

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

Tender Ref: AFCD/LTMP2024

TENDER FORM

Contract No.:

LODGING OF TENDER

To be acceptable as a Tender, this form, properly completed in triplicate and enclosed in a sealed plain envelope marked
“Tender for the Provision of Services to Implement the Long-Term Fisheries Resources

Monitoring Programme of Hong Kong”

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

must be deposited in the Government Logistics Department Headquarters

Tender Box situated on G/F, North Point Government Offices, 333 Java Road, North Point, Hong Kong

before **12:00 noon** (time) on **6 August 2024** (date) (Hong Kong time). **Late Tenders will not be accepted.**

The Tender Documents for this invitation to tender (“Tender Document”) consist of the following:

INTERPRETATION

PART 1 — TERMS OF TENDER

PART 2 — CONDITIONS OF CONTRACT

PART 3 — SERVICE SPECIFICATIONS

PART 4 – SCHEDULES

SCHEDULE 1: PRICE SCHEDULE

SCHEDULE 2: INFORMATION SCHEDULE

SCHEDULE 3: EXECUTION PLAN

SCHEDULE 4: INNOVATIVE SUGGESTION SCHEDULE

SCHEDULE 5: NON-COLLUSIVE TENDERING CERTIFICATE

SCHEDULE 6: THE COMPLETENESS CHECK SCHEDULE

PART 5 — OFFER TO BE BOUND

PART 6 — MEMORANDUM OF ACCEPTANCE

This Invitation to tender is not covered by the Agreement on Government Procurement of World Trade Organization.

Dated this 4 day of July 20 24



(Vivian LAM)

Government Representative

*for the Agriculture, Fisheries and
Conservation Department*

Tender Ref: AFCD/LTMP2024

PART 5 — OFFER TO BE BOUND
(PLEASE SIGN AND SUBMIT THIS PART 5
WITHOUT CHANGING THE ORIGINAL TEXT)

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 Unit Price(s) 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 submitted shall be Part 5 of this Tender Form or a printed copy from a softcopy of Part 5 of this Tender Form or a photocopy or a scanned copy of such hardcopy or printed copy. Any manner of reproduction of Part 5 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 5 – Offer to be Bound shall be signed and submitted in the Tender before the Tender Closing Time. This signed Part 5 – Offer to be Bound to be submitted must not be a photocopy of the original, otherwise, **the Tender will not be considered further.***
- (iii) *In compliance with the restriction set out in Paragraph 11.1(b) of the Terms of Tender, the Tenderer shall not make any alteration to the original text set out in this Part 5 – 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.*

Tender Ref.: AFCD/LTMP2024

PART 6
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 : _____
_____	_____
_____	_____

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INTERPRETATION

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

“AFCD” means the Agriculture, Fisheries and Conservation Department of the Government of Hong Kong Special Administrative Region of the People’s Republic of China;

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

“Alternative Authentication Method” or “AAM” means the use of an Identification Code for the submission of a Tender via the e-Tender Box in lieu of the use of a digital certificate;

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

“Companies Registry” means the Companies Registry of the Government;

“Contract” means the contract made between the Government and the Contractor for the supply of the Services on the terms and conditions set out in the Tender Documents, the Tender submitted by Contractor (to the extent accepted by the Government), the Memorandum of Acceptance issued by the Government to that Contractor, all other schedules, plans, drawing and other documents which form part of the Contractor’s Tender or are incorporated by reference in any of the above documents and the attachments to any of the above.

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

“Contract Deposit”	means the deposit as more particularly in Clause 12 of the Conditions of Contract and Clause 20 of the Terms of Tender;
“Contract Period”	has the meaning given to it in Clause 1.1 of the Conditions of Contract;
“Contract Price”	means the amount payable to the Contractor for the provision of the Services in accordance with the prices stipulated in the Price Schedule and the terms and conditions of the Contract;
“Contractor”	means the Tenderer whose Tender is accepted by the Government through the issue of the Tender Acceptance;
“Date of Tender Acceptance” or “Tender Acceptance Date”	means the date of the Tender Acceptance and this date shall, unless otherwise specified in the Interpretation (Supplement), be taken as the date of the Contract;
“Deliverables”	means all the deliverables, reports, summaries, briefings, presentations, diagrams, drawings, charts, tables, graphs, pictures, photographs, plans, models, opinions, comments created, developed, prepared, written or produced by the Contractor being the work product and/or services required to be produced/furnished under this Contract, including all the items set out in Clauses 4, 5 and 7 of the Service Specifications;
“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 AAM;
“ESG”	means environmental, social and governance strategy for Hong Kong;
“ESG Proposal”	means a proposed measure or arrangement that will improve environmental protection, sustainability or social responsibility or governance which may but need not be directly relevant to the procurement covered by this Invitation to Tender, but which can bring about positive value(s) and/or benefit(s) to the

Government or the public at large proposed by the Tenderer in its Tender to be assessed under assessment criterion 6(ii) of the Marking Scheme;

“essential requirement”	means a requirement specified in the Tender Documents which is identified as an essential requirement and a requirement in relation to which it is stated in the Tender Documents that the non-compliance by a Tender or a Tenderer as at the Tender Closing Time will lead to that Tender or Tenderer not being considered further (or the Tender or Tenderer being disqualified);
“Electronic Record”	has the meaning given to it under the Electronic Transactions Ordinance (Chapter 553 of the Laws of Hong Kong);
“Total Estimated Contract Price”	means the total estimated amount of contract price described as such in Part A1 of the Price Schedule as quoted by a Tenderer for the full and proper provision for the whole of the Services;
“e-Tender Box” or “ETB”	means the electronic tendering platform of the information technology system known as “Procurement and Contract Management System” or “PCMS” of the GLD for ETB Users to view tender notices and tender documents, and prepare and submit tenders electronically whether through the use of a digital certificate or an Identification Code;
“ETB User”	means a person who has registered with the PCMS whether as a GLD supplier, or a GLD subscriber, or a person who is for the time being just an applicant to become a GLD supplier up to the time of the notification of the result of its application;
“ETO”	means the Electronic Transactions Ordinance (Chapter 553 of the Laws of Hong Kong);
“Fisheries Statistics Specialist”	means the member in the Project Team responsible for supervising all statistical analyses to be performed in relation to the Services under this Contract;

