

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

TENDER FORM

Tender Ref. : AFCD/MWFA/2024

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 Service of Monitoring Work on Fishing Activities to the Agriculture,

Fisheries and Conservation Department (Tender Ref.: AFCD/MWFA/2024)”

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 28 March 2024 (date) (Hong Kong time). Late Tenders will not be accepted.

- PART 1 — INTERPRETATION
PART 2 — TERMS OF TENDER
PART 3 — CONDITIONS OF CONTRACT
PART 4 — SPECIFICATION
PART 5 — SCHEDULES
ANNEXES
PART 6 — OFFER TO BE BOUND
PART 7 — MEMORANDUM OF ACCEPTANCE**

Dated this 7 day of March 2024



(Dr. WONG Tsz-chun)
Government Representative

**Tender for the Provision of Service of
Monitoring Work on Fishing Activities to the Agriculture, Fisheries and
Conservation Department
(AFCD/MWFA/2024)**

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PART 1 INTERPRETATION

1. Definitions

In the documents issued by the Government in connection with this Invitation to Tender (including 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:

“AFCD”	means the Agriculture, Fisheries and Conservation Department of the Government;
“AIS”	means Automatic Identification System;
“Conditional Acceptance of Tender”	means the notification to be sent by the Government giving notice to the successful Tenderer of the Government’s conditional acceptance of its Tender as specified in Clause 13(a) of Part 2 – Terms of Tender;
“Contract”	means the contract between the Government and the Contractor for the provision of the Service and comprises the Interpretation, Terms of Tender, Conditions of Contract, Specifications and Offer to be Bound together with all the respective schedules, appendices and annexes to each of the above-mentioned documents;
“Contractor”	means the Tenderer whose Tender is accepted by the Government through the issue of the Memorandum of Acceptance;
“Contract Deposit”	means the sum of deposit referred to in Clause 19 of Part 2 – Terms of Tender and Clause 22 of Part 3 – Conditions of Contract;
“Contract Period”	means the period referred to in Clause 1 of Part 3 – Conditions of Contract;
“Contract Price”	means in relation to the Services comprising one or more Item(s), and in respect of a billing period during which such Item(s) of Services are provided, the amount payable for such Service(s) over that billing period on and subject to the terms and conditions of the Contract and is to be calculated based on the Unit Rate(s) per such billing period for such Item(s) as specified in the Price Schedule; and if expressly stated as applicable in the Price Schedule, the quantity of such Item(s) (which is not measured in billing periods) of the Services performed in that billing period;

“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;
“Essential Requirements”	means the essential requirements set out in Clause 4 of Part 2 – Terms of Tender, and/or requirements in relation to which they are stated in the Tender Documents that the non-compliance by a Tender or a Tenderer as at the Tender Closing Date will lead to that Tender or Tenderer not being considered further (or the Tender or Tenderer being disqualified);
“Estimated Total Contract Value”	means an amount equal to the summation of the Unit Rates for all such Item(s) as set out in the Price Schedule;
“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;
“Fishing”	means the capture or taking of fish, and any attempt to do so;
“Fishing Gear”	means any equipment, apparatus, tool, instrument or device and its accessories utilised in fishing;
“Fishing Moratorium”	means the period of annual summer fishing ban in the South China Sea, generally from 1 May to 15 August;

- “Force Majeure Event” means any of the followings:
- (a) any outbreak of war, hostilities (whether war be declared or not), invasion, acts of foreign enemies, rebellion, revolution affecting Hong Kong, overthrow (whether by external or internal means) of the Government; or
 - (b) any event which is not caused or contributed to by, and is beyond the control of, the Contractor, its related persons (as defined in Clause 16(f) and (g) of Part 2 – Terms of Tender) or any employee or agent or ex-employee or ex-agent of the Contractor and none of them can prevent the consequences of such event from happening;
- and which, in any case of (a) or (b) above, materially prevents the performance of the duties and obligations of any Party hereunder; for the avoidance of doubt, any change of law and regulation of whichever jurisdiction shall not be treated as a Force Majeure Event;
- “Good Industry Practice” means the standards, practices, methods and procedures conforming to all laws and regulations, 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;

“GPS”	means Global Positioning System;
“Hong Kong”	means the Hong Kong Special Administrative Region of the People's Republic of China;
“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;
“Inspecting Officer”	means the officer appointed by the Government Representative for the purpose of inspecting the Services performed in pursuance of the Contract;
“Intellectual Property Rights” or “IPR”	means patents, trade marks, service marks, trade names, design rights, copyright, domain names, database rights, rights in know-how, new inventions, designs, processes, and other intellectual property rights whether now known or created in future (of whatever nature and wherever arising) and in each case whether registered or unregistered and including applications for the grant of any such rights;
“Invitation to Tender”	means this invitation to tender for the provision of the Services to the Government on the terms and conditions set out in the Tender Documents;
“Items”	means the Services specified in the column of the table with heading “Item” in the Price Schedule with a unique item number and where applicable letter assigned to them in the first column of that same table in that Schedule, and shall be inclusive of all related services and subject matters specified in the Contract;
“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;
“MD”	means the Marine Department of the Government;
“MMSI”	means the Maritime Mobile Service Identity;
“Parties” (in upper or lower case)	means the Government and the Contractor; and “Party” (in upper or lower case) means any one of them;

“Price Proposal”	means the Schedule 1 – Price Schedule to be completed by the Tenderer;
“Registered Local Fishing Vessel” or “RLFV”	means a local fishing vessel with an operating licence issued by MD and also registered under section 14 of the Fisheries Protection Ordinance (Cap. 171);
“Services”	means all services, duties, and obligations to be provided, performed and complied with by the Contractor under the Contract, including but not limited to planning and conducting monitoring, collecting information/intelligence and assisting in conducting enforcement operation;
“Specifications”	means each and every specification referred in Part 4 – Specifications;
“Specified Tender Box”	means the tender box specified in the “Lodging of Tender” section of the Tender Form or, where applicable, other places assigned by a Government officer for depositing bulky tenders;
“Technical Proposal”	means all proposals, information and documents required to be submitted as part of the Tender apart from the Schedule 1 – Price Schedule as stipulated in Clause 5(e)(i)(II) of Part 2 – Terms of Tender;
“Tender”	means an offer to provide the Services as submitted by a Tenderer in response to the Invitation to Tender;
“Tender Closing Date”	means the date specified in the Lodging of Tender before which Tenders must be deposited with the Government, as the same may be extended by the Government pursuant to any applicable provision in the Tender Documents;
“Tender Closing Time”	means the time on the Tender Closing Date specified in the Lodging of Tender before which Tenders must be deposited with the Government, as the same may be extended by the Government pursuant to any applicable provision in the Tender Documents;
“Tender Documents”	means the documents as specified in Clause 1 of Part 2 – Terms of Tender and any addenda issued under Clause 3 of Part 2 – Terms of Tender;
“Tender Submission Date”	means the date of the Offer to be Bound;

“Tender Validity Period”	means the period of time described in Clause 6(b) of Part 2 – Terms of Tender during which the Tender is to remain valid and open for acceptance by the Government Representative;
“Tenderer”	means a person which or who has capacity to contract and has submitted a Tender in response to this Invitation to Tender;
“Unit Rate”	means the rate of a unit of Service for an Item as set out in the Price Schedule; and
“Virus”	means a subversive computer programme or piece of code that may corrupt or erase computer data files and/or change the normal behaviour of a computer

2. In this document, unless otherwise expressly stated to the contrary, the following rules of interpretation shall apply:
- (a) 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;
 - (b) words importing the singular shall include 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);
 - (c) headings are inserted for ease of reference only and shall not affect the construction of the Tender Documents or the Contract;
 - (d) references to a document shall:
 - (i) include all schedules, appendices, annexes and other materials attached to such document; and
 - (ii) mean the same as from time to time amended or supplemented in accordance with the terms of the Tender Documents or the Contract;
 - (e) references to “Tenderer” or “Contractor” shall include its permitted assigns, successors-in-title, or any persons deriving title under them;
 - (f) references to “Government” shall include its assigns, successors-in-title and persons deriving title under them, regardless of whether or not any of these persons are mentioned separately in the relevant provisions;
 - (g) references to a Clause, Sub-clause, Section or Paragraph in or a Schedule, Appendix or any other attachment to the Tender documents or the Contract are to a clause, sub-clause, section or paragraph in or a schedule, appendix or attachment to these Tender documents or the Contract;

- (h) references to “law” and “regulation” include any constitutional provisions, treaties, conventions, ordinances, subsidiary legislation, orders, rules and regulations having the force of law and rules of civil and common law and equity, regardless of the jurisdiction;
 - (i) any word or expression to which a specific meaning has been attached in any part of the Tender Documents bear such meaning whenever it appears in the same and other parts of the Tender Documents;
 - (j) any reference to “Cap.” is to a chapter of the Laws of Hong Kong;
 - (k) references to time and dates in the Tender Documents shall be construed as Hong Kong time and dates;
 - (l) references to a day refer to calendar day; and references to a working day mean any calendar day other than Saturdays and Public Holidays as defined in the Interpretation and General Clauses Ordinance (Cap. 1);
 - (m) references to a month mean a calendar month;
 - (n) 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;
 - (o) any act, default, neglect or omission of any employee, licensee, agent or sub-contractor of the Contractor shall be deemed to be the act, default, neglect or omission of the Contractor;
 - (p) words importing the whole shall be treated as including a reference to any part of the whole;
 - (q) references to “in writing” include manuscript, typewriting, printing, lithography, photography, facsimile, electronic mail, information which can be viewed on the e-Tender Box, and any other modes of representing and reproducing words in a legible form; and
 - (r) 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. All rights and powers of the Government under the Contract may be exercised by the Government Representative. If any provision of the Contract provides for a determination of any matter by the Government or the Government Representative, the determination made by the Government or the Government Representative (as the case may be) shall, in the absence of manifest error, be final and conclusive.

PART 2 TERMS OF TENDER

1. Tender Documents

- (a) These Tender Documents identified as AFCD/MWFA/2024 consist of one complete set of the documents in a bound booklet comprising:
- (i) Tender Form;
 - (ii) Part 1 – Interpretation;
 - (iii) Part 2 – Terms of Tender;
 - (iv) Part 3 – Conditions of Contract;
 - (v) Part 4 – Specifications;
 - (vi) Part 5 – Schedules
 - (I) Schedule 1 – Price Schedule;
 - (II) Schedule 2 – Payment Discounts and Contract Deposit Payment Method;
 - (III) Schedule 3 – Company/ Business Organization Details;
 - (IV) Schedule 4 – Crew Members Details;
 - (V) Schedule 5 – Statement of Compliance;
 - (VI) Schedule 6 – Non-collusive Tendering Certificate;
 - (vii) Annexes
 - (I) Annex 1 – Marking Scheme and Assessment Criteria;
 - (II) Annex 2 – Registration Form for the Tender Briefing;
 - (III) Annex 3 – Form of Bank Guarantee;
 - (IV) Annex 4 – Distribution of Hong Kong waters for Monitoring Work on Fishing Activities;
 - (V) Annex 5 – Sample Report for Monitoring Work on Fishing Activities;
 - (viii) Part 6 – Offer to be Bound; and
 - (ix) Part 7 – Memorandum of Acceptance.
- (b) 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.
- (c) These Tender Documents are to be bounded by the English text. The Specifications, Price Schedule and Marking Scheme in these Tender Documents are translated into Chinese version for Tenderers' reference only. In the event of any conflict or inconsistency between the English text and the Chinese translation of this document, the English text shall prevail.

2. Invitation to Tender

- (a) Tenders are invited for the provision of the Services as more particularly set out in the Specifications subject to and in accordance with the terms and conditions of the Contract.
- (b) Each Tenderer should read the Tender Documents carefully prior to submitting a Tender and ensure that it understands all requirements of the Tender Documents.
- (c) Each Tenderer should obtain such independent advice from its own advisers as it considers appropriate.

- (d) 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.
- (e) 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.
- (f) 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.
- (g) 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.
- (h) Without prejudice to Clause 2(g) above, the estimated requirement of the Services specified in the Price Schedule or Service Specifications (if any) 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 Procuring Department and the successful Tenderer must accept any increase or decrease of the stated estimates.
- (i) 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 Addenda

All supplementary information or tender addenda to the Tender Documents will be provided in writing by the Government and forwarded to all potential Tenderers who have registered with the Government when obtaining a copy of the Tender Documents.

4. Essential Requirements

- (a) Without prejudice to Clause 4(b) below, all tenders will be evaluated based on both the Technical Proposal and the Price Proposal.

- (b) In addition to Clause 4(a) above, all tenderers must satisfy all the following essential requirements:
- (i) Tenderers must be local fishermen or companies formed and registered in Hong Kong by local fishermen;
 - (ii) Tenderers must own three (3) or more Registered Local Fishing Vessels; and
 - (iii) The Registered Local Fishing Vessels owned by the Tenderers must meet the specifications specified in Clause 6(c) of Part 4 – Specifications.

Failure to satisfy any of the above essential requirements shall render a Tender **disqualified**.

5. **Tender Preparation and Submission**

- (a) Unless otherwise specified in the Terms of Tender, the Tenderer must bid for all Items specified in the Price Schedule by submitting the Unit Rate for each such Item. **Where a Tenderer fails to do so, its Tender will not be considered further.**
- (b) To be regarded as a complete Tender, the Tenderer must submit all of the following:
- (i) (I) (for Paper-based Tendering) a duly signed Part 6 “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 6 of the Tender Form or a printed copy from a softcopy of Part 6 of the Tender Form or a photocopy or a scanned copy of such hardcopy or printed copy. Any manner of reproduction of Part 6 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) (for Electronic Tendering) the box signifying the Tenderer’s agreement with Part 6 “Offer to be Bound” of the Tender Form must have been checked;
 - (ii) the duly completed Schedule 1 of Part 5 – Schedules (Price Schedule);
 - (iii) the duly completed Schedule 2 of Part 5 – Schedules (Payment Discounts and Contract Deposit Payment Method);
 - (iv) the duly completed Schedule 3 of Part 5 – Schedules (Company/Business Organization Details);
 - (v) the duly completed Schedule 4 of Part 5 – Schedules (Crew Members Details);
 - (vi) the duly completed Schedule 5 of Part 5 – Schedules (Statement of Compliance);

- (vii) the duly completed Schedule 6 of Part 5 – Schedules (Non-collusive Tendering Certificate);
- (viii) all information and documents, including a copy of valid business registration certificate or other valid business document issued by a competent authority and a copy of certification of incorporation and certificate of change of name (where applicable) if the Tenderer is a limited company as required in Schedule 3 of Part 5 – Schedules (Company/Business Organization Details);
- (ix) recommendation letter(s) from any local Fisheries Co-operative Society or Fishermen Association to prove that the Tenderer is a local fisherman or a company formed and registered in Hong Kong by a local fisherman/local fishermen as required in Clause 4(b)(i) above;
- (x) recommendation letter(s) from any local Fisheries Co-operative Society or Fishermen Association to prove that each of the proposed crew members is a local fisherman with certain number of year(s) of experience in fishing and monitoring works as required in Clause 4(b)(v) above;
- (xi) copies of Certificate of Registration of Local Fishing Vessel issued pursuant to section 14 of the Fisheries Protection Ordinance (Cap. 171);
- (xii) copies of Certificate of Ownership issued pursuant to section 10 of the Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation (Cap. 548D);
- (xiii) copies of valid Operating Licence issued pursuant to section 42 of the Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation (Cap. 548D);
- (xiv) copies of valid Certificate of Survey issued pursuant to section 24(1) of the Merchant Shipping (Local Vessels) (Safety and Survey) Regulation (Cap. 548G);
- (xv) copies of insurance policy indicating the RLFVs are insured in accordance with the requirements of the Merchant Shipping (Local Vessels) Ordinance (Cap. 548) and its subsidiary legislation, the Merchant Shipping (Local Vessels) (Amount of Insurance Cover) Notice (Cap. 548K);
- (xvi) a Technical Proposal with an Execution Plan in accordance with Appendix to Annex 1;
- (xvii) all other information, not already mentioned above, including technical and descriptive documents to demonstrate that the Technical Proposal will meet the requirements as specified in Clause 6 of Part 4 – Specifications; and
- (xviii) such other information and documents requested in the Tender Documents or relevant to the Tender that are not related to the Price Proposal in Clause 5(b)(ii) above.

