, the Tenderer mentioned below, agree to be bound by all of the terms and conditions as stipulated therein.
2. I/We, the Tenderer mentioned below, do hereby agree to carry out all and any of the Services at the Rates quoted by me/us in the Price Schedule free of all other charges, subject to and in accordance with the terms and conditions of 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 :

Notes:

- (i) *For Paper-based Tendering, the Offer to be Bound to be signed and submitted shall be Part V of this Tender Form or a printed copy from a softcopy of Part V of this Tender Form or a photocopy or a scanned copy of such hardcopy or printed copy. Any manner of reproduction of Part V of this Tender Form (including copy-typing) to be submitted as the Offer to be Bound shall not be acceptable and **the Tender with the non-conforming Offer to be Bound will not be considered further.***
- (ii) **For Paper-based Tendering, this Part V – Offer to be Bound shall be signed and submitted in the Tender before the Tender Closing Time. This signed Part V – Offer to be Bound to be submitted must not be a photocopy of the original, otherwise, **the Tender will not be considered further.***
- (iii) *The Tenderer shall not make any alteration to the original text set out in this Part V – Offer to be Bound, otherwise **the Tender will not be considered further.** Deleting inapplicable word “I/we” or “me/us” or the alternative wording denoted by # above is however not to be treated as an alteration.*

**PART VI
MEMORANDUM OF ACCEPTANCE**

On behalf of the Government of the Hong Kong Special Administrative Region,

I

.....
(name and position of officer)

accept your Tender for the Contract (as defined in the Tender Document) to provide the Services (as defined in the Tender Document) on and subject to the terms and conditions set out in the Contract so far as such offer relates to the following item(s) in the Schedule. A copy of each document constituting the Contract is hereby attached for identification purposes.

.....
.....
.....
.....
.....

Dated this day of 20

Signed by the said in the presence of :

.....
.....