“Force Majeure Event”	<p>means:</p> <p>(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</p> <p>(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 Paragraphs 16.6 and 16.7 of the 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;</p> <p>and which, in any case of (a) or (b) above, materially prevents the performance of the duties and obligations of any Party hereunder; for the avoidance of doubt, any change of law and regulation of whichever jurisdiction shall not be treated as a Force Majeure Event;</p>
“general holiday” or “public holiday”	means a Sunday and any other day which is a general holiday by virtue of the General Holidays Ordinance (Chapter 149 of the Laws of Hong Kong);
“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 Data” or “Government Property”	means all property, equipment, data, documents, information, text, drawings, pictures, diagrams, images, sound or music, and any other materials of whatsoever nature (tangible or intangible) stored, presented or embodied in any medium, and which are

	provided or to be provided by the Government to the Contractor under or for the purposes of or in relation to the Contract or otherwise the Contractor has access;
“Government 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;
“Hong Kong”	means the Hong Kong Special Administrative Region of the People’s Republic of China;
“Hong Kong dollars”	means the lawful currency of Hong Kong;
“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;
“Information Schedule”	means a schedule attached to the Tender Form for completion of the Tenderer’s information;
“Innovative Suggestion”	means a Pro-innovation Proposal or ESG Proposal proposed by the Tenderer;
“Innovative Suggestion Schedule”	Means a schedule attached to the Tender Form for completion of the Innovative Suggestions to be offered by the Tenderer in Schedule 4
“Interpretation”	means this Interpretation;
“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 Part A1 of the Price Schedule, and shall be inclusive of all related services and subject matters specified in the Contract;
“LTMP”	means the Long-Term Fisheries Resources Monitoring Programme of Hong Kong;
“marine fisheries resources surveys”	means surveys conducted at sea using various fishing gears such as longline, gillnet, cagetraps, etc. to collect marine fisheries resources.
“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;
“Materials”	means any and all works and materials of whatsoever nature (including their drafts and uncompleted versions) developed, written, prepared, produced, created, collected, compiled or provided by or on behalf of or for the Contractor, in relation to the Services or for the purposes of the Contract including without limitation, any reports, summaries, models, questionnaires, analyses, papers, advice, recommendations, documents, records, plans, designs, drawings, pictures, diagrams, images, sound, music, formula, tables, charts, databases, computer source codes, compilation of data or information, data or information collected, compiled, produced or created by the Contractor, its employees, agents or sub-contractors in relation to the Services or for the purposes of the Contract, recorded or stored by whatever means;
“Non-collusive Tendering Certificate”	means a document known as such and in the form attached to the Tender Form for completion and submission by the Tenderer as part of its Tender under Paragraph 29.2 of the Terms of Tender;
“Original Tender Closing Date”	means the date specified in the “Lodging of Tender” section of the Tender Form as the latest date before which Tenders must be deposited with the Government, regardless of whether the date has been

extended subsequently;

“Paper-based Tendering”	means the making and submission of a Tender in paper form in accordance with the “Lodging of Tender” section of the Tender Form;
“Parties” (in upper or lower case)	means the Government and the Contractor; and “Party” (in upper or lower case) means any one of them;
“PRC”	means the People’s Republic of China;
“Price Proposal”	means the Price Schedule to be completed by the Tenderer;
“Price Schedule”	means the price schedule attached to the Tender Form for completion of the Unit Price quotation(s) of the Services offered and also containing the payment timetable for the Contract Price (if applicable);
“PRIMER”	means the Plymouth Routines in Multivariate Ecological Research;
“Pro-innovation Proposal”	means a proposal that adopts any one or more of the following: technological means / arrangements / work process / solutions / equipment that can enhance efficiency, effectiveness and productivity of the Services proposed by the Tenderer in its Tender to be assessed under assessment criterion 6(i) of the Marking Scheme;
“Procuring Department”	means the bureau or department of the Government specified as such in the Appendix;
“Project Director”	means the member in the Project Team assuming the role as a team leader and responsible for the overall direction and management of the Services under the Contract;
“Project Manager”	means the member in the Project Team assuming the role as a liaison officer for communicating with the Government Representative in relation to the Services under the Contract;

“Project Specialist”	means the member in the Project Team, deployed by the Contractor as deemed appropriate, responsible for supervising specific task(s) to be performed in relation to the Services under this Contract;
“Project Team”	means the team deployed by the Contractor comprising of at least five (5) team members to provide the Services under the Contract including one (1) Project Director, one (1) Project Manager, one (1) Fisheries Statistics Specialist and at least two (2) Technical Staff; it also includes any additionally deployed Project Specialist(s) for supervising specific tasks as deemed appropriate by the Contractor;
“R”	means the R Project for Statistical Computing and is a free software environment for statistical computing which may be downloaded at r-project.org ;
“Schedules”	means all schedules referred to in Part 4 of the Tender Documents, and in the respective forms attached to the Tender Form; they may be assigned a consecutive number and/or letter for identification purposes;
“Services”	means the services to be provided by the Contractor to the Government as specified in the Service Specifications;
“Service Specifications”	means the Service Specifications set out in Part 3 of the Tender Documents and its Annexes and as attached to the Tender Form;
“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;
“SPSS”	means the Statistical Package for the Social Sciences;
“Technical Staff”	means the members in the Project Team responsible for performing technical services including but not limited to conducting field surveys, processing

	samples, analyzing data and performing taxonomic identification in relation to the Services under this Contract;
“Technical Proposal”	means all proposals, information and documents required to be submitted as part of the Tender apart from the Price Schedule;
“Tender”	means an offer to provide the Services as submitted by a Tenderer in response to the Invitation to Tender;
“Tender Acceptance”	has the meaning given to it in Paragraph 18 of the Terms of Tender;
“Tender Closing Date”	means the latest date specified in the Lodging of Tender as the latest date before which Tenders must be deposited with the Government, as the same may be extended by the Government from time to time pursuant to any applicable provision in the Tender Documents;
“Tender Closing Time”	means the latest time specified in the Lodging of Tender as the latest time before which Tenders must be deposited with the Government, as the same may be extended by the Government from time to time pursuant to any applicable provision in the Tender Documents;
“Tender Documents”	means the documents as specified in Clause 1 of the Terms of Tender and any addendum issued by the Government for the purpose of the Invitation to Tender prior to the Tender Closing Date;
“Tender Form”	means: <ul style="list-style-type: none"> (a) in the case of a Tender submitted in paper form, the Tender Form G.F. 231 issued for the Invitation to Tender; and (b) in the case of a Tender submitted electronically, the tender form available on the e-Tender Box for completion electronically;