The Tenderer should only include price quotation requested in Schedule 1 of Part 5 – Schedules (“Price Schedule”). If a Tenderer has submitted price quotation not in the Price Schedule, the Government reserves the right to disqualify the Tenderer concerned. Even if the Tenderer has not been disqualified, the unsolicited price quotation shall not be attached any weight and shall not form part of the Contract regardless of whether or not they are found in the copies of the Schedules forming part of the Contract (unless such price quotation is accepted by the Government evidenced in writing).

- (c) Any failure to complete or submit the documents and/or information required under Clause 5(b) 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 Time, the Tenderer fails to submit:**
- (i) the duly completed and signed Part 6 – Offer to be Bound;
 - (ii) Schedule 1 containing the price quotation for the Services; and
 - (iii) a Technical Proposal as required under Clause 5(b)(xvi) of this part.
- (d) 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.
- (e) 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:

- (i) Paper-based Tendering

The Tender (comprising the Technical and Price Proposals) shall be completed in writing on hardcopy (and if so expressly requested herein on softcopy) and shall be submitted in triplicate in accordance with the “Lodging of Tender” section of the Tender Form as follows:-

- (I) Documents relating to the price information (i.e. the original and two copies of “Schedule 1”, fully completed, signed and dated) must be enclosed in a sealed envelope clearly marked “**Tender for the Provision of Service of Monitoring Work on Fishing Activities to the Agriculture, Fisheries and Conservation Department - Price Proposal (Tender Ref.: AFCD/MWFA/2024)**”;

- (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 Unit Rates for Provision of Services) must be enclosed in another sealed envelope clearly marked “**Tender for the Provision of Service of Monitoring Work on Fishing Activities to the Agriculture, Fisheries and Conservation Department - Technical Proposal (Tender Ref.: AFCD/MWFA/2024)**”; and
- (III) The Tender comprising both “Price Proposal” and “Technical Proposal” should be enclosed in a sealed envelope marked “**Tender for the Provision of Service of Monitoring Work on Fishing Activities to the Agriculture, Fisheries and Conservation Department (Tender Ref.: AFCD/MWFA/2024)**” 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 Tender Closing Time stipulated in the Tender Form. Late Tenders will not be considered.

(ii) Electronic Tendering

The Tender (comprising the Technical and Price Proposals) shall be submitted:

- (I) in accordance with the terms and conditions of use of the PCMS and the e-Tender Box; and
 - (II) through the e-Tender Box through the use of any one type of digital certificates recognised by and uploaded to the e-Tender Box or through an Identification Code.
- (f) The Government may not consider a Tender (or will not consider a Tender where it is expressly so stated) if:
- (i) false, inaccurate or incorrect information is given in the Tender; or
 - (ii) any proposal, document or information requested in the Tender Documents is not furnished in full in the Tender.
- (g) 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:
- (i) 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;
 - (ii) 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
 - (iii) if the Tenderer is incorporated, formed or established outside Hong Kong, a document equivalent to that described in Clause 5(g)(i) or 5(g)(ii) above (as the case may be) issued by a governmental or competent authority of the place where the Tenderer is incorporated, formed or established.
- (h) Execution and Submission of Tenders
- (i) 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 6 “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.
 - (ii) 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 5(g)(i), (ii) or (iii) 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 5(b)(i)(II), (ii), (iii), (iv), (v), (vi), (vii), (viii), (ix), (x), (xi), (xii), (xiii) or (xiv) 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.

(i) Tender Closing Time

(i) (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 5(c) above is not successfully and completely transmitted through the e-Tender Box before the Tender Closing Time.

- (ii) In case Tropical Cyclone Warning Signal No. 8 or above is hoisted, or Black Rainstorm Warning Signal or “extreme conditions” 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.
- (iii) 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>).
- (j) 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>).
- (k) 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.
- (l) Modification of Tender
 - (i) Before the Tender Closing Time, a Tenderer who has lodged a Tender may modify its Tender as considered necessary.
 - (ii) 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.

(iii) 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.

- (m) Apart from Part 6 “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 5(b)(i)(I) above), wherever there is any provision in the Tender Documents requiring that the original of any document or the document to be submitted as part of the Tender,
- (i) 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 5(h)(i)(I) above; (II) in the case of any certificate which is required to be issued by a specified body 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
- (ii) in the case of Electronic Tendering, the Tenderer shall first submit the certified true copy as described in Clause 5(m)(i)(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.

6. Tenders to Remain Open

- (a) 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.
- (b) 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 twenty (120) days** after the Tender Closing Date (“Tender Validity Period”).

- (c) If a Tenderer offers in its Tender a period that is shorter than the applicable Tender Validity Period specified in Clause 6(b) above, or if it rejects the Tender Validity Period prescribed in Clause 6(b) above, its Tender will **not** be further considered.

6A. Cancellation of the Invitation to Tender Exercise

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

7. Prices / Charges

- (a) Unless otherwise provided for in the Tender Documents, the Tenderer shall quote the Unit Rate for each item in the Price Schedule (Schedule 1 of Part 5 – Schedules) in Hong Kong dollars only. The Unit Rate 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 Unit Rates are quoted.
- (b) Prices quoted by a Tenderer shall only be shown in the Price Schedule.
- (c) A Tenderer must quote fixed Unit Rates for all items and the same Rate 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.
- (d) 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 8 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.
- (e) 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.

8. Request for Information

- (a) Notwithstanding anything herein to the contrary, in the event that the Government Representative determines that:
- (i) clarification in relation to any part of the Tender is necessary; or
 - (ii) certain document or a piece of information, other than those specified in Clause 5(c) 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.
- (b) Any excess proposal or information supplied by a Tenderer which goes beyond what has been requested by the Government pursuant to Clause 8(a) 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.

9. Tenderer's Counter-Proposals

- (a) The Tenderer must not submit any proposal that has the effect of varying or modifying (i) any essential requirements specified in Clause 4 of this part; (ii) all provisions in the Tender Documents concerning the preparation, submission and evaluation of Tenders and award of Contract; and (iii) those additional provisions which are not permitted to be subject to any counter-proposal as identified in the Terms of Tender.
- (b) 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.
- (c) If a Tenderer fails to comply with Clause 9(a) or 9(b) 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.
- (d) Counter-proposal to other provisions of the Tender Documents not specified in Clause 9(a) or 9(b) 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 9(a) or 9(b) above ("Counter-Proposals"), the Counter-Proposals shall be submitted in the following manner:

- (i) (I) for Paper-based Tendering, the Counter-Proposals shall be attached to Part 6 “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;
 - (ii) the original provisions which the Counter-Proposals relate to shall be fully recited before the proposed alteration or deletion;
 - (iii) 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;
 - (iv) if it is an addition, the additional provisions shall be underlined;
 - (v) words to be deleted shall be crossed out by a single line only; and
 - (vi) an explanation shall be given below the alteration or deletion and put in square brackets “[]”.
- (e) Unless the Government otherwise agrees, Counter-Proposals that are not submitted in accordance with Clause 9(d) 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.
- (f) 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.

10. Tenderer’s Enquiries

- (a) 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 11 of the Terms of Tender.
- (b) 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.

- (c) 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.

11. Communication with the Government

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.

12. Tender Assessment

Without prejudice to other rights and powers of the Government not to consider a Tender hereunder, the evaluation of Tenders will be conducted as follows:

(a) Completeness Check

A completeness check will be conducted by checking whether these Tenders have been submitted in accordance with the procedural requirements stipulated in these Tender Documents. Failure to submit any one of the documents as set out in Clause 5(c) of this part shall render a Tender not being considered further.

(b) Checking for Compliance with Essential Requirements

A Tender which has passed the completeness check will be assessed for its compliance with all the Essential Requirements, including but not limited to those set out in Clause 4 of Part 2 – Terms of Tender. Any Tender which fails to meet any of the requirements shall not be considered further.

(c) Technical and Price Proposals Assessments

Among the Tenders which satisfy all the requirements as stipulated in Clause 12(b) above, the Technical and Price Proposals assessments would be taken according to the Marking Scheme as specified in Annex 1. The Technical and Price Proposals assessments would occupy 60% and 40% of the overall assessment, respectively. Unless the Government decides that it is in the public interest not to award the Contract, subject to other provisions in these Terms of Tender, the Tenderer who obtain the highest total score will normally be awarded with the Contract.

For price assessment purpose, any payment discounts offered by any Tenderer will **NOT** be taken into consideration.

13. Acceptance

- (a) The successful Tenderer will be notified within one hundred and twenty (120) 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 be obliged to pay the Contract Deposit as required under Clause 19 of this part to the Government within 14 days of the notification (or such later date as the Government may allow).

- (b) Only upon completion of the actions specified in Clause 13(a) 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 13(c) 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 provide the Contract Deposit (unless the payment of such is either unnecessary or waived by the Government in writing), 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.
- (c) The successful Tenderer who has deposited with the Government the Contract Deposit will receive the Memorandum of Acceptance in the form set out in Part 7 from the Government as an indication of unconditional acceptance. The 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.
- (d) 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 13(c) above to the successful Tenderer, there is to be no binding Contract with that Tenderer.

14. Offer to be Binding

- (a) 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.
- (b) By signing the Part 6 – 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.

15. Negotiation

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

16. Government Discretion

- (a) 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:
- (i) 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;
 - (ii) 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;
 - (iii) 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;
 - (iv) 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 16(f) and 16(g) 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;

- (v) (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;
- (vi) 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
- (vii) 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.

The grounds specified in Clause 16(a)(i) to 16(a)(vii) above are separate and independent, and shall not be limited by reference to or inference from the other of them.

- (b) For the purposes of Clause 16(a) 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:
 - (i) details of any petition or proceeding mentioned in Clause 16(a)(i) above;
 - (ii) details of all infringement claims, allegations, rulings, judgments, decisions or settlement agreements as mentioned in Clause 16(a)(iii) above;
 - (iii) details of all Contract Defaults as mentioned in Clause 16(a)(iv) above;
 - (iv) details of conviction as mentioned in Clause 16(a)(v) above in Hong Kong or any overseas jurisdiction;
 - (v) details of any professional misconduct or act or omission as mentioned in Clause 16(a)(vi) above; and
 - (vi) details of any failure to pay taxes as mentioned in Clause 16(a)(vii) above.

If none of the events as mentioned in Clauses 16(a)(i) to 16(a)(vii) 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 Schedule 3 at the time of submission of its Tender. If found missing, the Government reserves the right to seek clarification pursuant to Clause 16(c) 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.

- (c) In addition to the information mentioned in Clause 16(b) 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 16(a) above.
- (d) If the Tenderer fails to comply with the request made by the Government pursuant to Clause 16(c) above within such time as required by the Government, the Government may disqualify the Tenderer pursuant to Clause 8 of the Terms of Tender. If the Tenderer has submitted false, inaccurate or incomplete information, the Government may disqualify the Tenderer pursuant to Clause 16(a)(ii) above.
- (e) In providing the information required under Clauses 16(b) and 16(c) above, the Tenderer may show cause to satisfy the Government that in relation to any of the events as mentioned in Clause 16(a) 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.
- (f) If the Tenderer is a company, the expression "related person" of the Tenderer includes any one of the following:
 - (i) 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");
 - (ii) a holding company or a subsidiary of the Tenderer;
 - (iii) a holding company or a subsidiary of a majority shareholder (being a company) of the Tenderer; or
 - (iv) 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).

- (g) If the Tenderer is a sole proprietor or partnership, the expression “related person” includes any one of the following:
- (i) any partner of the Tenderer (if it is a partnership);
 - (ii) 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
 - (iii) 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.
- (h) 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 16(a) above include persons who were in such capacity at such time of the event referred to in that Sub-clause.
- (i) 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.

17. Provision of Services

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

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

- (a) If the Estimated Total Contract Value payable by the Government to the successful Tenderer exceeds HK\$1.36 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(a) of the Conditions of Contract as security for the due and faithful performance of the Contract by the successful Tenderer.

- (b) 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:
- (i) 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.
 - (ii) 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;
 - (iii) 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;
 - (iv) The management accounts or unaudited accounts mentioned in Clause 19(b)(ii) and 19(b)(iii) 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;
 - (v) 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) They should be certified by the company’s director. 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;
- (vi) 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
 - (vii) 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.
- (c) 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 Clause 19(b) 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 Clause 19(b) above) as security for the due and faithful performance of the Contract by the successful Tenderer.
 - (d) The Contract Deposit shall be payable within fourteen (14) 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 3 issued by a bank holding a valid banking licence under the Banking Ordinance (Cap.155) (“Bank Guarantee”).
 - (e) If a Tenderer elects to provide a Bank Guarantee,
 - (i) 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(d) above a Bank Guarantee in the format set out at Annex 3;
 - (ii) the Bank Guarantee duly executed shall be submitted to the Government in accordance with Clause 19(d) above; and

- (iii) 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.
- (f) A Tenderer is required to elect the method of providing a Contract Deposit it prefers by completing the Payment Discounts and Contract Deposit Payment Method at Schedule 2. 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 within three (3) months after the date the Contract has been awarded.

21. Complaints about Tender Process or Contract Award

The Tendering process is subject to internal monitoring to ensure that contracts are awarded properly and fairly. Any Tenderer who feels that its offer has not been fairly evaluated may write to the Director of Agriculture, Fisheries and Conservation. The Tenderer shall lodge the complaint within three (3) months after the award of Contract.

22. Personal Data Provided

- (a) 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.
- (b) 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(a) above.
- (c) 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.
- (d) 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

- (a) 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 Unit 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.
- (b) Nothing in Clause 23(a) above shall prejudice the Government's power to disclose whenever it considers appropriate information of any nature whatsoever (whether or not specified in Clause 23(a) above) if the disclosure is made under any one of the following circumstances:
- (i) 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);
 - (ii) the disclosure of any information already known to the recipient;
 - (iii) the disclosure of any information which is public knowledge;
 - (iv) 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;
 - (v) the disclosure of any information regarding anti-competitive collusive conduct to the Competition Commission of Hong Kong (and other authorities as relevant); or
 - (vi) without prejudice to the power of the Government under Clause 23(a), 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 monitored and may be taken into account when its future offers for other tenders or quotation exercises are evaluated.

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. Prevention of Bribery Ordinance

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. Warranty against Collusion

- (a) 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 Clause 27(b) below), including 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.
- (b) The Tenderer shall submit to the Government a Non-collusive Tendering Certificate (in the form set out in Part 5 – Schedule 6 to this Tender Form) duly signed by an authorized person on the Tenderer's behalf.
- (c) In the event that a Tenderer is in breach of any of the representations and/or warranties in Clause 27(a) above or in the Non-collusive Tendering Certificate submitted by it under Clause 27(b) above, the Government shall be entitled to, without compensation to any person or liability on the part of the Government:
 - (i) reject the Tenderer's Tender;
 - (ii) if the Government has accepted the Tender, withdraw its acceptance of the Tenderer's Tender; and
 - (iii) if the Government has entered into the Contract with the Tenderer, forthwith terminate the Contract.
- (d) 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(a) above or in the Non-collusive Tendering Certificate submitted by it under Clause 27(b) above.
- (e) A breach by a Tenderer of any of the representations and/or warranties and/or undertakings in Clause 27(a) above or in Non-collusive Tendering Certificate submitted by it under Clause 27(b) above may prejudice its future standing as a Government contractor or service provider.
- (f) Clause 27(a) 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.