“Tender Submission Date”	means the date of the Offer to be Bound;
“Tender Validity Period”	has the meaning given to it in Paragraph 4.2 of the Terms of Tender;
“Tenderer”	means a person which or who has capacity to contract and has submitted a Tender in response to this Invitation to Tender;
“terms and conditions of use of the PCMS and the e-Tender Box”	means all those terms and conditions for the use of the PCMS and the e-Tender Box from time to time published on the website of the e-Tender Box including the “Terms and Conditions of Use of the PCMS and the e-Tender Box” and the “e-Tender Box System and File Attachment Requirements” in the version prevailing immediately prior to the Tender Closing Date;
“website of the e-Tender Box”	means the website of the following address: https://pcms2.gld.gov.hk ;
“working day”	means Monday to Friday, other than a public holiday, or a day on which Tropical Cyclone Warning Signal No. 8 or above is hoisted, or Black Rainstorm Warning Signal or “extreme conditions” announced by the Government is/are in force, for any time during the normal business hours;

1.2 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;
- (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 a document are to a clause, sub-clause, section or paragraph in or a schedule, Appendix or attachment to that document;
- (h) references to “laws” and “regulations” shall include any constitutional provisions, treaties, conventions, ordinances, subsidiary legislation, orders, rules and regulations having the force of law and rules of civil and common law and equity, regardless of the jurisdiction;
- (i) any word or expression to which a specific meaning has been attached in any part of the Tender Documents shall bear such meaning whenever it appears in the same and other parts of the Tender Documents;
- (j) a time of a day shall be construed as a reference to Hong Kong time;
- (k) references to “normal business hours” mean 0900 to 1800 hours;
- (l) references to a day mean a calendar day;

- (m) references to a month mean a calendar month;
- (n) any negative obligation imposed on any Party 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) the expressions “include” and “including” shall be construed without limitation to the words following;
- (r) words and expressions extend to their grammatical variations and cognate expressions where those words and expressions are defined in the Tender Documents or by reference to any other definition;
- (s) 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;
- (t) reference to “original signature” or “originally signed” includes a digital image of a hand-written signature (viz., a scanned signature);
- (u) 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;

1.3 Nothing in the Contract shall be taken to restrict, derogate from or otherwise interfere with any power or duty, or the exercise or performance of any power or

duty conferred or imposed by or under any law upon the Government or any person in the service of the Government.

- 1.4 All rights and powers of the Government under the Contract may be exercised by the Government Representative. If any provision of the Contract provides for a determination of any matter by the Government or the Government Representative, the determination made by the Government or the Government Representative (as the case may be) shall, in the absence of manifest error, be final and conclusive.
- 1.5 Unless otherwise expressly stated, all provisions of the Tender Documents shall apply regardless of whether Paper-based Tendering or Electronic Tendering is used for the submission of the Tender or formation of the Contract.

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PART 1 - TERMS OF TENDER

1. Tender Documents

1.1 These Tender Documents identified as “Tender for Provision of Services to Implement the Long-Term Fisheries Resources Monitoring Programme of Hong Kong” (Tender Ref: AFCD/LTMP2024) consist of one complete set of the following documents (collectively “Tender Documents”):

- (a) “Lodging of Tender” section of the Tender Form (G.F. 231);
- (b) the Interpretation;
- (c) Part 1 – the Terms of Tender with Appendices A to F;

- Appendix A – Contact Details
- Appendix B – Method of Providing the Contract Deposit
- Appendix C – Form of Banker’s Guarantee
- Appendix D – Guidance Note GN-1
- Appendix E – Marking Scheme and Assessment Criteria
- Appendix F – Reply Slip for Tender Briefing Session

- (d) Part 2 – Conditions of Contract
- (e) Part 3 – Service Specifications
- (f) Part 4 – Schedules

- Schedule 1: Price Schedule
- Schedule 2: Information Schedule
- Schedule 3: Execution Plan
- Schedule 4: Innovative Suggestion Schedule
- Schedule 5: Non-Collusive Tendering Certificate
- Schedule 6: The Completeness Check Schedule

- (g) Part 5 – Offer to be Bound; and
- (h) Part 6 – Memorandum of Acceptance.

1.2 Unless otherwise defined, each of the above documents constituting the Tender Documents and the Contract (as the case may be) shall be referred to in the Tender Documents and the Contract.

2. Invitation to Tender

- 2.1 Tenders are invited for the provision of all of the Services subject to and in accordance with the Tender Documents.
- 2.2 Each Tenderer should read the Tender Documents carefully prior to submitting a Tender and ensure that it understands all requirements of the Tender Documents.
- 2.3 Each Tenderer should obtain such independent advice from its own advisers as it considers appropriate.
- 2.4 Each Tenderer should check the numbers of pages of the Tender Documents. If it finds any missing or indistinct pages, it should inform the Government Representative immediately so that the same can be rectified.
- 2.5 Each Tenderer will be regarded to be thoroughly conversant with all aspects of the Tender Documents (including the Contract) and in general to have obtained all necessary information of any circumstances which may influence or affect its Tender or its performance of the Contract. The Government does not assume any liability in respect of any errors or mistakes made by a Tenderer or any neglect or failure of a Tenderer to obtain any information or clarification relating to the provision of the Services to the Government in accordance with the Contract.
- 2.6 No error, mistake, neglect or failure by a Tenderer shall affect any provision of the Tender Documents (including the Contract) or relieve the Tenderer from any of its obligations or liabilities under the Tender Documents (including the Contract). For the avoidance of doubt, a successful Tenderer shall not be entitled to any additional payment, compensation, exemption from compliance or observance, or allowance by reason of any such error, mistake, neglect or failure. If a Tenderer is awarded the Contract, it shall not be excused from any obligation or liability under the Contract as a consequence of any misinterpretation by it of any provision in the Tender Documents or the Contract.
- 2.7 Information, statistics and forecasts set out in the Tender Documents are provided for a Tenderer's reference only. The Government does not

warrant or represent that the information, statistics and forecasts are complete, true or accurate. The Government does not bind itself to adhere to such information, statistics and forecasts.

- 2.8 The provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Invitation to Tender and a Tender submitted by a Tenderer in response to this Invitation to Tender.

3. Tender Preparation and Submission

- 3.1 Unless otherwise specified in the Terms of Tender, the Tenderer must quote all the prices requested for in the Price Schedule. **Where a Tenderer fails to do so, its Tender will not be considered further.**

- 3.2 Not used.

- 3.3 The Tenderer must submit the following in its Tender before the Tender Closing Time:

- (a) (i) (for Paper-based Tendering) a duly signed Part 5 “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 5 of the Tender Form or a printed copy from a softcopy of Part 5 of the Tender Form or a photocopy or a scanned copy of such hardcopy or printed copy. Any manner of reproduction of Part 5 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 5 “Offer to be Bound” of the Tender Form must have been checked **and the Tender with**

the non-conforming Offer to be Bound will not be considered further;

- (b) Schedule 1 – Price Schedule;
- (c) Schedule 2 – Information Schedule;
- (d) Schedule 3 – Execution Plan;
- (e) Schedule 4 – Innovative Suggestion Schedule;
- (f) Schedule 5 – Non-collusive Tendering Certificate duly completed and signed;
- (g) Schedule 6 – the Completeness Check Schedule;
- (h) Appendix A to the Terms of Tender – Contact Details;
- (i) Appendix B to the Terms of Tender – Method of Providing the Contract Deposit; and
- (j) Appendix C to the Terms of Tender – Form of Banker’s Guarantee.

3.4 Any failure to complete or submit the documents and/or information required under Clause 3.3 above may, at the absolute discretion of Government, render a Tender non-conforming and not to be further considered. **However, a Tenderer should note that its Tender will not be considered further if, by the Tender Closing Date, the Tenderer fails to submit the following:**

- (a) Part 5 the “Offer to be bound” which must be duly signed or signified by the Tenderer in accordance with Paragraph 3.3(a) of the Terms of Tender;
- (b) Schedule 1 – Price Schedule;

(c) Schedule 2 – duly completed sections of Table D relevant to essential requirements set out in Paragraph 6 of the Terms of Tender; and

(d) Schedule 3 – Execution Plan.

3.5 The Tenderer shall complete and submit all Schedules in English and in accordance with other requirements of the Tender Documents.

3.6 A two-envelope system shall be adopted for this Tender. Regardless of whether Paper-based Tendering or Electronic Tendering is used, 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.

(a) Paper-based Tendering

If this method is used, the Technical Proposal and the Price Proposal shall be completed in writing on hardcopy and shall be submitted in TRIPLICATE with two sets in hard copies and one set in soft copy in pdf format on compact disc(s) and shall be placed inside two (2) separate envelopes clearly marked as specified below respectively:

(i) The Price Proposal must be enclosed in a sealed envelope clearly marked “Envelope A” and “Tender Reference: AFCD/LTMP2024 – Tender for the Provision of Services to Implement the Long-Term Fisheries Resources Monitoring Programme of Hong Kong – Price Proposal”; and

(ii) The Technical Proposal must be enclosed in another sealed envelope clearly marked “Envelope B” and “Tender Reference: AFCD/LTMP2024 – “Tender for the Provision of Services to Implement the Long-Term Fisheries Resources Monitoring Programme of Hong Kong - Technical Proposal”.

- (iii) The two (2) sealed plain envelopes shall then be enclosed in a large sealed envelope and clearly marked “Tender Reference: AFCD/LTMP2024 – Tender for the Provision of Services to Implement the Long-Term Fisheries Resources Monitoring Programme of Hong Kong” and deposited into the Specified Tender Box as specified in the Lodging of Tender before the Tender Closing Time, or a Tender not deposited in the Specified Tender Box will not be considered.

(b) Electronic Tendering

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

3.7 A complete list of all proposals, documents and information which are required to be submitted is set out in the Completeness Check Schedule. The Technical Proposal shall be submitted to include all of foregoing apart from the Price Schedule, and the Price Proposal shall be submitted to include the Price Schedule.

3.8 The Government may not consider a Tender (or will not consider a Tender where it is expressly so stated) if:

- (a) false, inaccurate or incorrect information is given in the Tender;
or
- (b) any proposal, document or information requested in the Tender Documents is not furnished in full in the Tender.

3.9 In these Terms of Tender, there are also requirements for the submission of documents and/or information, whereby it is provided that if not supplied by the Tender Closing Time, or upon subsequent request of the Government after the Tender Closing Time, the Tender will not be considered further. Even so, for this type of documents and/or information, the Government is not obliged to make any request for resubmission after the Tender Closing Time. If the Government chooses not to do so, or even if the Government chooses to do so but the Tenderer fails to supply the missing document or information, the Tender will also not be considered further.

3.10 For all other proposals, documents and information which do not fall within Paragraph 3.3 or 3.4 above, the Government reserves the right to seek submission under Paragraph 12.1 of the Terms of Tender or evaluate the Tender on an “as is” basis.