- (g) The rights of the Government under Clauses 27(c) to 27(e) above are in addition to and without prejudice to any other rights or remedies available to it against the Tenderer.

28. Statement of Compliance

A Tenderer shall confirm in Schedule 5 of Part 5 – Schedules that the Service offered shall comply with Clauses 6(a) to 6(d) of Part 4 – Specifications. Without prejudice to other provisions of these Tender Documents, a Tenderer who expressly indicates non-compliance with any of the Service Requirements in Clauses 6(a) to 6(d) of Part 4 – Specifications will result in its Tender **not** being considered further.

29. Briefing Session

- (a) 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: 2:30 p.m.
Date: 20 March 2024 (Wednesday)
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 2 on or before 19 March 2024.

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

PART 3 CONDITIONS OF CONTRACT

1. Contract Period

- (a) The Contract shall be for a term of 24 months effective from 1 July 2024, or such other date as specified in the Memorandum of Acceptance, unless or until earlier terminated or extended in accordance with Clause 1(b).
- (b) 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) month 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.
- (c) 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(b) above provided that the maximum extended period(s) (excluding the original period of 24 months) do not exceed six (6) months.
- (d) Upon the Contract Period is extended pursuant to Clause 1(b), 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

The Contractor shall throughout the Contract Period:

- (a) plan and conduct monitoring, collect information / intelligence and assist in conducting enforcement operation in accordance with Clause 3 of this part and Clauses 2 to 6 of Part 4 – Specifications;
- (b) comply with all instructions of the Government Representative in relation to the Services;
- (c) notify the Government Representative forthwith of any matter that may materially affect the Contractor's provision of the Service under this Contract;
- (d) comply with all the laws, regulation and by-laws applicable to the provision of the Service, including obtaining and maintaining any required authorization, licences, permits and approvals under any such laws, regulations and by-laws.

3. Services to be provided by the Contractor

- (a) The Contractor shall during the Contract Period:
 - (i) provide Services as set out in Part 4 – Specifications and other parts of the Contract; and

- (ii) provide all facilities, tools, materials and equipment to ensure that the Services are provided in accordance with the terms and conditions of the Contract.
- (b) The Contractor shall fully co-operate with the Government Representative and comply with his instructions and directives on all matters relating to the Contract. The Contractor shall perform the Services in a manner fully and strictly in accordance with the terms and conditions of the Contract and to the satisfaction of the Government Representative.

4. **Contractor's Warranties and Undertakings**

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

- (a) the Contractor 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 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;
- (c) 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 licences or permits;
- (d) 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;
- (e) in the event of any of the Contractor's employees, agents or sub-contractors 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;
- (f) 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), the Merchant Shipping (Local Vessels) Ordinance (Cap. 548) and other applicable laws in the employment of its staff for the performance of the Contract or other Government contracts; and
- (g) in relation to the fishing vessel(s) used by the Contractor for performing the Services, the fishing vessel(s) is/are local fishing vessel(s) registered pursuant to the Fisheries Protection Ordinance (Cap. 171) which is/are owned by the Contractor with valid Certificate of Ownership issued pursuant to the Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation (Cap. 548D).

5. Payment

- (a) 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, the Contractor shall be paid according to the Unit Rates for such Item(s) as set out in Schedule 1 - Price Schedule for the quantity of such Item(s) of the Services performed.
- (b) The payment for the provision of sea enforcement operations support shall be computed as follows:
 - (i) Use of such Service for every hour shall be paid one ninth of the “Unit Rate” for a “Patrol” as set out in Schedule 1 - Price Schedule; and
 - (ii) Use of such Service for less than an hour shall be paid as an hour, i.e. one ninth of the “Unit Rate” for a “Patrol” as set out in Schedule 1 - Price Schedule.
- (c) In the case where the Contractor cannot finish the whole course of patrol assigned in accordance with Clause 7 in Part 4 - Specifications, payment will be made in proportion to the actual patrol hours conducted against the total number of hours required to be conducted. The actual patrol hours started from leaving the site where the vessel moored and ended at the time back to the vessel mooring site.
- (d) Payment of the Contract Price shall include all cost required for fuel, maintenance work and cleansing for performance of the Services. AFCD would not make any extra payment for the Service due to the increase of fuel cost or any other reasons.
- (e) If a Service is cancelled due to extreme weather or any other reasons, the Contractor will not be entitled to any payment for the cancelled Service.
- (f) The Contractor shall at the beginning of each month deliver to the Government Representative an invoice in respect of the Services rendered to the Government in the preceding month. The Government shall, subject further to any Government rights to make deductions or set-off under the Contract, pay the Contractor in arrears within thirty (30) days after receipt of the invoice from the Contractor setting out the particulars of the Services provided and the amount payable for the Services and such other information as the Government Representative may require from time to time, for the Services accepted by the Government regarding that particular month.
- (g) All invoices shall be addressed and despatched in the manner specified in Clause 30. Payment shall be made in Hong Kong Dollars.
- (h) For the avoidance of doubt, the Contractor shall not be entitled to any payment other than those set out in Clause 5(a) to 5(g).

6. 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.

7. Inspection and Replacement

- (a) The Services performed shall be subject to inspection by the Inspecting Officer and/or the Government Representative.
- (b) All costs incurred by the Contractor in complying with this Clause 7 (including those for the appointment of the Independent Accredited Laboratory where applicable) shall be borne by the Contractor and shall not be chargeable to the Government. Upon breach of any term or condition of the Contract by the Contractor, including but not limited to failure to comply with the performance requirements in accordance with the Service Specifications, the Government shall be entitled to reject unsatisfactory performance of the Services and withhold payment of the Contract Price until the deficiencies or defects have been rectified by the Contractor.
- (c) In the event that the Contractor, its sub-contractors or any of the Services performed shall fail to comply with any of the requirements of the Contract, or in the event that there is a breach of or non-compliance with any warranty, undertaking or obligation on the part of the Contractor to observe and perform which is capable of remedy, the Government may by notice in writing to the Contractor at any time require the Contractor to make good the defect, deficiency or remedy the breach at its sole costs and expenses within such time as may be stipulated by the Government in the notice.

8. Liability and Indemnities

- (a) Neither the Government nor any of its employees or agents shall be under any liability whatsoever for or in respect of:
 - (i) any loss of or damage to any of the Contractor's property or that of its employees or agents however caused (whether by any Negligence of the Government or any of its employees or agents or otherwise); or
 - (ii) any injury to or death of the Contractor's employees or agents, save and except any such injury or death caused by the Negligence of the Government or any of its employees or agents.
- (b) 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:
 - (i) 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
 - (ii) all and any demands, claims, actions, arbitrations, proceedings, threatened, brought or instituted by any person against an Indemnified Party or by an Indemnified Party against any person (regardless of whether or not they have been settled or compromised) (collectively, "Claims" and each a

“Claim”) and everything stated in Sub-clause (a) above incurred or suffered by an Indemnified Party in all and any such Claims,

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

- (I) the breach of any provisions of the Contract by the Contractor;
- (II) the negligence, recklessness, tortious acts or wilful act or omission of the Contractor, its employees, agents or sub-contractors;
- (III) any Warranty which is incorrect, inaccurate, incomplete or misleading;
- (IV) any claim or allegation that the use or possession of the materials or third party materials infringes the Intellectual Property Rights or any other rights of any person;
- (V) the non-compliance by the Contractor, its employees, agents or sub-contractor(s) with any applicable law, or regulation, order or requirement of any government agency or authority;
- (VI) any act or omission of the Contractor, or its employees, agents or sub-contractors, in the performance of the Contract notwithstanding that the Contractor is authorised or obliged to do or commit any such act or omission under this Contract;
- (VII) any loss, damage, injury or death referred to in Clause 8(a) above save and except injury or death caused by the Negligence of the Government or any of its employees (in the course of employment);
or
- (VIII) any injury or death of any third party, or any loss or damage to property sustained by any third party, in consequence of any act, omission, default, or negligence of the Contractor or any of its employees, agents and sub-contractors.

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

- (c) 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.
- (d) For the purposes of this Clause 8, “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).

- (e) 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.

9. **Policy of Insurance and Compensation**

- (a) The Contractor shall effect and keep in force, and renew upon expiry, throughout the Contract Period a public liability insurance policy in the joint names of (i) the Contractor and (ii) the Government, (with appropriate cross-indemnity clause as if a separate policy has been issued to each of them) subject to a maximum indemnity amount in the sum of not less than an indemnity amount of HK\$10,000,000 for each claim or a series of claims arising from one event, but otherwise unlimited in the aggregate indemnity amount for all claims arising during the entire period of insurance (“Insurance Policy”).
- (b) The Insurance Policy shall:
 - (i) contain a clause whereby the insurer shall irrevocably and unconditionally waive any right of subrogation or any other right or claim against the Government; and
 - (ii) be issued by an insurance company authorized to carry on the relevant insurance business under the Insurance Ordinance (Cap. 41).
- (c) Upon commencement of the Contract, the Contractor shall deposit with the Government Representative for record, and immediately upon renewal, copies of such policies of insurance, or if not available, copies of the insurance certificates, together with the receipt of payment of the current premium, certified as true and correct by the representative of the Contractor.
- (d) Under no circumstances shall the Government be responsible for the premium payable under the Insurance Policy.
- (e) The Contractor shall conform to the terms and conditions of the Insurance Policy and all reasonable requirements of the insurer in connection with the settlement of claims, the recovery of losses and the prevention of accidents. The Contractor shall not do or permit to be done any act or omission whereby any of the Insurance Policy shall be rendered void or voidable, or which would otherwise amount to a breach of the Insurance Policy. 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.

10. **Termination**

- (a) The Government may forthwith terminate the Contract upon the occurrence of any of the following events but without prejudice to any other rights which the Government has or may have if:
 - (i) 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;

- (ii) the Contractor is in breach of any provision of the Contract which in the opinion of the Government is not capable of remedy;
- (iii) the Contractor commits a breach of any provision of the Contract which is capable of remedy and fails to remedy the same within fourteen (14) days from the date of service of notice by the Government (or such longer period as specified in the notice) requiring such remedy;
- (iv) any warranty is incorrect, inaccurate, incomplete or misleading;
- (v) 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;
- (vi) if the Contractor is an incorporated body, a shareholders' or members' resolution has been passed that it be wound up or dissolved (other than voluntarily for the purpose of bona fide reconstruction or solvent amalgamation the terms of which have been approved by the Government in advance);
- (vii) a petition is presented for the winding up or dissolution or bankruptcy of the Contractor, which is not dismissed within fourteen (14) days after the petition is presented;
- (viii) the Contractor is or becomes insolvent, or any order is made for the Contractor's bankruptcy or winding up or dissolution;
- (ix) an administrator, administrative receiver, receiver or similar officer is appointed over the whole or any part of the Contractor's business or assets;
- (x) the Contractor suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
- (xi) the Contractor assigns or transfers or purports to assign or transfer all or any part of the Contract or all or any of its rights or obligations thereunder without the prior written consent of the Government;
- (xii) 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 Documents submitted by the Contractor during the tendering process;
- (xiii) the Contractor is found to have wilfully provided false attendance record, where in such case, the Government will reserve the rights to take any legal actions against the provision of any false documents;
- (xiv) the Contractor is in breach of any of the representations, warranties and/or

- undertakings hereby given or any conditions and/or requirements;
- (xv) the Contractor has made a material misrepresentation (including submission of false statement or inaccurate information) during the tendering process of the Contract;
 - (xvi) the Contractor, any officer (including director), employee, agent or sub-contractor of the Contractor 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;
 - (xvii) the Contractor abandons the Contract in whole or in part;
 - (xviii) any event or circumstance occurs which enables the Government to terminate the Contract under any one of the following provision of the Tender Documents:
 - (I) Clause 14 of the Conditions of Contract (Illegal Workers);
 - (II) Clause 15(c) of the Conditions of Contract (Probity);
 - (III) Clause 19(g) of the Conditions of Contract (Force Majeure);
 - (IV) Clause 22(b) of the Conditions of Contract (Contract Deposit);
 - (V) Clause 27(c)(iii) of the Terms of Tenders (Warranty against Collusion); or
 - (VI) Clause 29(d) of the Conditions of Contract (Admission of Contractor Personnel to Government Premises);
 - (xix) 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;
 - (xx) the continued engagement of the Contractor or the continued performance of the Contract is contrary to the interest of national security; or
 - (xxi) the Government reasonably believes that any of the events mentioned above is about to occur.
- (b) The Government may terminate the Contract by giving seven (7) days' written notice to the Contractor if the Contractor has failed to provide the valid insurance certificate and Operating License issued under the Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation (Cap. 548D) at any time during the Contract Period as may be required by the Government Representative.
- (c) 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.

- (d) Each of the grounds entitling the Government to terminate the Contract as specified in Clause 10(a) to (c) above and in each Sub-clause of Clause 10(a) shall be construed independently and shall not be limited or restricted by reference to or inference from any other ground or any other provision of this Contract.

11. Termination Consequences

- (a) If the Contract is expired or early terminated (howsoever occasioned) (“**Termination**”):
- (i) the Government shall cease to be under any obligation to make any payment to the Contractor for the Services provided by the Contractor prior to the Termination and in accordance with the Contract for which payment has yet to be made by the Government until the Government has established the final cost of making other arrangements contemplated under Sub-clause (viii) and provided such calculation shows a sum or sums due to the Contractor;
 - (ii) the Government shall not be responsible for any claim, legal proceeding, liability, loss (including any direct or indirect loss, any loss of revenue, profit, business, contract or anticipated saving), damages (including any direct, special, indirect or consequential damages of whatsoever nature) or any cost or expenses, suffered or incurred by the Contractor arising out of or in relation to the Termination;
 - (iii) the Government shall 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
 - (iv) the Contractor shall immediately return to the Government all Government Property which is supplied or in respect of which access is granted to the Contractor by the Government for the purposes of or in relation to the Contract;
 - (v) the Contractor shall provide all such assistance as the Government may request from time to time after the Termination to ensure an orderly and effective transition of the provision of the Services to the Government or another contractor to be appointed by the Government Representative and/or completion of any work-in-progress;
 - (vi) the Contractor shall within twenty-eight (28) days of the date of Termination compile and submit to the Government a report of all relevant information, facts, data, findings and conclusions in respect of the Services which have been provided up to the effective date of Termination;
 - (vii) at the request of the Government, the Contractor shall enter into and perform all deeds of assignment, transfer or novation in favour of the Government or in favour of any person whom the Government may designate, for the assignment, transfer or novation of any contract, arrangement or other subject matter whatsoever (including without limitation licences in relation to any Intellectual Property Rights) on such terms and conditions as the Government

may stipulate; and procure any other third party whom the Government considers necessary for effecting or perfecting such assignment, transfer or novation to enter into and perform any such deeds of assignment, transfer or novation; and

- (viii) without prejudice to the right to seek indemnity under Clause 8(b) of the Conditions of Contract and any claims made or to be made by the Government for breach of the whole or any part of Contract, in the event of the Termination under Clause 10(a) or 10(b) of the Conditions of Contract, the Contractor shall be liable for all losses, damage, costs and expenses incurred by the Government arising from the Termination including without limitation (i) any amounts in excess of the Estimated Total Contract Value incurred by the Government in engaging such other contractor(s) to complete the uncompleted Services and all costs and expenses incurred in making the arrangements for the same including conducting tender for the uncompleted Services; and (ii) any additional expenditure incurred by the Government in connection with a default by the Contractor referred to in Clause 10(a) or 10(b) of the Conditions of Contract.
- (b) 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.
- (c) Upon Termination of the Contract (howsoever occasioned), the Contract shall be of no further force and effect, but without prejudice to the Government's rights and claims under the Contract or otherwise at law against the Contractor arising from antecedent breaches of the Contract by the Contractor (including any breach(es) which entitle the Government to terminate the Contract), the rights and claims which have accrued to a Party prior to the Termination, and 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.

12. 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 his servants, workmen, agents or sub-contractors, 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.

13. Government Premises / Contractor Premises

- (a) The Contractor, shall ensure that all persons engaged by him in carrying out this Contract remain to such parts of Government premises as are necessary for the due discharge of the Contractor's obligations under the Contract.

- (b) Where the Services are carried out on the Contractor's premises, such premises shall be open to inspection by the Government Representative or Inspecting Officer at all reasonable times.
- (c) The safety of any craft, vessel and vehicle used by the Contractor 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 8(b).

14. Illegal Workers

The Contractor undertakes not to employ illegal workers in the execution of this Contract or any other Government contracts. Should the Contractor be found to have employed illegal workers in breach of this undertaking, the Government Representative may, on behalf of the Government, by notice, terminate this Contract pursuant to Clause 10(a) of this part.

15. Probity

- (a) The Contractor acknowledges it has been reminded that:
 - (i) dishonesty, theft and corruption on its part or that of its employees, agents or sub-contractors 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
 - (ii) the soliciting or accepting of advantages, as defined in the Prevention of Bribery Ordinance (Cap. 201) is not permitted.
- (b) The Contractor shall inform its officers, employees (whether permanent or temporary), agents and sub-contractors that the soliciting or accepting of advantages (as defined in the Prevention of Bribery Ordinance, Cap. 201) is not permitted. The Contractor shall also caution its officers, employees and agents and sub-contractors against soliciting or accepting any hospitality, entertainment or inducement which may impair their impartiality in relation to the selection of its sub-contractors, if any, or the supervision of the work of the sub-contractors.
- (c) The Government may terminate the Contract immediately if the Contractor or any of its officers, employees, agents and sub-contractors is convicted of an offence under the Prevention of Bribery Ordinance (Cap. 201), the Theft Ordinance (Cap. 210) or the Crimes Ordinance (Cap. 200).

16. Heat Stroke Prevention

- (a) The Contractor shall provide other outdoor workers at the site, as appropriate, with either:
 - (i) Umbrellas for protecting them against sunshine;

- (ii) Wide-brimmed hats or equivalent for serving similar functions to protect them against sunshine and, upon request, a pair of cooling arm sleeves / towels which are made of thin and vapour permeable fabric, if long-sleeved working clothes for protecting them against sunshine are not provided; or
 - (iii) Upon request, a portable fan to increase air flow to the worker.
- (b) If the Contractor has a duty under this Contract to provide portable fans and/or cooling arm sleeves / towels upon request, the Contractor shall also inform such workers of the availability of portable fans and/or cooling arm sleeves / towels accordingly for their use upon their request.

17. **Publicity**

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

18. **Confidentiality**

- (a) The Contractor shall not disclose any information (i) furnished by or on behalf of the Government or by any other person to the Contractor or any of its employees, agents or sub-contractors (collectively "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 18(a) shall not apply to the disclosure of any confidential information:
- (i) 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;
 - (ii) 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;
 - (iii) 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;
 - (iv) in circumstances where such disclosure is required pursuant to any laws of Hong Kong or an order of a court of Hong Kong; or
 - (v) with the prior consent in writing of the Government.

- (b) Any disclosure permitted under Clause 18(a) (excluding Clause 18(a)(iv) above) shall be in strict confidence and shall extend only so far as may be necessary for the purposes specified in Clause 18(a) and the Contractor shall ensure the confidentiality of any such disclosure by taking appropriate action to restrain or restrict any further disclosure.
- (c) 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.
- (d) 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 18 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 8 as a result of any breach of confidence (whether actionable based on this Contract or at law) by any such persons.
- (e) 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 18.

19. **Force Majeure**

- (a) If the Contractor becomes aware of any matter likely to constitute a Force Majeure Event, the Contractor shall forthwith notify the Government in writing concerning such matter and provide the Government with all relevant information as the Government may request.
- (b) Within seven (7) days after the occurrence of a Force Majeure Event or earlier, the Contractor shall notify the Government in writing of the full particulars of the Force Majeure Event including its nature, extent, how the Force Majeure Event has and/or will materially prevent it from performing the Contract or such part thereof, and likely duration of such material prevention.
- (c) Provided the Government is satisfied with the Contractor's claim of a Force Majeure Event which has materially prevented and/or will continue to materially prevent it from performing its obligations under the Contract or such part thereof, the Contract or such part thereof strictly to the extent of such prevention shall be suspended during the subsistence of such Force Majeure Event commencing from a date to be agreed between the Parties ("Suspension due to Force Majeure"). Where the Government is not so satisfied about any alleged claim of a Force Majeure Event, there shall be no Suspension due to Force Majeure. The Contractor may not allege or claim any event as a Force Majeure Event. Any failure by the Contractor to perform any obligation under the Contract shall be treated as default and entitles the Government to terminate the Contract in accordance with Clause 10(a).
- (d) Without prejudice to the generality of Clause 19(c) above, whilst the Suspension due to Force Majeure subsists:

- (i) the Contractor shall not be required to perform any part of its obligations under the Contract strictly to the extent it is materially prevented from doing so by the Force Majeure Event (“Affected Obligations”) but it shall use its best endeavours to remove or mitigate the effect of the Force Majeure Event on the Affected Obligations;
 - (ii) the Government may make alternative arrangements for the performance of the Affected Obligations, whether by another person or otherwise, without compensation to the Contractor;
 - (iii) the Contractor shall not be entitled to any payment of money in respect of the Affected Obligations (if any money would have been payable in the first place);
 - (iv) notwithstanding anything in the Contract to the contrary, no compensation shall be payable by either Party to the other due to any losses or damage arising from the Suspension due to Force Majeure; and
 - (v) the Contractor shall continue to fully and punctually perform and observe all of its other obligations which are not affected by the Force Majeure Event in full accordance with the requirements of the Contract including those obligations which are not Affected Obligations, and to that extent, all terms and conditions of the Contract shall continue to apply and be in full force and effect.
- (e) Following the issue of a notice by the Contractor under Clause 19(a) above which has led to Suspension due to Force Majeure under Clause 19(c) above, the Contractor shall keep the Government informed once every week or at such longer frequency as may be allowed by the Government, and in any event from time to time upon the request of the Government, of:
- (i) the likely duration of the relevant Force Majeure Event and of its effect of materially preventing the Contractor from performing the Affected Obligations;
 - (ii) the actions taken or proposed to be taken by the Contractor to mitigate or minimise the effects of that Force Majeure Event (“Mitigation Actions”); and
 - (iii) any other matters relevant to that Force Majeure Event or the Contractor’s performance affected by that Force Majeure Event.
- (f) As soon as the relevant Force Majeure Event has terminated or otherwise that the Government considers that the Mitigation Actions have minimised the effect of the Force Majeure Event on the ability of the Contractor to perform the Affected Obligations, the Contractor shall forthwith notify the Government, or the Government may on its own, after consultation with the Contractor, by notice in writing to the Contractor, determine the appropriate date for resuming the performance of the Affected Obligations (“Resumption Date”). The Contractor shall immediately after the termination of the Force Majeure Event or with effect from Resumption Date as determined by the Government in the aforesaid manner, resume performance of the Affected Obligations in accordance with the terms and

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

- (g) Should a Suspension due to Force Majeure subsists for more than thirty (30) days, the Government shall be entitled to, but is not obliged to, terminate the Contract pursuant to Clause 10(a)(xviii)(IV) of this part (depending on the election of the Government).

20. Disclaimer

- (a) 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.
- (b) 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.

21. Relationship of the Parties

The Contractor enters into the Contract with the Government as an independent contractor only and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership, or a joint venture between the Government and the Contractor. Unless otherwise expressly provided for in the Contract, neither Party is authorised to act in the name of, or on behalf of, or otherwise bind the other Party.

22. Contract Deposit

- (a) The Contractor shall pay the Contract Deposit in accordance with Clause 19 of the Terms of Tender.
- (b) If the Contractor fails to comply with Clause 22(a) above, the Government shall have the right to terminate the entire Contract pursuant to Clause 10(a) of this part.
- (c) 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.

- (d) 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 without interest; 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.
- (e) 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.
- (f) 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 twenty-one (21) 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 and, where applicable, the additional security amount required under Clause 19 of the Terms of Tender.

23. Assignment

The Contractor shall not, without the written consent of the Government Representative, assign, transfer, sub-contract or otherwise deal with any of its rights 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. Notwithstanding any written consent, the Contractor shall be responsible for all acts, omission, and defaults of its sub-contractors (of whatever tier) and agents (of whatever tier), and the employees and agents of each such sub-contractor and agent as if they were its own acts, omissions or defaults.

24. Sub-Contracting

The Contractor may, subject to the prior written approval of the Government, engage the service of sub-contractors to assist it with its duties under this Contract, provided that the Contractor:

- (a) shall not be relieved from any of those duties by engaging any such sub-contractor and shall remain fully liable to the Government for their performance; and
- (b) shall, without argument or delay, first secure legally binding obligations from any such sub-contractor in providing its service to the Contractor which are entirely consistent with the performance by the Contractor of its contractual obligations (including this Clause).

25. Entire Agreement and Amendment

- (a) The Contract constitutes the whole agreement between the Parties and supersedes any previous agreements or arrangements between them relating to the subject matter hereof. The Contractor acknowledges that in entering into the Contract, it has not relied on any statements, warranties or representations given or made by the Government. On the other hand, the Government has relied on the warranties when entering into the Contract.
- (b) All of the provisions of the Contract shall remain in full force and effect notwithstanding the completion of the Service (except insofar as those obligations which have been fully performed).
- (c) Subject to the terms and conditions of the Contract, no waiver, cancellation, alteration or amendment of or to the terms and conditions of the Contract shall be valid unless made by an instrument in writing and duly signed by both parties.

26. Order of Precedence

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 Specifications;
- (c) the Terms of Tender;
- (d) the Interpretation;
- (e) the Schedules;
- (f) other Tender Documents which forms part of the Contract; and
- (g) any other materials which were submitted by the Contractor as part of its Tender and attached to the Contract.

27. Severability

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

28. Waiver

- (a) 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.

- (b) Without prejudice to the generality of Clause 28(a) 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.

29. Admission of Contractor Personnel to Government Premises

- (a) Upon request from time to time by the Government, the Contractor shall provide to the Government a list of the names, posts, staff identity card numbers, addresses and telephone numbers of all Contractor's employees, agents, sub-contractors and those employees and agents of the aforementioned sub-contractors (collectively "Relevant Personnel") 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.
- (b) The Contractor shall ensure that while any of the Relevant Personnel is on the Government's premises they will conform to the Government's normal codes of staff and security practice.
- (c) 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.
- (d) In the event that the Contractor fails to comply with this Clause 29 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 10(a).

30. Notices

- (a) 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 Schedule 3.

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
Sea Enforcement Section
(Attn: Dr. WONG Tsz-chun)
Facsimile: (852) 2314 2866
Email: adrian_tc_wong@afcd.gov.hk

- (b) Such notices, demands, invoice, correspondence or other communications shall be addressed as provided in Clause 30(a) above and, if so addressed, shall be deemed to have been duly given or made as follows:
- (i) if sent by personal delivery during normal business hours on a working day, upon delivery at the address of the relevant party;
 - (ii) 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;
 - (iii) 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
 - (iv) 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.
- (c) Notice, demand, invoice, correspondence or other communication to the Contractor from the Government in the prescribed manner specified in Clause 30(b) 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 30(a) above.
- (d) Nothing in this Clause 30 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 30(b) 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.

31. Conflict of Interest

- (a) The Contractor shall during the Contract Period and for six (6) months thereafter:

- (i) ensure that it (including each and every officer, employee and agent of the Contractor) and each of its sub-contractors and each of their respective employees, officers and agents engaged in the discharge of the obligations hereunder, and each of their respective associates and associated persons (collectively “Restricted Group”) shall not undertake any business, activity, service, task, or job or do anything whatsoever for its own account (whether on its own or in conjunction with another person(s) in a joint venture or partnership or other business entity) or for or on behalf of another person (other than in the proper performance of the Contract) which conflicts or which may be seen to conflict with the Contractor’s duties or obligations under the Contract without the prior written approval of the Government; and
 - (ii) forthwith notify the Government in writing of all or any facts which may reasonably be considered to give rise to a situation where the interests (of whatsoever nature) of the Contractor or any other member of the Restricted Group, conflict or compete, or may be seen to conflict or compete, with the Contractor’s duties or obligations under the Contract.
- (b) The Contractor shall ensure that itself and each other member of the Restricted Group shall keep themselves informed and that each other member of the Restricted Group shall inform the Contractor and keep it informed regularly of all facts which may reasonably be considered to give rise to a situation in which its and/or their interests conflict or compete, or may be seen to conflict or compete, with the Contractor’s obligations under this Contract.
- (c) In the Contract:
- (i) “associate” of a person means:
 - (I) a relative or partner of that person; or
 - (II) a company one or more of whose directors is in common with one or more of the directors of that person;
 - (ii) “associated person” of a person means:
 - (I) any person who has control, directly or indirectly, over the second-mentioned person;
 - (II) any person who is controlled, directly or indirectly, by the second-mentioned person; or
 - (III) any person who is controlled by, or has control over, the person mentioned in (i) or (ii) above;
 - (iii) “control” over another person (“person under control”) means the power of a person to secure:
 - (I) by means of the holding of shares or interests or the possession of voting power in or in relation to that person under control or any other person;

(II) by virtue of powers conferred by any constitution, memorandum or articles of association, partnership, agreement or arrangement (whether legally enforceable or not) affecting that person under control or any other person; or

(III) by virtue of holding office as a director in that person under control or any other person;

that the affairs of the person under control are conducted in accordance with the wishes of that person exercising control;

(iv) “director” means any person occupying the position of a director by whatever name called and includes a de facto or shadow director;

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

(vi) “Restricted Group” has the meaning given to it in Clause 31(a) above.

32. Governing Law and Jurisdiction

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

33. Retention of Records

The Contractor shall keep and maintain until seven (7) years after the expiry of the Contract, or such longer period as may be agreed by the Parties, full and accurate records in relation to the Contract including the Services provided under it, all expenditure reimbursed by the Government, and all payments made by the Government. If requested by the Government, the Contractor shall afford the Government or its representative or authorised person access to the records and to make and retain copies thereof as may be requested by the Government or its representative or authorised person.

34. Assistance in Legal Proceedings

(a) If and whenever requested to do so by the Government Representative, the Contractor shall provide to the Government all relevant information, documents (including documentation and statements from staff) and other assistance in connection with any inquiry, investigation, arbitration, tribunal hearings or court proceedings in which the Government may become involved or any internal disciplinary hearing of the Government that arises out of or in connection with the Contract or the Contractor’s presence at the Government’s premises. If requested by the Government, the Contractor shall arrange for relevant staff to give evidence at such inquiries, investigations, arbitrations, hearings or proceedings.

(b) Where the Contractor or any employees, agents or sub-contractors of the Contractor become aware of an incident, accident or other matter which may give rise to a

claim or legal proceedings by a third party against the Government or the Contractor or in respect of the Contract, it shall notify the Government Representative immediately in writing giving full details of such incident, accident or matter as the Government Representative may require.