3.11 When completing the Tender Documents (including the Offer to be Bound section of the Tender Form), each Tenderer shall ensure that the name of the Tenderer is the same as the name shown in:

- (a) if the Tenderer is a company incorporated in Hong Kong:
 - (i) the Certificate of Incorporation of the Tenderer; or
 - (ii) if there is a change of name of the Tenderer since the date of its Certificate of Incorporation, the latest Certificate of Change of Name of the Tenderer; or
 - (iii) its business name as shown in the current business registration certificate of the Tenderer; or

- (b) if the Tenderer is a sole proprietorship or a partnership, the current business registration certificate of the Tenderer issued under the Business Registration Ordinance (Chapter 310 of the Laws of Hong Kong); or
- (c) if the Tenderer is incorporated, formed or established outside Hong Kong, a document equivalent to that described in Paragraph 3.11(a)(i), (a)(ii), (a)(iii) or (b) above (as the case may be) issued by a governmental or competent authority of the place where the Tenderer is incorporated, formed or established.

3.12 Tender Closing Time

(a) (i) Paper-based Tendering

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

(ii) Electronic Tendering

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

- (b) In case Tropical Cyclone Warning Signal No. 8 or above is hoisted, or Black Rainstorm Warning Signal or “extreme conditions” announced by the Government is/are in force, for any duration between 0900 and 1200 hours on the date specified in the “Lodging of Tender” section of the Tender Form, the latest date and time before which Tenders are to be deposited in the Specified Tender Box and at the e-Tender Box will be extended to 1200 hours on the next working day.
- (c) In case of blockage of the public access to the location of the Specified Tender Box at any time between 0900 and 1200 hours

on the Tender Closing Date, the Government will announce extension of the Tender Closing Time until further notice. Following removal of the blockage, the Government will announce the extended tender closing time as soon as practicable. The above announcements will be made via press releases on the website of Information Services Department (<http://www.info.gov.hk/gia/general/today.htm>).

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

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

3.15 Modification of Tender

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

(b) Paper-based Tendering

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

(c) Electronic Tendering

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

3.16 Apart from Part 5 “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 Paragraph 3.3(a)(i) above), wherever there is any provision in the Tender Documents requiring that the original of any document or the document as mentioned in Paragraph 3.16(b) below to be submitted as part of the Tender,

- (a) in the case of Paper-based Tendering, (i) the Tenderer may submit a photocopy certified to be true and complete by the person(s) specified in Paragraph 3.11(a)(i) above; (ii) in the case of any certificate which is required to be issued by a specified body (for example an Independent Accredited Laboratory or a recognised certification body (if applicable)), the photocopy certificate must be certified as true and complete by that specified body or a lawyer duly qualified to practise in Hong Kong or the laws of the place of incorporation, formation or establishment of the Tenderer; and (iii) if only a photocopy without any certification has been submitted, the Government reserves the right to request a certified true copy as required in (i) or (ii) above (whichever is applicable) (“certified true copy”) after the Tender Closing Date. The Tender may not be considered further if the certified true copy is not provided; and
- (b) in the case of Electronic Tendering, the Tenderer shall first submit the certified true copy as described in Paragraph 3.16(a)(i) or (ii) above (whichever is applicable) in electronic format as part of its Tender via the e-Tender Box. Subsequently, the Government reserves the right to request a certified true copy (hardcopy) after the Tender Closing Date. If only a photocopy without any certification has been submitted in electronic format as part of its Tender via the e-Tender Box, the Government reserves the right to request a certified true copy (hardcopy) after

the Tender Closing Date. The Tender may not be considered further if the certified true copy (hardcopy) is not provided.

4. Tenders to Remain Open

- 4.1 A Tender once submitted by a Tenderer will be binding on the Tenderer.
- 4.2 A Tender must remain valid and open for acceptance for not less than 180 days after the Tender Closing Date.
- 4.3 If a Tenderer does not state in its Tender the period for which the Tender is to remain valid and open for acceptance, the Tender Validity Period of that Tender will be 180 days after the Tender Closing Date.
- 4.4 If a Tenderer offers in its Tender a period that is shorter than 180 days, the Government may not consider the Tender further.

5. Prices

- 5.1 A Tenderer must quote all the prices requested for in the Tender Documents in Hong Kong dollars. The prices must cover all expenses incidental to the due and proper performance of the Contract by the Contractor.
- 5.2 A Tenderer must quote fixed price which must remain valid for the whole Contract Period. A Tender with any price variation clause, including one based on foreign exchange market fluctuation, will not be considered further.
- 5.3 A Tender should make sure that all prices quoted in its Tender are accurate before it submits the Tender. The Tender will be bound by the Tender prices quoted in its Tender if the Tender is accepted by the Government. Under no circumstances will the Government be obliged to accept any request for price adjustment on any ground (including any mistake made in the prices quoted).

5.4 Prices quoted by a Tenderer must only be shown in the Price Schedule.

6. Compliance with Essential Requirements

6.1 Tenderers must meet all the essential requirements set out in this Paragraph 6 of the Terms of Tender before the Tender Closing Date. **Failure to meet any of the essential requirements set out in this Clause will render the Tender invalid and the Tender will not be considered further.**

6.2 It is an essential requirement that the Project Team shall consist of at least one (1) Project Director, one (1) Project Manager, one (1) Fisheries Statistics Specialist, and at least two (2) Technical Staff. Additional Project Specialist(s) may also be proposed to join the Project Team for supervising specific tasks if deemed appropriate by the Tenderer.

6.3 A Tenderer must state the relevant years of experience of the members of the Project Team in the **Information Schedule (Schedule 2 in Part 4 of the Tender Documents)**.

6.4 For the proposed Project Team members:

(a) It is an essential requirement that the Project Director must:

- (i) have an aggregate of at least **ten (10) years** of experience in directing and managing projects that involve marine fisheries resources surveys with statistical analysis of biological survey data in the **fifteen (15) years** immediately preceding the Original Tender Closing Date; and
- (ii) have a postgraduate degree in fisheries science, marine biology, or related subjects.

(b) It is an essential requirement that the Project Manager must:

- (i) have an aggregate of at least **five (5) years** of experience in managing or conducting marine fisheries resources surveys with statistical analysis of biological survey data in the **fifteen**

(15) years immediately preceding the Original Tender Closing Date; and

- (ii) have a postgraduate degree in fisheries science, marine biology, or related subjects.