35. 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 the Contracts (Rights of Third Parties) Ordinance (Cap. 623).

PART 4 SPECIFICATIONS

Unless otherwise specified, all criteria listed below at Clauses 2 to 6 are requirements which the service offered by the Contractor shall fully comply with.

1. Background

The Fisheries Protection Ordinance (Cap.171) was amended in 2012, in which a registration system for fishing vessels had been introduced and trawling was banned in Hong Kong waters for protecting our precious marine resources and ecosystem. This Contract aims to improve the efficiency and effectiveness of combating illegal fishing by collaborating with local fishermen, as they possess good knowledge of and are capable of distinguishing different fishing methods, types of fishing vessels and legalities of fishing.

2. Objectives

- (a) The Contractor shall provide the following Services to AFCD throughout the Contract Period as stipulated in Clause 1 of Conditions of Contract:
 - (i) Conducting routine patrols within Hong Kong waters as instructed by AFCD to collect information/intelligence related to illegal fishing;
 - (ii) Submitting a monitoring report for each routine patrol as specified in Clause 4 below; and
 - (iii) Providing support for sea enforcement operations of AFCD as specified in Clause 5 below.
- (b) The Contractor shall engage local fishermen to enhance the effectiveness of monitoring efforts, thereby supporting AFCD in combating illegal fishing activities by both local and mainland fishing vessels.

3. Conducting routine patrols

- (a) The Contractor shall conduct routine patrols as instructed by AFCD and in accordance with Clause 6(d) below. For each routine patrol, one of the four waters in Hong Kong will be monitored (distribution shown in Annex 4):
 - (i) North East Waters (NE);
 - (ii) South East Waters (SE);
 - (iii) South Waters (S); and
 - (iv) West Waters (W).
- (b) The Contractor shall collect information/intelligence related to illegal fishing during routine patrols:

- (i) If the Contractor identifies either local or non-local fishing vessels engaged in illegal fishing activities during patrols (by making reference to the database of registered fishing vessel from AFCD's website: https://www.afcd.gov.hk/tc_chi/fisheries/fish_cap/fish_cap_fpo/fish_comp_mes.html), the Contractor shall inform AFCD for further action;
 - (ii) If the Contractor identifies Fishing Gears in the sea left by non-local fishing vessels during patrols, the Contractor shall inform AFCD to remove these Fishing Gears; and
 - (iii) For each routine patrol, the Contractor shall report to AFCD the information/intelligence collected by submitting a monitoring report as specified in Clause 4 below.
- (c) For each illegal fishing case identified by the Contractor, the Contractor shall provide a statement with signature as requested by AFCD. The Contractor shall be a witness in court if necessary.

4. **Submitting monitoring reports**

- (a) The monitoring report for each routine patrol shall be prepared following the template in Annex 5 which includes the information listed below:
 - (i) Registration number of the RLFV being used for patrol;
 - (ii) MMSI number of the mentioned RLFV;
 - (iii) Crew members on board the mentioned RLFV to conduct the monitoring and recording of illegal fishing activities;
 - (iv) General weather condition;
 - (v) Visibility;
 - (vi) Level of wind force and sea state;
 - (vii) Patrol route of AIS and other designated record methods;
 - (viii) Duration of patrol within Marine Park / Marine Reserve; and
 - (ix) Number of suspected fishing vessel(s) observed. If one or more suspected fishing vessels were observed during patrol, the following information shall also be marked in the monitoring report:
 - (I) Date and time;
 - (II) Discovery location (GPS);
 - (III) Registration number (Hong Kong);
 - (IV) Registration number (Mainland);

- (V) Fishing activities conducted;
 - (VI) Characteristic of the suspected fishing vessel;
 - (VII) AIS data (MMSI number) (if any);
 - (VIII) General weather condition, level of wind force and sea state; and
 - (IX) Photos and/or videos.
- (b) The Contractor shall submit the monitoring report to AFCD within fourteen (14) days after the respective routine patrol.
 - (c) The Contractor shall revise the monitoring report or submit supplementary documents within the specified period requested by AFCD.
 - (d) After the end of each month of the Contract Period, the Contractor shall submit a monthly summary of routine patrols conducted and illegal fishing activities observed to AFCD and revise the summary as may be requested by AFCD.

5. Supporting sea enforcement operations of AFCD

When AFCD conducts any enforcement operation which requires assistance from the Contractor, the Contractor shall assist AFCD to collect illegal fishing intelligence in accordance with Clause 6(d) below and AFCD's instructions before and during the operation so that the commander of the enforcement operation can make/fine tune the respective arrangement and action with reference to the intelligence collected.

6. Service requirement standard

The Contractor warrants and undertakes to AFCD that throughout the Contract Period:

- (a) The Contractor shall be a local fisherman or a company formed by a local fisherman/local fishermen with recommendation letter(s) from any local Fisheries Co-operative Society or Fishermen Association to prove that the Contractor is closely related to Hong Kong fisheries.
- (b) The Contractor shall provide at least three (3) Registered Local Fishing Vessels ("RLFVs") for the provision of service of monitoring work. It shall also provide the fishing and monitoring experience details of at least three (3) crew members for each vessel.
- (c) The RLFVs provided by the Contractor shall meet the following specifications:
 - (i) Each RLFV shall possess a valid Certificate of Ownership and a valid Operating License issued under the Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation (Cap. 548D);
 - (ii) Each RLFV shall possess a valid Certificate of Survey issued under the Merchant Shipping (Local Vessels) (Safety and Survey) Regulation (Cap. 548G);

- (iii) Each RLFV shall be insured in accordance with the requirements of the Merchant Shipping (Local Vessels) Ordinance (Cap. 548) and its subsidiary legislation, the Merchant Shipping (Local Vessels) (Amount of Insurance Cover) Notice (Cap. 548K);
 - (iv) Each RLFV shall possess a valid Certificate of Registration of Local Fishing Vessel issued under the Fisheries Protection Ordinance (Cap. 171);
 - (v) At least two (2) of the RLFVs shall be longer than 12 meters;
 - (vi) Cruising speeds of the RLFVs shall be greater than 10 knots;
 - (vii) The RLFVs shall operate under strong breeze or Sea State of 6 or below;
 - (viii) The RLFVs shall be installed with Automatic Identification System (AIS) which should be switched on during performance of the Service;
 - (ix) The RLFVs shall be equipped with suitable and sufficient safety equipment, including but not limited to life jacket and lifebuoy, to ensure the safety of all crew members during performance of the Service.
- (d) The Contractor shall arrange at least three (3) crew members to operate the RLFV as specified in Clause 6(b) above including one (1) coxswain, one (1) engineer and at least one (1) observer to monitor and record the illegal fishing activities encountered. Each of the crew members shall have at least 1 year of experience in fishing and/or fisheries monitoring work as at the Tender Closing Date as evidenced from recommendation letter(s) from any local Fisheries Co-operative Society or Fishermen Association;
- (e) The Contractor shall provide AFCD the license numbers of the RLFVs as mentioned in Clause 6(b) above, and the name list with phone numbers of all crew members as referred to in Clause 6(d) above prior to the performance of the required Service;
- (f) The Contractor shall allow and facilitate at most four (4) AFCD staff members on board of the RLFV to inspect the performance of Service by the Contractor when necessary;
- (g) In case of extreme weather that is not suitable for vessel voyage, the Contractor shall inform and get approval from AFCD to cancel the planned Service;
- (h) The Contractor shall not disclose to any third party any confidential information such as the date, time of Service and other related information;
- (i) The Contractor shall comply with all relevant Laws of Hong Kong, including but not limited to Employment Ordinance (Cap. 57), Immigration Ordinance (Cap. 115), Employees' Compensation Ordinance (Cap. 282), Mandatory Provident Fund Schemes Ordinance (Cap. 485), Occupational Safety and Health Ordinance (Cap. 509) and Merchant Shipping (Local Vessels) Ordinance (Cap. 548); and
- (j) The ownership of all information and records belongs to AFCD.

7. Estimated Requirements and Services Schedule

- (a) About eighteen (18) routine patrols per month outside the Fishing Moratorium and six (6) routine patrols per month during the Fishing Moratorium are estimated to be required within the Contract Period. The number of routine patrols shall be prorated for any partial month during the Fishing Moratorium.
- (b) The working time for each patrol shall be a continuous 9-hour duration at any period of time assigned by the representative of AFCD from Mondays to Sundays, including public holidays.
- (c) For general information only, the estimated number of routine patrols required is three hundred and forty (340) times for the Contract Period as stipulated in Schedule 1 – Price Schedule. For the avoidance of doubt, information, statistics, forecasts and estimated requirement of the Services set out are provided for reference only. The Government does not warrant or represent that the information, statistics and forecasts are complete, true or accurate. The Government's actual requirements of the Services may vary depending on the actual need and the Contractor must accept any increase or decrease by twenty percent ($\pm 20\%$) as part of the Contract with the Unit Rates as set out in the Schedule 1 - Price Schedule and all other terms and conditions remain unchanged. The Contractor shall be entitled to payment to be calculated based on the Unit Rate(s) of the Item(s) as specified in the Price Schedule and the quantity of such Item(s) of the Services performed in accordance with the actual requirements.
- (d) Supporting sea enforcement operations of AFCD is on an "as and when required" basis and the actual requirements may vary depending on the actual need of the AFCD.
- (e) AFCD would inform the Contractor at least twenty-four (24) hours before the required Service.

為使投標者更容易理解，以下提供服務內容的中文版本作參考。如中英文本有歧義，均以英文本為準。

服務合約規格

除非有其他規定，承辦商提供的服務須完全符合下列第 6(a)至 6(d)項的所有要求。

1. 背景

《漁業保護條例》(第171章)於2012年修訂後引入本地漁船登記制度及禁止在香港水域拖網捕魚，以保護珍貴的海洋資源及生態系統。然而，非法捕魚的情況仍在香港水域發生。本地漁民熟悉不同的捕魚方法及操作，能夠辨認各種漁船及區分合法與非法的捕魚方式，加上他們捕魚經驗豐富，可協助漁農自然護理署(本署)監察非法捕魚活動。因此，本署希望通過與漁民團體合作，以更有效打擊非法捕魚活動。

2. 目標

(a) 承辦商必須在第 3 部分第 1 項提及的合約期間為本署提供以下服務：

- (i) 承辦商必須根據本署指示，於香港內指定的水域進行日常巡邏並搜集有關非法捕魚的情報；
- (ii) 承辦商必須就每一次觀察活動向本署提交本部分第 4 項提及的觀察報告；及
- (iii) 於本署進行執法行動時根據第 5 項提供支援。

(b) 承辦商必須聘用本地漁民去提升觀察工作的效率，以便協助本署打擊非法捕魚，包括本地及非本地的漁船。

3. 進行日常巡邏

(a) 承辦商必須根據本署指示及參照本部分第6(d)項進行觀察工作，而每次觀察工作將於以下四個服務水域中指定其中一個進行(水域分佈圖請參照附件4)：

- (i) 東北水域(NE)；
- (ii) 東南水域(SE)；
- (iii) 南面水域(S)；及
- (iv) 西面水域(W)。

(b) 承辦商必須在觀察工作期間收集有關非法捕魚的資訊及/或情報：

- (i) 如承辦商發現進行非法捕魚活動的本地或非本地漁船(請參照本署網站內的已登記本地漁船資料：https://www.afcd.gov.hk/tc_chi/fisheries/fish_cap/fish_cap_fpo/fish_comp_mes.html)，須立即通知本署再作跟進；
 - (ii) 如承辦商發現非本地漁船並確認其船隻將漁具設置於海中，應立即通知本署以便移除及處理該些漁具；及
 - (iii) 每次完成觀察工作後，承辦商須向本署呈交本部分第4項提及的觀察報告。
- (c) 如承辦商於觀察期間發現非法捕魚活動，及後經本署確定有足夠資料成案，承辦商須向本署提供一份已簽名作實的證人口供。在有需要時，承辦商須就相關案件於法庭作供。

4. 提交漁業活動觀察報告

- (a) 每次觀察工作後所提交的漁業活動觀察報告須參照附件 5 的範本，內容必須包括：
- (i) 觀察工作所使用的已登記本地漁船的牌照號碼；
 - (ii) 上述船隻的九位碼(MMSI)；
 - (iii) 船隻上負責觀察及記錄非法捕魚的人員；
 - (iv) 整體天氣情況；
 - (v) 能見度；
 - (vi) 整體風向、風力及海面情況；
 - (vii) AIS 巡航路線圖或其他指定的記錄方式；
 - (viii) 海岸公園／海岸保護區的巡邏時間；及
 - (ix) 懷疑進行非法捕魚活動的船隻數目。如觀察期間發現 1 隻或以上的可疑船隻，觀察報告中須記錄以下資料：
 - (I) 發現日期及時間；
 - (II) 發現地點(GPS 位置)；
 - (III) 香港牌照號碼；
 - (IV) 內地牌照號碼；
 - (V) 作業方式；

- (VI) 船隻特徵；
 - (VII) 目標船隻 AIS 資料(MMSI 碼)(如有)；
 - (VIII) 發現時整體天氣情況、風向、風力及海面情況；及
 - (IX) 相關相片及/或影片。
- (b) 承辦商須於每次觀察工作完成後的14天內向本署提交有關的漁業活動觀察報告。
- (c) 如有需要，承辦商須按本署要求在指定時間內修改觀察報告或提供補充文件。
- (d) 承辦商須於每個月尾向本署提交每月所進行的觀察活動及發現懷疑進行非法捕魚活動的總結表，並在有需要時修改相關總結表。

5. 於本署進行執法行動時提供支援

本署在執行打擊非法捕魚的行動時，承辦商須根據本部分第6(d)項的要求，並按本署指示在行動前及進行期間搜集非法捕魚情報，以便行動指揮官能根據有關情報作出相應的部署和行動。

6. 服務要求準則

- (a) 承辦商必須為本地漁民或由本地漁民組成的公司，並須提交由任何本地漁業合作社或漁會所發出的推薦信，以證明其與本港漁業有密切聯繫。
- (b) 承辦商必須向本署提供最少 3 艘已登記的本地漁船以進行漁業活動觀察服務。就每艘船隻承辦商必須提交最少 3 名船員的姓名，並列明有關船員在捕魚和監察方面的經驗。
- (c) 承辦商所提供已登記的本地漁船，必須符合以下規格及要求：
- (i) 船隻必須持有根據香港法例第548D章《商船(本地船隻)(證明書及牌照事宜)規例》所發出的有效擁有權證明書及有效運作牌照；
 - (ii) 船隻必須持有根據香港法例第548G章《商船(本地船隻)(安全及檢驗)規例》所發出的有效驗船證明書；
 - (iii) 承辦商必須根據香港法例第548章《商船(本地船隻)條例》及其附例第548K章《商船(本地船隻)(投保額)公告》替船隻完成投保；
 - (iv) 船隻必須持有根據香港法例第171章《漁業保護條例》所發出的有效《本地漁船登記證明書》；
 - (v) 至少2艘船隻的長度必須長於12米；