(c) It is an essential requirement that the Fisheries Statistics Specialist must:

- (i) have an aggregate of at least **five (5) years** of experience in providing specialist support on statistical analysis of datasets from ecological / fisheries surveys for research projects or consultancy studies in the **fifteen (15) years** immediately preceding the Original Tender Closing Date; and
- (ii) have a postgraduate degree in statistics, mathematics, or related subjects.

(d) It is an essential requirement that each of the Technical Staff must:

- (i) have an aggregate of at least **two (2) years** of experience in conducting field work for marine fisheries resources surveys in the **five (5) years** immediately preceding the Original Tender Closing Date; and
- (ii) have a university degree in fisheries science, marine biology, or related subjects.

6.5 The Tenderer shall submit documentary proof that can adequately substantiate its claim for qualification and experience of all members of the Project Team before the Tender Closing Date. If the Tenderer fails to do so before the Tender Closing Date, the Government may evaluate the experiences on an as-is basis or may in its absolute discretion request the Tenderer to submit documentary proof pursuant to Clause 12 of the Terms of Tender. For the avoidance of doubt, the **Original Tender Closing Date (before any extension)** will be the cut-off date for the calculation of years of experience of the Project Team and the years of

experience of the Project Team need not be continuous for the purpose of paragraphs 6.4(a)(i), 6.4(b)(i), 6.4(c)(i) and 6.4(d)(i).

- 6.6 The Tenderer is required to submit an Execution Plan (**Schedule 3 in Part 4 of the Tender Documents**) before the Tender Closing Date which shall contain the following key parts including field survey plan, data collection plan, data analysis plan, programme evaluation plan, and presentation and training plan (see the relevant explanatory notes for the Marking Scheme in Appendix E for detailed requirements).

7. Company/Business Organisation Status

- 7.1 The Tenderer shall provide the following details relating to itself in the Information Schedule:

- (a) name and principal place of business of the Tenderer;
- (b) length of business experience;
- (c) shareholders/partners/proprietor of the Tenderer and their percentage of ownership;
- (d) names of the following:
 - (i) managing director and other directors;
 - (ii) partners; or
 - (iii) sole proprietor;
- (e) a copy of a valid Business Registration Certificate issued under the Business Registration Ordinance (Chapter 310 of the Laws of Hong Kong) or documentary evidence showing that the Tenderer is exempted from business registration under the Business Registration Ordinance (Chapter 310 of the Laws of Hong Kong); or if the Tenderer does not carry on business in Hong Kong, the equivalent document issued by the authority of the place of business of the Tenderer;
- (f) if the Tenderer is a company, its Memorandum (if any) and Articles of Association, Certificate of Incorporation, Certificate of Change of Name (if any); or the equivalent documents issued by the authority of the place of incorporation of the Tenderer if the Tenderer was not incorporated under the Companies Ordinance (Chapter 622 of the Laws of Hong Kong) (or its predecessor Ordinance);

- (g) if the Tenderer is a company incorporated in Hong Kong or is a registered non-Hong Kong company under the Companies Ordinance (Chapter 622 of the Laws of Hong Kong), a copy of the latest annual return filed with the Companies Registry and all subsequent filings since the latest annual return; or the equivalent documents issued by the authority of the place of incorporation of the Tenderer if the Tenderer was not incorporated or registered under the Companies Ordinance (Chapter 622 of the Laws of Hong Kong) (or its predecessor Ordinance);
- (h) place and date of its incorporation or formation;
- (i) business profile information of the Tenderer including the number and location of full time/contract employees, core business strategies and strength, and industry expertise;
- (j) a Tenderer shall provide a certified extract of board resolution or other documentary evidence acceptable to the Government demonstrating authorisation and approval for the submission of its Tender. This requirement shall always be applicable to a Tenderer which is a company regardless of the mode of submission of Tender. In the case that a Tenderer is a sole proprietorship or a partnership, documentary evidence acceptable to the Government demonstrating authorisation and approval for the submission of its Tender shall also be required if (a) (in the case of Paper-based Tendering), the signatory of the Offer to be Bound, or (b) in the case of Electronic Tendering using an Identification Code, the person submitting the Tender, is not the sole proprietor or a partner (or a general partner in the case of a limited partnership) (as the case may be);
- (k) where a Tenderer is not a company, a partnership, or a sole proprietorship, some of the information mentioned in the foregoing Sub-paragraphs of this Paragraph 7.1 may not apply and may not be available. Regardless of the mode of submission of its Tender, the Government reserves the right to request such relevant information and documents in relation to the Tenderer to ascertain the identity of the Tenderer as well as to ensure that the submission of the Tender has been duly authorised and approved; and
- (l) names and addresses of banks which are prepared to provide references or other relevant financial data which indicate the financial viability of the Tenderer.

7.2 If a Tenderer is incorporated, formed or established outside Hong Kong, a legal opinion in form and substance satisfactory to the Government and issued by a lawyer duly qualified to practise the laws of the place of incorporation, formation or establishment (as the case may be) of the Tenderer and acceptable to the Government may be requested by the Government. The legal opinion, if required, should be made available upon request during the Tender Validity Period. Upon such request, the Tenderer shall provide such legal opinion covering the following issues and any other issues as may be required by the Government:

- (a) the Tenderer is duly incorporated, formed or established and validly existing and in good standing under the laws of the place of the Tenderer's incorporation, formation or establishment and that the Tenderer has full power, capacity and authority to carry on the business as it is now conducting and to provide the Services to the Government on the terms and conditions of the proposed Contract. By "validly existing and in good standing", it is meant that no event mentioned in any of the Clauses 15.2(a) to (e) of the Conditions of Contract or any event which has an equivalent effect to any such event has occurred in relation to the Tenderer;
- (b) the Tenderer has the full power, authority and legal capacity to:
 - (i) execute and submit its Tender and to incur the liabilities and perform the obligations under the Tender Documents; and
 - (ii) enter into and execute the Contract and to incur the liabilities and perform the obligations thereunder;
- (c) the proposed Contract with the Government will, upon its formation pursuant to Paragraph 18 of the Terms of Tender, constitute the legal, valid and binding obligations of the Tenderer in the place of its incorporation, formation or establishment and is enforceable against the Tenderer in accordance with its terms; without prejudice to the generality of the foregoing, where an Electronic Record is used in the formation of the Contract (whether with or without any electronic or digital signature), the Contract shall not be denied legality, validity or enforceability on the sole ground that an Electronic Record was used for that purpose;

- (d) the submission of its Tender and the performance of the Contract (if awarded to the Tenderer) have been duly authorised by all necessary corporate action of the Tenderer, and does not violate any provision of any applicable law, regulation or decree of the Tenderer's place of incorporation, formation or establishment, or the Memorandum (if any) and Articles of Association or similar constitutional documents of the Tenderer;
- (e) no authorisations, consents, approvals are required from any governmental authorities or agencies or other official bodies in the place of incorporation, formation or establishment in connection with the execution and delivery of the Tenderer's Tender, or the performance by the Tenderer of its obligations under the Tender Documents and the Contract;
- (f) the Tenderer's Tender and the Contract (if awarded to the Tenderer) need not be registered or filed in the place of incorporation, formation or establishment in order to secure their validity and/or priority;
- (g) there is no restriction under the laws of the place of the Tenderer's incorporation, formation or establishment affecting the Tenderer's obligations under the Tender Documents and the Contract;
- (h) the choice of the laws of Hong Kong to govern the Tender Documents and the Contract is a valid choice of laws;
- (i) the judgment handed by the courts of Hong Kong after the adjudication of any dispute arising from the Contract will be recognised and given effect to by the courts of the place of incorporation, formation or establishment of the Tenderer; and
- (j) it is not necessary under the laws of the place of incorporation, formation or establishment of the Tenderer that the Government be licensed, qualified or otherwise registered in such place of incorporation, formation or establishment in order to enable it to enforce its rights under the Tender Documents and the Contract.

8. Sub-contractors

- 8.1 If any obligations of the Contractor are proposed to be performed by a sub-contractor, the Tenderer shall submit in the Information Schedule

information of the sub-contractor. Details of the obligations to be performed by the proposed sub-contractor shall be submitted.

- 8.2 The information required in the Information Schedule for each proposed sub-contractor shall cover the information as required in Paragraph 7.1(a) of the Terms of Tender as if references to Tenderer shall mean the proposed sub-contractor.
- 8.3 The Government reserves the power to request the Tenderer to withdraw any sub-contracting proposal in the Information Schedule whereupon should the Tenderer refuse to do so, its Tender may not be considered further.
- 8.4 Where it is so specified in the Terms of Tender as being applicable, a legally binding sub-contractor's undertaking will be required to be submitted. If a sub-contractor's undertaking is required, and that the proposed sub-contractor was established or incorporated outside Hong Kong, and if requested by the Government, the legal opinion referred to in Paragraphs 7.2 of the Terms of Tender shall also be provided in relation to the proposed sub-contractor.

9. 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.

10. Tenderer's Commitment

All Tenders, information and responses from a Tenderer must be submitted in writing. Each of them is the offer, commitment and representation of the Tenderer and will, if accepted by the Government, be incorporated into and made part of the Contract in such manner as the Government considers appropriate.

11. Counter-Proposals

- 11.1 The Tenderer must not submit any proposal that has the effect of varying or modifying (a) any essential requirements specified in the Tender Documents; (b) all provisions in the Tender Documents concerning the preparation, submission and evaluation of Tenders and award of Contract which shall mean all provisions in all Tender Documents (excluding only (but subject to (c) below) (i) those provisions which are not identified as essential requirements in the Service Specifications, and (ii) the Conditions of Contract.
- 11.2 The Tenderer must not directly or indirectly attempt to preclude or limit the effect of any requirements or instructions set out in the Tender Form, these Terms of Tender or the Schedules.
- 11.3 If a Tenderer fails to comply with Paragraph 11.1 or 11.2 above, subject to any clarification which the Government may, but is not obliged to, seek from the Tenderer, its Tender will not be further considered.
- 11.4 Counter-proposal to other provisions of the Tender Documents not specified in Paragraph 11.1 or 11.2 above, whilst not strictly disallowed, is not encouraged. If the Tenderer wishes to submit one or more counter-proposals to any provision in the Tender Documents not of the types specified in Paragraph 11.1 or 11.2 above (“Counter-Proposals”), the Counter-Proposals shall be submitted in the following manner:
- (a) (i) for Paper-based Tendering, the Counter-Proposals shall be attached to Part 5 “Offer to be Bound” of the Tender Form; or
 - (ii) for Electronic Tendering, the Counter-Proposals shall be attached as a separate attachment and identified as such;
 - (b) the original provisions which the Counter-Proposals relate to shall be fully recited before the proposed alteration or deletion;
 - (c) the proposed alteration to the original provisions shall be underlined and shall bear the corresponding clause number of the original provisions unless it is an addition;
 - (d) if it is an addition, the additional provisions shall be underlined;
 - (e) words to be deleted shall be crossed out by a single line only; and

- (f) an explanation shall be given below the alteration or deletion and put in square brackets “[]”.

11.5 Unless the Government otherwise agrees, Counter-Proposals that are not submitted in accordance with Paragraph 11.4 above will not be considered by the Government and will not be regarded to form part of the Tender submitted by a Tenderer. In such event, the Tenderer shall be deemed to have agreed to the original provisions to which the Counter-Proposals relate and the Government will continue to consider the Tenderer's Tender on this basis.

11.6 Notwithstanding and without prejudice to the aforesaid, the Government may, but is not obliged to, negotiate with the Tenderer any Counter-Proposal. The Government may at its absolute discretion reject any Counter-Proposal. If the Government does elect to negotiate with a Tenderer concerning a Counter-Proposal, and if after such negotiation, the Tenderer is unwilling to withdraw such Counter-Proposal, or otherwise revise it on terms acceptable to the Government, its Tender may not be considered further. Any accepted Counter-Proposal following from a successful negotiation shall be deemed as part of the Tenderer's Tender and forms part of the Contract and shall be binding on the Tenderer if the Contract is eventually awarded to it.