- (vi) 船隻巡航速度不少於10節；
 - (vii) 船隻須適航於風力六級或以下的海面風速情況；
 - (viii) 船隻必須裝置船舶自動識別系統(AIS)，並於觀察工作期間保持開啟；
 - (ix) 船隻必須配備合適及足夠的安全設備，包括但不限於救生衣及救生圈，以確保在觀察工作期間船上人員的安全。
- (d) 承辦商須安排最少3名員工在操作上述第6(b)項提及的船隻，當中包括1名船長、1名輪機操作員和最少1名觀察員作觀察及記錄非法捕魚活動情況。每位員工應於投標截止日期前擁有至少1年的捕魚及/或漁業觀測工作方面的相關經驗，並以任何本地漁業合作社或漁民團體的推薦信作為證明。
 - (e) 承辦商須在提供觀察工作前向本署提供所有參照上述第6(b)項提及的船隻牌照號碼，以及參照上述第6(d)項提及的各名人員的姓名及聯絡號碼等資料。
 - (f) 如有需要，本署會派遣最多4名職員到船上監察承辦商進行漁業活動觀察的表現。
 - (g) 如船隻在惡劣天氣的情況下而不宜航行，承辦商須通知本署，並在本署同意下取消預定的觀察工作。
 - (h) 承辦商絕不能向第三方透露任何有關服務的資料，如觀察日期、時間及其他相關資料。
 - (i) 承辦商提供有關服務時，必須遵守所有相關的香港法例，包括但不限於香港法例第57章《僱傭條例》、香港法例第115章《入境條例》、香港法例第282章《僱員補償條例》、香港法例第485章《強制性公積金計劃條例》、香港法例第509章《職業安全及健康條例》及香港法例第548章《商船(本地船隻)條例》等。
 - (j) 承辦商搜集的所有資料及記錄，均屬本署所有。

7. 服務計劃及預測交付成果

- (a) 在合約期間，預計休漁期以外的月份每月進行約18次例行巡邏，而休漁期期間的月份每月進行大約6次例行巡邏。如月份只有部份時間在休漁期內，例行巡邏的次數將按照比例進行調整。
- (b) 每次巡邏的工作時間為連續9小時，由本署代表指定的任何時段，星期一至日，包括公眾假期。
- (c) 一般而言，合約期內所需例行巡邏的預計次數為340次，詳細情況請參照附表1報價表。為免產生疑問，所列服務的估算需求僅供參考。政府不保證或聲明所提及的資訊、數據和估算數目為完整、真實或準確的。政府對服務的實際要求可能會根據實際需要而有所不同，承辦商必須接受在附表1報價表中顯示的每次服務費用以及所有其他條款和條件保持不變情況下，可能有百

分之二十 ($\pm 20\%$) 的任何增加或減少。承辦商會根據報價表中的項目的每次服務費用以及已按照實際需要提供的服務項目才獲得付款。

- (d) 協助本署海上執法行動是按「有需要時」的原則進行，實際要求可能會因應本署的實際需要而有所不同。
- (e) 本署會於所需服務前至少 24 小時通知承辦商。

Schedule 1– Price Schedule

To: Director of Agriculture, Fisheries and Conservation

I/We,

having read the terms stated in these Tender Documents, hereby offer to provide the Service as required thereof as set out in the following table:

Item No.	Item	Estimated Quantity Required ⁽ⁱ⁾ (a)	Unit Rate (HK\$) (b)	Amount (HK\$) (a) x (b)
Provision of Service of Monitoring Work on Fishing Activities as detailed at Part 4 – Specifications				
1	Patrol	340		
2	Monitoring report	340		
Estimated Total Contract Value (HK\$):				

Remarks:

- (i) The estimated quantity required specified in this Price Schedule is an estimate provided for reference only and is not being a figure to which the Government binds itself to adhere. The Government's actual requirements of the Services may vary depending on the actual need and the Contractor must accept any increase or decrease by twenty percent ($\pm 20\%$) of the estimated quantity stated in this Price Schedule.

Signature of Person Authorized
to sign Tender

:

Name and Title of Authorized
Person

:

Name of Tenderer

:

Date

:

為使投標者更容易理解，以下提供報價表的中文版本作參考。如中英文本有歧義，均以英文本為準。

附表1—報價表

我/我們已閱讀招標文件所述的條款內容，特此提供所需服務的費用顯示於以下列表：

項目編號	項目	估計服務次數要求 ⁽ⁱ⁾ (a)	每次服務費用 (港幣) (b)	總值 (港幣) (a) x (b)
根據招標文件第4部分「規格」中的「服務要求」提供漁業活動觀察服務				
1	巡邏	340		
2	觀察報告	340		
估計總合約價格 (港幣)：				

註：

- (i) 報價表內所提供的服務次數只為估計數字，以供承辦商參考，並非實際服務次數。政府對服務的實際要求可能會根據實際需要而有所不同，承辦商必須接受在所有合約價格、條款和條件保持不變情況下，服務次數可能有百分之二十 ($\pm 20\%$) 或以下的增加或減少。

受權人簽署 : _____

受權人姓名及職位 : _____

公司名稱 : _____

日期 : _____

Schedule 2 – Payment Discounts and Contract Deposit Payment Method

Payment Discounts

Tenderer is requested to indicate in the space provided below what discount it would allow on the tendered prices if payment is made in full within:

- (a) Seven (7) clear working days from date of receipt of invoice: _____% discount.
- (b) Fourteen (14) clear working days from date of receipt of invoice: _____% discount.
- (c) Twenty-eight (28) clear working days from date of receipt of invoice: _____% discount.

N.B.: (i) Please refer to Clause 12(c) of Part 2 – Terms of Tender before completing the above. Any prompt payment discount offered by Tenderer will NOT be taken into consideration in the tender price assessment.

- (ii) Tenderer is requested to insert the word ‘NIL’ in the space provided above if they do not offer any payment discount.

Contract Deposit

I/We am/are prepared to pay the Contract Deposit by * Banker’s Guarantee / Cash / Not applicable
(if the actual contract value is below HK\$1.4 million)

(*delete whichever is not applicable)

Name of Tenderer: _____

Authorized Signatory: _____
(Name, Title and Signature)

Date: _____

Schedule 3 – Company/Business Organization Details

1. **Company/Business Organization Status**

[Please refer to Clause 5(b)(vii) of Part 2 – Terms of Tender.]

A Tenderer should provide the following details:

- (a) Name and address of the company/business organization:

- (b) Length of business experience:

- (c) Shareholders/partners/proprietor of the company/business organization and their percentage of ownership:

- (d) Name and residential address of the following:

- (i) Managing director/partners:

- (ii) Other directors:

- (iii) Sole proprietor:

- (e) A copy of the Business Registration Certificate, Memorandum and Articles of Association, Certificate of Incorporation or other constitutional documents or documents evidencing its business status (Note: The name of company/business organization shown in the documents as required under this Clause shall be the same as the one stated in the Offer to be Bound).

- (f) A copy of relevant document showing the authorized person(s) who sign(s) the Part 6 - Offer to be Bound has/have the authority to sign for and on behalf of the Tenderer.

N.B.: Please use separate sheet if space is inadequate.

2. User Reference

A Tenderer should provide a list of government users to whom similar services have been provided by the Tenderer (whether alone or in partnership):

(a) Name of government user(s):

(b) Name, address and telephone number for contact:

(c) Scope of services provided:

(d) Dates and duration of services provided:

N.B.: Please use separate sheet if space is inadequate.

3. Information required under Clause 16(b) of Part 2 –Terms of Tender:

* **(a)** I/We confirm that none of the events as mentioned in Paragraphs 16(a)(i) to 16(a)(vii) of the Terms of Tender has ever occurred.

* **(b)** I/We confirm that the following event(s) as mentioned in Paragraphs 16(a)(i) to 16(a)(vii) of the Terms of Tender has occurred:

Date	Details of the Event

Note: * Please delete whichever is not applicable.

4. Contact Details

[Please refer to Clause 30(a) of Part 3 – Conditions of Contract.]

A Tenderer should provide the following contact details:

(a) Correspondence address:

(b) Attn:

(c) Facsimile Number:

(d) Email Address:

(e) Telephone Number:

Name of Tenderer: _____

Authorized Signatory: _____
(Name, Title and Signature)

Date: _____

Schedule 4 – Crew Members Details

	Crew ____		
	Crew Member ____	Crew Member ____	Crew Member ____
i) Name:			
ii) HK Identity Card No. ³ :			
iii) Position (please ✓ as appropriate):	<input type="checkbox"/> Coxswain <input type="checkbox"/> Engineer <input type="checkbox"/> Observer	<input type="checkbox"/> Coxswain <input type="checkbox"/> Engineer <input type="checkbox"/> Observer	<input type="checkbox"/> Coxswain <input type="checkbox"/> Engineer <input type="checkbox"/> Observer
iv) Certificate of Competency No. ^{3,4} :			
v) Year of issuance ^{3,4} :			
vi) Grade of certificate ^{3,4} :			
vii) Experience in fishing and monitoring works ⁵ :	year(s)	year(s)	year(s)

Remarks

- (1) Each crew must comprise one coxswain, one engineer and at least one observer.
- (2) Each of the crew members must have at least 1 year of relevant experience in fishing and/or fisheries monitoring works as at the Tender Closing Date.
- (3) In respect of each of the proposed crew member, please submit photocopies of his/her Hong Kong Identity Card and Certificate of Competency (if applicable). The Government may require the Tenderer to produce the original documents for inspection.
- (4) The rows are to be filled-in as applicable.
- (5) Tenderers shall refer to Clause 5(b)(x) in Part 2 – Terms of Tender for the submission of recommendation letter(s) to prove the number of year(s) of experience in fishing and monitoring works.
- (6) Tenderers may photocopy this page if more than three (3) crews and/or more than nine (9) crew members in total are proposed.

	Crew ____		
	Crew Member ____	Crew Member ____	Crew Member ____
i) Name:			
ii) HK Identity Card No. ³ :			
iii) Position (please ✓ as appropriate):	<input type="checkbox"/> Coxswain <input type="checkbox"/> Engineer <input type="checkbox"/> Observer	<input type="checkbox"/> Coxswain <input type="checkbox"/> Engineer <input type="checkbox"/> Observer	<input type="checkbox"/> Coxswain <input type="checkbox"/> Engineer <input type="checkbox"/> Observer
iv) Certificate of Competency No. ^{3,4} :			
v) Year of issuance ^{3,4} :			
vi) Grade of certificate ^{3,4} :			
vii) Experience in fishing and monitoring works ⁵ :	year(s)	year(s)	year(s)

Remarks

- (1) Each crew must comprise one coxswain, one engineer and at least one observer.
- (2) Each of the crew members must have at least 1 year of relevant experience in fishing and/or fisheries monitoring works as at the Tender Closing Date.
- (3) In respect of each of the proposed crew member, please submit photocopies of his/her Hong Kong Identity Card and Certificate of Competency (if applicable). The Government may require the Tenderer to produce the original documents for inspection.
- (4) The rows are to be filled-in as applicable.
- (5) Tenderers shall refer to Clause 5(b)(x) in Part 2 – Terms of Tender for the submission of recommendation letter(s) to prove the number of year(s) of experience in fishing and monitoring works.
- (6) Tenderers may photocopy this page if more than three (3) crews and/or more than nine (9) crew members in total are proposed.

	Crew ____		
	Crew Member ____	Crew Member ____	Crew Member ____
i) Name:			
ii) HK Identity Card No. ³ :			
iii) Position (please ✓ as appropriate):	<input type="checkbox"/> Coxswain <input type="checkbox"/> Engineer <input type="checkbox"/> Observer	<input type="checkbox"/> Coxswain <input type="checkbox"/> Engineer <input type="checkbox"/> Observer	<input type="checkbox"/> Coxswain <input type="checkbox"/> Engineer <input type="checkbox"/> Observer
iv) Certificate of Competency No. ^{3,4} :			
v) Year of issuance ^{3,4} :			
vi) Grade of certificate ^{3,4} :			
vii) Experience in fishing and monitoring works ⁵ :	year(s)	year(s)	year(s)

Remarks

- (1) Each crew must comprise one coxswain, one engineer and at least one observer.
- (2) Each of the crew members must have at least 1 year of relevant experience in fishing and/or fisheries monitoring works as at the Tender Closing Date.
- (3) In respect of each of the proposed crew member, please submit photocopies of his/her Hong Kong Identity Card and Certificate of Competency (if applicable). The Government may require the Tenderer to produce the original documents for inspection.
- (4) The rows are to be filled-in as applicable.
- (5) Tenderers shall refer to Clause 5(b)(x) in Part 2 – Terms of Tender for the submission of recommendation letter(s) to prove the number of year(s) of experience in fishing and monitoring works.
- (6) Tenderers may photocopy this page if more than three (3) crews and/or more than nine (9) crew members in total are proposed.

Schedule 5 – Statement of Compliance

[Please refer to Clause 28 of Part 2 – Terms of Tender.]

Confirmation of compliance with all requirements in Clauses 6(a) to 6(d) of Part 4 – Specifications

- I/We* confirm that I/we* shall comply with the requirements as stipulated in Clauses 6(a) to 6(d) of Part 4 – Specifications.^
- I/We* confirm that I/we* shall **not** comply with the requirements as stipulated in Clauses 6(a) to 6(d) of Part 4 – Specifications in the following aspects:^

Clause No.	Requirement	Details of Deviation
------------	-------------	----------------------

Notes:

- (i) *Please delete as appropriate.
- (ii) ^Please tick the box opposite if the compliance statement is confirmed in the affirmative.
- (iii) If a Tenderer does not complete the above, subject to any clarification which may be made by the Government, it shall be deemed that the Tenderer **will** comply with the relevant requirements in the Specifications.
- (iv) **A Tenderer's Tender will not be considered further if the Tenderer expressly indicates non-compliance with all or any requirements under Clauses 6(a) to 6(d) of Part 4 - Specifications.** For this purpose, the completion of any one of the three columns under the non-compliance statement above in relation to such non-compliance shall be taken as such express indication. Any other indication which casts doubt on the true intention of the Tenderer may be further clarified.

Name of Tenderer: _____

Authorized Signatory: _____
(Name, Title and Signature)

Date: _____

Schedule 6 – 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 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 27(a) of the Terms of Tender, the Government may exercise any of the rights under Clauses 27(c) to 27(e) 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 (Chapter 619 of the Laws of Hong Kong), bid-rigging is serious anti-competitive conduct. I/We understand that the Government may, at its discretion, report all suspected instances of bid-rigging to the Competition Commission (the “Commission”) and provide the Commission with any relevant information, including but not limited to information on my/our Tender and my/our personal information.

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

Name of the authorised signatory (where applicable) :

Title of the authorised signatory (where applicable) :

Date :

ANNEX 1

Marking Scheme and Assessment Criteria for Provision of Service of Monitoring Work on Fishing Activities to the Agriculture, Fisheries and Conservation Department

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 5(c) of Part 2 - 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) (for Paper-based Tendering) a duly signed Part 6 – Offer to be Bound;
 - (b) (for Electronic Tendering) the box signifying the Tenderer’s agreement with Part 6 – Offer to be Bound of the Tender Form must have been checked;
 - (c) The duly completed Schedule 1 of Part 5 – Schedules (Price Schedule); and
 - (d) A Technical Proposal with an Execution Plan in accordance with Appendix to this Annex.
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, including but not limited to those set out in Clause 4 of Part 2 – Terms of Tender.
6. A Tender which fails to meet any of the Essential Requirements, including but not limited to those set out in Clause 4 of Part 2 – Terms of Tender, will not be considered further. Tenders which have passed this Stage II assessment will proceed to Stage III assessment.

Stage III – Technical Assessment

7. 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.

8. **Any Tender which fails to score the passing mark (16 out of 60) under the Assessment Criterion (1) in Appendix to Annex 1 will not be considered further.**
9. 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

10. (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 as set out in Schedule 1 (Price Proposal).
11. 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

12. (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 will normally be recommended for the award of the Contract.

Appendix to Annex 1

**Provision of Service of Monitoring Work on Fishing Activities to the
Agriculture, Fisheries and Conservation Department
Assessment Criteria and Marking Guidelines for Stage III - Technical Assessment**

Assessment Criteria		Maximum Mark	Passing Mark*
(A) Execution Plan (80 marks)			
(1)	Service Plan		
	(a) Background and objectives of service (see Note 1)	10	16
	(b) Description of the background of the target waters (see Note 2)	10	
	(c) Suggested patrol routes (see Note 3)	20	
	(d) Methods of information/intelligence collection (see Note 4)	20	
(2)	Innovative suggestions (see Note 5)		
	(a) Pro-innovation proposals – directly relevant to the Service (see Note 6)	15	
	(b) Environmental, social and governance (“ESG”) proposals – measures to improve environmental protection, sustainability, governance or social responsibility which may but need not be directly relevant to the Services (see Note 7)	5	
Sub-total for (A)		80	--
(B) Experience (20 marks)			
(3)	Experience in fishing and monitoring works (see Note 8)	20	--
Sub-total for (B)		20	--
Total Technical Mark		100	--

Explanatory Notes for Stage III – Technical Assessment

(A) Execution Plan

(The Execution Plan shall be put into the Technical Proposal Envelope.)

Tenderers should provide detailed information in their Service Plans which shall provide information listed below:

- (a) Background and objectives of the Service;
- (b) Description of the background of the target waters;
- (c) Suggested patrol routes (with images); and
- (d) Methods of information/intelligence collection.

The Service Plan should demonstrate the Tenderer’s ability to coordinate and deliver the Services with quality assurance measures. Marks will be given according to the marking guidelines provided below. All information included in the Service Plan submitted by the Contractor and to the extent as accepted by the Government shall form part of the Contract.

Note 1: Marking Guidelines for Assessment Criterion (1)(a) in (A) Execution Plan (Max. mark: 10)Assessment of background and objectives of service

Marks will be given as follows:

<u>Marks</u>	<u>Marking Standard</u>
10	Proposal is practical and includes information such as identification of fishing methods or fishing vessels with detailed explanation on each item and provides <u>6 or more</u> good suggestions which will enhance the Service.
7.5	Proposal is practical and includes basic information such as identification of fishing methods or fishing vessels with brief explanation and provides <u>4 – 5</u> good suggestions to achieve the objectives of the Service.
5	Proposal is practical and includes basic information such as identification of fishing methods or fishing vessels with brief explanation and provides <u>2 – 3</u> good suggestions to achieve the objectives of the Service.
2.5	Proposal is practical and includes basic information such as identification of fishing methods or fishing vessels with brief explanation and provides <u>only 1</u> good suggestion to achieve the objectives of the Service.
0	Proposal is <u>impractical</u> or <u>does not provide any suggestion</u> to achieve the objectives of the Service.

Note 2: Marking Guidelines for Assessment Criterion (1)(b) in (A) Execution Plan (Max. mark: 10)Assessment of description of the background of the target waters

Marks will be given as follows:

<u>Marks</u>	<u>Marking Standard</u>
10	Description of the background of the target waters such as any specific features is practical with detailed explanation that shows the Tenderer knows that particular waters very well; with <u>6 or more</u> precaution items on that particular waters.
7.5	Description of the background of the target waters such as any specific features is practical with brief explanation that shows the Tenderer knows that particular waters; with <u>4 – 5</u> precaution items on that particular waters.
5	Description of the background of the target waters such as any specific features is practical with brief explanation that shows the Tenderer knows that particular waters; with <u>2 – 3</u> precaution items on that particular waters.

2.5	Description of the background of the target waters such as any specific features is practical with brief explanation that shows the Tenderer knows that particular waters; with <u>only 1</u> precaution item on that particular waters.
0	<u>No</u> description of the background of the target waters such as any specific features or precaution item have been provided.

Note 3: Marking Guidelines for Assessment Criterion (1)(c) in (A) Execution Plan (Max. mark: 20)

Assessment of suggested patrol routes

Marks will be given as follows:

<u>Marks</u>	<u>Marking Standard</u>
20	The proposal provides <u>6 or more</u> suggested patrol routes which cover <u>most</u> black spots of illegal fishing activities suggested by the tenderer with detailed explanation and figures.
15	The proposal provides <u>4 - 5</u> suggested patrol routes which cover <u>main</u> black spots of illegal fishing activities suggested by the tenderer with detailed explanation and figures.
10	The proposal provides <u>2 - 3</u> suggested patrol routes which cover <u>main</u> black spots of illegal fishing activities suggested by the tenderer with detailed explanation and figures.
5	The proposal provides <u>only 1</u> suggested patrol route which cover <u>main</u> black spots of illegal fishing activities suggested by the tenderer with detailed explanation and figures.
0	<u>No</u> suggested patrol route and black spots of illegal fishing activities have been provided.

Note 4: Marking Guidelines for Assessment Criterion (1)(d) in (A) Execution Plan (Max. mark: 20)

Assessment of methods of information/intelligence collection

Marks will be given as follows:

<u>Marks</u>	<u>Marking Standard</u>
20	The proposal provides <u>6 or more</u> feasible methods for information / intelligence collection with detailed explanation and figures.
15	The proposal provides <u>4 - 5</u> feasible methods for information / intelligence collection with detailed explanation and figures.
10	The proposal provides <u>2 - 3</u> feasible methods for information / intelligence collection with brief explanation and figures.
5	The proposal provides <u>only 1</u> feasible method for information / intelligence collection with brief explanation and figures.

0	<u>No</u> feasible method for information / intelligence collection has been provided.
---	--

Note 5: for Assessment Criterion (2) in (A) Execution Plan

- (a) Tenderers may provide innovative suggestions under the criteria listed below:
- (i) Pro-innovative proposals; and
 - (ii) ESG proposals.
- (b) Marks will not be given to any pro-innovation proposal/ESG proposal which a tenderer will neither be capable of nor responsible for implementation.
- (c) A suggestion that scores marks under pro-innovation proposals will not earn marks again under ESG proposals and vice versa. In case a tenderer specified the type of a suggestion under both pro-innovation proposals and ESG proposals and the Tender Assessment Panel considers that the same suggestion could earn marks under pro-innovation proposals and ESG proposals, it will be taken as scoring marks under pro-innovation proposals only.
- (d) Tenderers should propose pro-innovation proposals and ESG proposals by filling in the details in Schedule of Innovative Suggestions to facilitate tender evaluation.
- (e) Apart from the Schedule of Innovative Suggestions, tenderers shall submit the following information for demonstrating the effectiveness and practicability of the pro-innovation proposals/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:
- (i) if the suggestion is concerned with a kind of technology, equipment, tool, system, material, facility and vehicle, etc.: scope of the services involved, details on how to implement, specifications, catalogues, features, functions, quantity, coverage, locations and outcome, etc. as appropriate;
 - (ii) if the suggestion is concerned with a kind of measure, service, scheme and activity, etc.: the objective, scope of the services involved, details on how to implement, functions, quantity, monetary value, scale, coverage, locations, frequency, duration, outcome and number of target beneficiaries, etc. as appropriate; and
 - (iii) if the suggestion is related to manpower: the objective, scope of the duties involved, details on how to implement, work shifts (full time or part time), posts, recruitment method, means to approach the target candidates, quantity, monetary value, scale, coverage, locations, frequency, duration, outcome and number of target beneficiaries, etc. as appropriate.
- (f) Tenderers may be requested to provide supporting documents or a demonstration to prove the practicability of their pro-innovation proposals/ESG proposals. All proposed pro-innovation proposals/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/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.

- (g) All practicable pro-innovation proposals/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 such as claiming damages and/or termination of the contract.
- (h) What constitutes as one pro-innovation proposal or one ESG proposal to score marks in accordance with the scale specified in Notes 6 or 7 below shall be determined by the Government.

Note 6: Marking Guidelines for Assessment Criterion (2)(a) in (A) Execution Plan (Max. mark: 15)

Assessment of pro-innovation proposals

- (a) Tenderers are encouraged to provide pro-innovation proposals for Assessment Criterion (1) to enhance the performance of Services.
- (b) 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 monitoring work on fishing activities as compared with how the service is delivered under the existing contract or the conventional mode of service delivery adopted by the Government in general.

Marks will be given as follows:

<u>Marks</u>	<u>Marking Standard</u>
15	The proposal contains <u>6 or more</u> practical pro-innovative proposals that contribute to benefits/positive values.
10	The proposal contains <u>3 – 5</u> practical pro-innovative proposals that contribute to benefits/positive values.
5	The proposal contains <u>1 – 2</u> practical pro-innovative proposal(s) that contribute to benefits/positive values.
0	The proposal contains <u>no</u> practical pro-innovative proposals.

Note 7: Marking Guidelines for Assessment Criterion (2)(b) in (A) Execution Plan (Max. mark: 5)Assessment of ESG proposals

- (a) Tenderers are also encouraged to provide ESG proposals which may but need not be directly relevant to the monitoring work on fishing activities but can bring about positive values or benefits to the Government or the public at large.
- (b) ESG proposals may not necessarily be technology-related.

Marks will be given as follows:

<u>Marks</u>	<u>Marking Standard</u>
5	The proposal contains <u>3 or more</u> practical ESG proposals that contribute to benefits/positive values.
2.5	The proposal contains <u>1 – 2</u> practical ESG proposal(s) that contribute to benefits/positive values.
0	The proposal contains <u>no</u> practical ESG proposals.

(B) Experience**Note 8: Marking Guidelines for Assessment Criterion (3) in (B) Experience (Max. mark: 20)**Assessment of experience in fishing and monitoring works

Marks will be given as follows:-

<u>Marks</u>	<u>Marking Standard</u>
20	At least three proposed crew members each of whom have <u>16 or more</u> years of relevant experience in fishing and/or fisheries monitoring works as at the Tender Closing Date.
10	At least three proposed crew members each of whom have <u>10 - 15</u> years of relevant experience in fishing and/or fisheries monitoring works as at the Tender Closing Date.
0	<u>Less than</u> three proposed crew members each of whom have <u>10 or more</u> years of relevant experience in fishing and/or fisheries monitoring works as at the Tender Closing Date.

Schedule of Innovative Suggestions

(Please refer to Notes 5 – 7 of the Explanatory Notes for Marking Scheme for details.)

Tenderers shall provide details of the proposed innovative suggestions in the following tables. If there is not enough space, please use supplementary sheets if necessary.

Assessment Criterion (2)(a) – Pro-innovation proposals

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

Assessment Criterion (2)(b) – ESG proposals

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

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 :

為使投標者更容易理解，以下提供評分制度及評審準則的中文版本作參考。如中英文本有歧義，均以英文本為準。

附件 1

為漁農自然護理署提供漁業活動觀察服務的評分制度及評審準則

1. 本署將按「雙信封」評分制度評審投標書。技術得分及價格得分的比例為60:40，其中價格評審將在技術評審之後分別進行。
2. 就評審投標書，本署將成立評審小組進行以下五個階段的評審：

第一階段 – 完整性檢查

3. 評審小組將會根據第2部分「投標條款」第5(c)項的要求檢查所有投標書的文件及資料的完整性。如在投標截止日期之前未能提交以下任何文件，投標將不會被進一步考慮：
 - (a) （適用於紙張形式投標）已填寫並簽署的第6部分「受約束的要約」；
 - (b) （適用於電子投標）投標者必須剔選表示同意投標表中的第6部分「受約束的要約」的方框；
 - (c) 已填寫的第5部分的附表1報價表；及
 - (d) 根據附件1附錄所提及的包含執行計劃的技術提案。
4. 通過第一階段評審的投標書將進入第二階段評審。

第二階段 – 符合基本要求的檢查

5. 評審小組將會進一步檢查通過第一階段評審的投標書是否符合基本要求，包括但不限於第2部分「投標條款」第4項列明的基本要求。
6. 不符合任何基本要求（包括但不限於第2部分「投標條款」第4項列明的基本要求）的投標書將不會被進一步考慮。通過第二階段評估的投標書將進入第三階段評審。

第三階段 – 技術評審

7. 評審小組將會按照附件1附錄中的評審準則和評分指南進一步評審已通過第一、二階段評審的投標書內的技術方案。
8. 任何未能在附件1附錄中的評估標準(1)下獲得及格分數（滿分60分中的16分）的投標書將不會被進一步考慮。
9. 通過第一至第三階段評審的投標書當中，技術得分最高的投標書將獲得最高的「按比例計算的技術得分」60分，其餘投標者將根據以下公式獲得「按比例計算的技術得分」：

$$60 \times \frac{\text{技術評審所得分數}}{\text{所有通過第一至第三階段評審的投標書中最高的技術評審所得分數}}$$

第四階段 – 價格評審

10. (a) 評審小組將會進一步評審已通過第一至第三階段評審的投標書內的價格方案。

(b) 此階段將根據附表 1 報價表中的估計總合約價格作評審。

11. 通過第一至第三階段評審的投標書當中，價格最低的投標書將獲得最高的「按比例計算的價格得分」60分，其餘投標者將根據以下公式獲得「按比例計算的價格得分」：

$$40 \times \frac{\text{所有通過第一至第三階段評審的投標書中最低的估計總合約價格}}{\text{估計總合約價格}}$$

[備註：「按比例計算的技術得分」及「按比例計算的價格得分」將調整至2位有效數字。小數點後第三位的數值大於或等於0.005的數字將會進位，即在數字上加上0.01，並截去小數點後第三位及其後的小數位；而小數點後第三位的數值小於0.005的數字將會捨去，即截去小數點後第三位及其後的小數位，但不會改變小數點後第二位的數值。]

第五階段 – 綜合得分的計算

12. (a) 投標書的綜合得分為「按比例計算的技術得分」及「按比例計算的價格得分」的總和。

(b) 投標書綜合得分最高的投標者通常會被推薦簽訂合約。

附件 1 附錄

為漁農自然護理署提供漁業活動觀察服務
第三階段 - 技術評審的評審準則和評分指南

評審準則	最高分數	及格分數*
(A) 執行計劃 (80 分)		
(1) 服務計劃		
(a) 服務的背景及目標 (詳見備註 1)	10	16
(b) 服務水域背景的描述 (詳見備註 2)	10	
(c) 建議的巡邏路線 (詳見備註 3)	20	
(d) 搜集資料/情報的方法 (詳見備註 4)	20	
(2) 創新建議 (詳見備註 5)		
(a) 促進創新方案 – 與服務直接相關 (詳見備註 6)	15	
(b) 環境、社會及管治 (ESG) 方案 – 旨在改善環境保護、可持續性、管治或社會責任的措施，可能但不一定需要與服務直接相關 (詳見備註 7)	5	
(A)的小計	80	--
(B) 經驗 (20 分)		
(3) 捕魚作業及監察經驗 (詳見備註 8)	20	--
(B)的小計	20	--
技術評審合計分數	100	--

第三階段 - 技術評估的說明性的備註

(A) 執行計劃

(執行計劃應放入技術方案信封中。)

投標者應在其服務計劃中提供詳細資料，其中應提供以下資料：

- (a) 服務的背景和目標；
- (b) 服務水域背景的描述；
- (c) 建議的巡邏路線 (附有圖像)；及
- (d) 搜集資料/情報的方法。

服務計劃應展示投標者協調並提供具有質素保證的服務的能力，並根據下面所提供的評分指南給予分數。承辦商提交的服務計劃中包含的所有資料，只要被政府接受，即成為合同的一部分。

備註 1：(A) 執行計劃中評審準則 (1)(a) 的評分指南（最高分數為 10 分）對服務的背景和目標的評審

將按照以下準則給予分數：

分數	評分標準
10	方案切合實際及包含基本資料，例如就識別捕魚方法或漁船等項目提供詳盡說明，並提供 <u>6 個或以上</u> 可取的建議，以提升服務質素。
7.5	方案切合實際及包含基本資料，例如就識別捕魚方法或漁船等項目提供簡要說明，並提供 <u>4 至 5 個</u> 可取的建議，以達到服務的目標。
5	方案切合實際及包含基本資料，例如就識別捕魚方法或漁船等項目提供簡要說明，並提供 <u>2 至 3 個</u> 可取的建議，以達到服務的目標。
2.5	方案切合實際及包含基本資料，例如就識別捕魚方法或漁船等項目提供簡要說明，並提供 <u>1 個</u> 可取的建議，以達到服務的目標。
0	方案不切實際，或未能提出任何建議以達到服務的目標。

備註 2：(A) 執行計劃中評審準則 (1)(b) 的評分指南（最高分數為 10 分）對服務水域背景的描述的評審

將按照以下準則給予分數：

分數	評分標準
10	目標水域的背景描述，例如任何具體特徵，應切合實際及附有簡要說明，顯示投標者非常熟悉該水域，並提出 <u>6 個或以上</u> 有關水域一帶要注意的事項。
7.5	目標水域的背景描述，例如任何具體特徵，應切合實際及附有簡要說明，顯示投標者熟悉該水域，提出 <u>4 至 5 個</u> 有關水域一帶要注意的事項。
5	目標水域的背景描述，例如任何具體特徵，應切合實際及附有簡要說明，顯示投標者熟悉該水域，並提出 <u>2 至 3 個</u> 有關水域一帶要注意的事項。
2.5	目標水域的背景描述，例如任何具體特徵，應切合實際及附有簡要說明，顯示投標者熟悉該水域，並提出 <u>1 個</u> 有關水域一帶要注意的事項。
0	未能提供任何具體特徵或注意事項等目標水域的背景描述。

備註 3：(A) 執行計劃中評審準則 (1)(c) 的評分指南（最高分數為 20 分）對建議的巡邏路線的評審

將按照以下準則給予分數：

分數	評分標準
20	方案提供了 <u>6 個或以上</u> 建議的巡邏路線，涵蓋投標者建議的 <u>大部分</u> 非法漁業活動黑點，並附有詳細的說明和數據。
15	方案提供了 <u>4 至 5 個</u> 建議的巡邏路線，涵蓋投標者建議的 <u>主要</u> 非法漁業活動黑點，並附有詳細的說明和數據。
10	方案提供了 <u>2 至 3 個</u> 建議的巡邏路線，涵蓋投標者建議的 <u>主要</u> 非法漁業活動黑點，並附有詳細的說明和數據。
5	方案提供了 <u>1 個</u> 建議的巡邏路線，涵蓋投標者建議的 <u>主要</u> 非法漁業活動黑點，並附有詳細的說明和數據。
0	未能提供任何巡邏路線或非法漁業活動黑點。

備註 4：(A) 執行計劃中評審準則 (1)(d) 的評分指南（最高分數為 20 分）

對搜集資料／情報的方法的評審

將按照以下準則給予分數：

分數	評分標準
20	方案提供 <u>6 個或以上</u> 可行的搜集資料／情報的方法，並附有詳盡說明及數據。
15	方案提供 <u>4 至 5 個</u> 可行的搜集資料／情報的方法，並附有簡要說明及數據。
10	方案提供 <u>2 至 3 個</u> 可行的搜集資料／情報的方法，並附有簡要說明及數據。
5	方案提供 <u>1 個</u> 可行的搜集資料／情報的方法，並附有簡要說明及數據。
0	未能提供任何可行的搜集資料／情報的方法。

備註 5：(A) 執行計劃中評審準則 (2)

(a) 投標者可以在以下列出的準則下提供創新建議：

- (i) 促進創新方案；及
- (ii) 環境、社會及管治（ESG）方案。

(b) 不會為任何投標者不能實施或負責的促進創新方案／ ESG 方案給予分數。

(c) 在促進創新方案下獲得分數的建議將不會再在 ESG 方案下獲得分數，反之亦然。如果投標者將建議同時指定在促進創新方案和 ESG 方案下，而評審小組認為該建議在促進創新方案和 ESG 方案下都可以獲得分數，則該建議將僅在促進創新方案下獲得分數。

(d) 投標者應通過填寫創新建議附表（只提供英文版本）提出促進創新方案及 ESG 方案，以便評審。

- (e) 除了創新建議附表（只提供英文版本）外，投標者還應提交以下資料，以證明促進創新方案／ ESG 方案有效性及切合實際。如果投標者只提出概念而沒有足夠的細節，則不會給予分數。投標者應提供以下資料：
- (i) 如果建議涉及某種技術、設備、工具、系統、材料、設施和車輛等，則應酌情提供其涉及的服務範圍、實施細節、規格、目錄、特點、功能、數量、覆蓋範圍、位置及結果等資料；
 - (ii) 如果建議涉及某種措施、服務、策劃和活動等，則應酌情提供其目標、涉及的服務範圍、實施細節、功能、數量、貨幣價值、規模、覆蓋範圍、位置、頻率、持續時間、結果和目標受益人數等資料；及
 - (iii) 如果建議涉及人力資源，則應酌情提供其目標、涉及的職責範圍、實施細節、工作輪班（全職或兼職）、職位、招聘方式、接觸目標候選人的方法、數量、貨幣價值、規模、覆蓋範圍、位置、頻率、持續時間、結果和目標受益人數等資料。
- (f) 投標者可能會被要求提供證明文件或示範，以證明其促進創新方案／ ESG 方案切合實際。所有提出的促進創新方案／ ESG 方案將根據投標書中提供的資料及投標者在政府要求時提供的事實證明文件（例如測試報告／證書）進行評審。評審將不會考慮示範。它只是一種使評審小組成員更好地了解投標者提出的促進創新方案／ ESG 方案的方法。在示範期間，投標者也不允許提供原始投標書中未包含的其他額外資料。
- (g) 所有政府接受的可行的促進創新方案／ ESG 方案都將成為合約的一部分。未能履行這些促進創新方案／ ESG 方案將被視為違反合約義務，政府有權根據現有的違反合約義務處理機制進行後續行動，例如索取賠償損失和／或終止合約。
- (h) 政府將決定甚麼構成一個促進創新方案或一個 ESG 方案，並按照下列備註 6 或 7 所指定的準則評分。

備註 6：(A) 執行計劃中評審準則 (2)(a) 的評分指南（最高分數為 15 分）

對促進創新方案的評審

- (a) 政府鼓勵投標者為評審準則 (1) 提供促進創新的方案，以提高服務績效。
- (b) 促進創新方案須提高服務成果的效率、效果和生產力，但不一定要與技術層面有關。當中可分為技術方法、安排、工作流程、解決問題的方案及／或不同的設備，而相關的服務成果須為可見、可量化和可量度的。投標者可提出涉及應用／採用新技術／發明及／或應用現有／成熟創新技術的創新方案，而這些方案不但可增強服務成果，同時促進智慧城市的發展以及創新和技術的發展。如漁業活動監測工作根據所提出直接相關的創新方案與採用的傳統模式相比下，更為有效且切實可行，則會給予評分。

將按照以下準則給予分數：

分數	評分標準
15	方案提供 <u>6 個或以上</u> 可行、有利益及貢獻的促進創新的方案。
10	方案提供 <u>3 至 5 個</u> 可行、有利益及貢獻的促進創新的方案。
5	方案提供 <u>1 至 2 個</u> 可行、有利益及貢獻的促進創新的方案。

0	未能提供任何可行的促進創新的方案。
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備註 7：(A) 執行計劃中評審準則 (2)(b) 的評分指南（最高分數為 5 分）

對 ESG 方案的評審

- (a) 政府亦鼓勵投標者提供ESG方案，這些方案並不一定與漁業活動監測工作直接相關，但能為政府或廣大公眾帶來正面的價值或利益。
- (b) ESG 提案不一定與技術相關。

將按照以下準則給予分數：

分數	評分標準
5	方案提供 <u>3個或以上</u> 可行、有利益及貢獻的ESG方案。
2.5	方案提供 <u>1 至 2 個</u> 可行、有利益及貢獻的ESG方案。
0	未能提供任何可行的ESG方案。

(B) 經驗

備註 8：(B) 經驗評審準則 (3) 的評分指南（最高分數為 20 分）

對漁業及觀察活動工作相關經驗的評審

將按照以下準則給予分數：

分數	評分標準
20	於投標截止日期前，至少三名船員各具有 16 年或以上捕魚及/或漁業觀測工作方面的相關經驗。
10	於投標截止日期前，至少三名船員各具有 10至15 年捕魚及/或漁業觀測工作方面的相關經驗。
0	於投標截止日期前，少於三名船員各具有 10 年或以上捕魚及/或漁業觀測工作方面的相關經驗。

ANNEX 2

Registration Form for the Tender Briefing

**Tender for the Provision of Service of
Monitoring Work on Fishing Activities to the
Agriculture, Fisheries and Conservation Department**

(Tender Reference AFCD/MWFA/2024)

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 Enforcement Section
(Attn: Dr. WONG Tsz-chun)
Facsimile: (852) 2314 2866

We will attend the Tender briefing for the above Tender
on 20 March 2024, 2:30 p.m.
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 19 March 2024. 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.

ANNEX 3**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) ("Guarantor")

IN FAVOUR OF

The Government of the Hong Kong Special Administrative Region of the People's Republic of China ("Government")

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/MWFA/2024]), 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 the Guarantor HEREBY AGREES with the Government 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 date three (3) months after the early termination or expiry of the Contract; 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) Notwithstanding anything herein to the contrary, 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 Guarantorhas 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:)
)
)

@ 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.....)
)
)
)
)

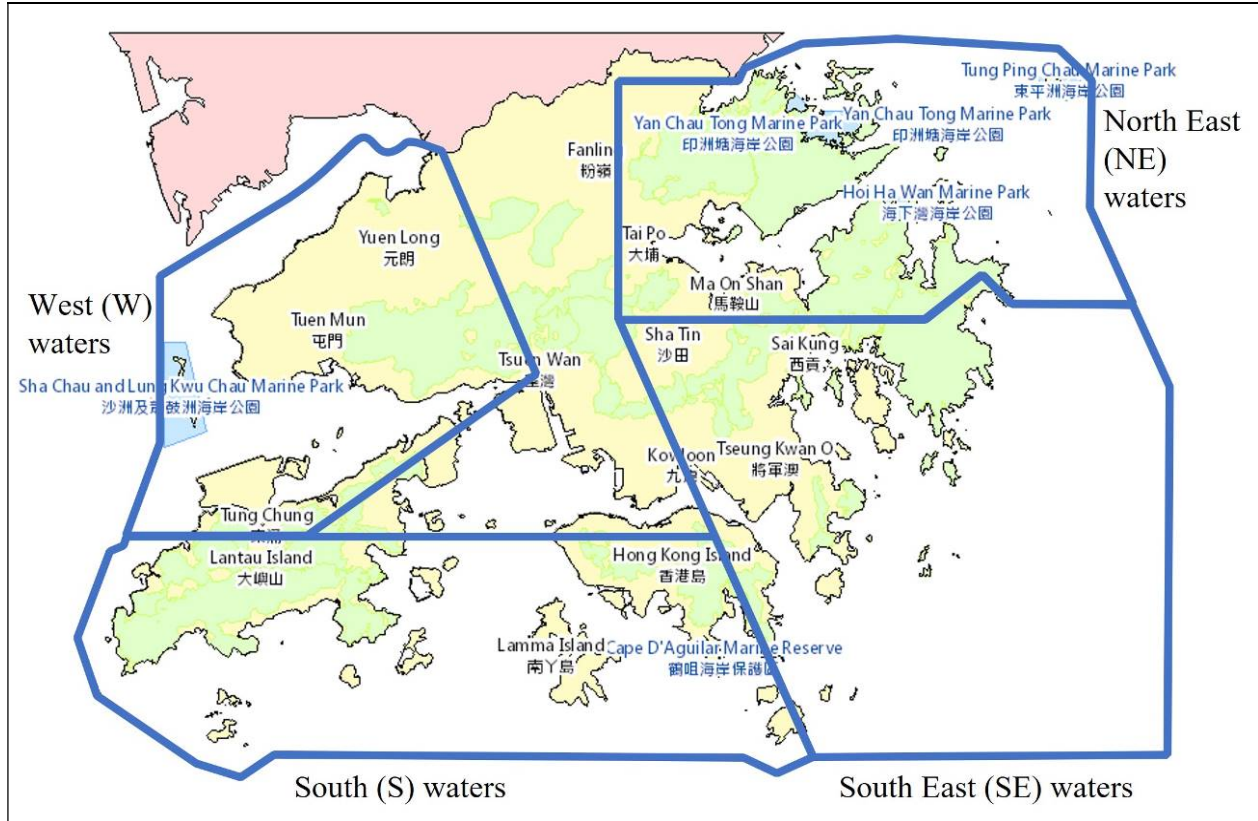
* Please delete as appropriate.

@ 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 4

Distribution of Hong Kong waters for Monitoring Work on Fishing Activities



Annex 5

Sample Report for Monitoring Work on Fishing Activities
漁業活動觀察報告範本

Patrol Information**巡航資料**

Date 日期：	
Time 時間：	
Registration number of the patrol vessel： 巡航船隻牌照號碼	
MMSI number of patrol vessel 巡航船隻 MMSI碼：	
Name of observer 觀察及記錄人員：	
Number of suspected illegal fishing vessel: 發現懷疑進行非法捕魚活動的船隻數目	
General weather 整體天氣：	
Visibility 能見度：	
Level of wind force and sea state： 整體風向、風力及海面情況：	

Inspection records of marine parks and marine reserves**巡察海岸公園及海岸保護區記錄**

東面水域 (SE Waters)	時間	南面水域 (S Waters)	時間
Cape D'Aguilar Marine Reserve 鶴咀海岸保護區		Southwest Lantau Marine Park 大嶼山西南海岸公園	
		South Lantau Marine Park 南大嶼海岸公園	
西面水域 (W Waters)	時間	北面水域 (NE Waters)	時間
Sha Chau and Lung Kwu Chau Marine Park 沙洲及龍鼓洲海岸公園		Yan Chau Tong Marine Park 印洲塘海岸公園	
The Brothers Marine Park 大小磨刀海岸公園		Tung Ping Chau Marine Park 東平洲海岸公園	

Patrol route of AIS and other designated record methods

AIS的巡航路線圖/或其他指定的記錄方式

Company chop 公司蓋章： _____
Report date 編寫報告日期： _____

Information of suspected illegal fishing vessel(s)**懷疑進行非法捕魚活動的船隻資料**

Serial number 序號 : _____

Date and Time 發現日期及時間	通知 : 漁護署 <input type="checkbox"/> 警方 <input type="checkbox"/>
Location (GPS) 發現地點 (GPS位置)	
Registration number (HK) 香港牌照號碼	
Registration number (Mainland) 內地牌照號碼	
Fishing method 作業方式	
Characteristics of fishing vessel 船隻特徵	
GPS location or AIS or MMSI number of target fishing vessel 目標漁船的GPS位置及/或AIS資料 (MMSI碼)(如有)	
General weather condition, level of wind force and sea state 發現時的天氣、能見度、風向、風 力及海面情況	

Additional information (if any) 補充資料 (如有):

Information of suspected illegal fishing vessel(s)

懷疑進行非法捕魚活動的船隻資料

Photos 相片

Registration number (HK) 香港牌照號碼： _____

Location of suspected illegal fishing vessel; 代表懷疑進行非法捕魚漁船的位置：



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 6 of this Tender Form or a printed copy from a softcopy of Part 6 of this Tender Form or a photocopy or a scanned copy of such hardcopy or printed copy. Any manner of reproduction of Part 6 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 6 – Offer to be Bound shall be signed and submitted in the Tender before the Tender Closing Time. This signed Part 6 – 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 6 – 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 7
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 relating to the following item(s). 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 :

.....
.....

.....
.....