12. Request for Information

12.1 In the event that the Government determines that:

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

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

where the missing information or document is of the type specified in Paragraph 3.4 of the Terms of Tender).

- 12.2 Any excess proposal or information supplied by a Tenderer which goes beyond what has been requested by the Government pursuant to Paragraph 12.1 above will be ignored for the purposes of the Tender evaluation or will entitle (but not oblige) the Government not to consider the Tender further.

13. Tenderer's Enquiries

- 13.1 Any enquiries from the Tenderer concerning the Tender Documents up to the date of lodging its Tender with the Government shall be in writing and shall be submitted to the Government no later than three (3) working days before the Tender Closing Date. The request shall be submitted in the manner specified in Paragraph 14.1 of the Terms of Tender.
- 13.2 After lodging a Tender with the Government, the Tenderer shall not attempt to initiate any further contact, whether direct or indirect, with the Government on its Tender or the Tender Documents. The Government shall have the sole right to initiate any such further contact and all such contacts and any replies of the Tenderer thereto shall be in writing or formally documented in writing.
- 13.3 Unless otherwise expressly stated by the Government in writing, a statement made by the Government (whether oral or written) in response to any enquiry made by a potential Tenderer shall be for information only. No such statement shall constitute a representation or warranty by the Government of any nature whatsoever (whether express or implied), and no invitation is made by the Government to any Tenderer or potential Tenderer to rely on such statement. No such statement shall form part of the Tender Documents or alter, negate or constitute a waiver of any provision of the Tender Documents.

14. Communication with the Government

- 14.1 Without prejudice to the requirements set out in Paragraph 18 of the Terms of Tender concerning notification of acceptance of Tender, all communications given or made by the Government or a Tenderer in relation to the Invitation to Tender shall be in writing and sent or

delivered to the other Party in the manner provided in Clause 29 of the Conditions of Contract at the address, facsimile number or email address specified in the Appendix A to the Terms of Tender – Contact Details, save that in the case of lodging any enquiries under Paragraph 13.1 of the Terms of Tender, the Tenderer shall lodge such enquiries by facsimile or by email only. The Tenderer shall complete its postal address, facsimile number and email address in the Appendix A to the Terms of Tender – Contact Details and should note that the Government will not accept the use of a postal box as the Tenderer's correspondence address for any purpose whether before or after the award of the Contract.

- 14.2 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.

15. Negotiations

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

16. Government Discretion

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

- (a) a petition is presented or a proceeding is commenced which has not been withdrawn any time as at the Tender Closing Date or an order is made or a resolution is passed for the winding up or bankruptcy of the Tenderer or a related person of the Tenderer;
- (b) the Tenderer has made or submitted a false, inaccurate or incomplete statement or representation or a forged document in the Tender or in any subsequent submission by the Tenderer or communication between the Government and the Tenderer since submission of that Tender;

- (c) a claim is made alleging or the Government has grounds to believe that any thing(s), service(s) or material(s) to be supplied or recommended by the Tenderer in its Tender infringe or will infringe any Intellectual Property Rights of any person;
- (d) the Tenderer has made significant or persistent breaches or deficiencies in the performance of any substantive requirement or obligation under any Government or other contracts;
- (e) the Tenderer has been convicted of a serious crime or offence;
- (f) the Government has grounds to believe that the Tenderer is guilty of professional misconduct that adversely reflect on the commercial integrity of the Tenderer;
- (g) the Tenderer has failed to pay taxes to the Government;
- (h) the Tenderer has attempted to limit or avoid its responsibility in contract, tort or otherwise for failing to exercise the skill and care required by the Contract, or reasonably be expected of the Tenderer/Contractor under the Contract in the Tender or in any subsequent submission by the Tenderer or communication between the Government and the Tenderer since submission of the Tender;
- (i) the Tenderer 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; or
- (j) the continued engagement of the Contractor or the continued performance of the Contract is contrary to the interest of national security; or
- (k) the Government reasonably believes that any of the events mentioned above is about to occur.

The grounds specified in Paragraphs 16.1(a) to 16.1(k) above are separate and independent, and shall not be limited by reference to or inference from the other of them.

16.2 For the purposes of Paragraph 16.1 above, each Tenderer shall provide at the time of submission of its Tender (and thereafter up to the time of award in relation to any event occurring between the time of submission and the time of award) all information at least in relation to itself and those information in relation to its related person or its director or management staff (which it has knowledge and is reasonably relevant to facilitate the Government's determination as to whether to exercise its right of disqualification), including but not limited to the following:

- (a) details of any petition or proceeding mentioned in Paragraph 16.1(a) above;
- (b) details of all infringement claims, allegations, rulings, judgments, decisions or settlement agreements as mentioned in Paragraph 16.1(c) above;
- (c) details of all Contract Defaults as mentioned in Paragraph 16.1(d) above;
- (d) details of conviction as mentioned in Paragraph 16.1(e) above in Hong Kong or any overseas jurisdiction;
- (e) details of any professional misconduct or act or omission as mentioned in Paragraph 16.1(f) above; and
- (f) details of any failure to pay taxes as mentioned in Paragraph 16.1(g) above.

If none of the events as mentioned in Paragraphs 16.1(a) to 16.1(k) above has ever occurred within the applicable period as mentioned above, the Tenderer shall provide a statement to that effect by completing the relevant part of the Information Schedule as set out in Table C of the Information Schedule in Schedule 2 of Part 4 of the Tender Documents at the time of submission of its Tender. If found missing, the Government reserves the right to seek clarification pursuant to Paragraph 16.3 below.

16.3 In addition to the information mentioned in Paragraph 16.2 above, the Government reserves the right (but not obligation) to request from a

Tenderer or a related person of the Tenderer or director or management staff of the Tenderer or those of the related person of the Tenderer or other independent sources, such other information that is reasonably relevant to facilitate the Government's determination as to whether to exercise its right of disqualification under Paragraph 16.1 above.

- 16.4 If the Tenderer fails to comply with the request made by the Government pursuant to Paragraph 16.3 above within such time as required by the Government, the Government may disqualify the Tenderer pursuant to Clause 12 of the Terms of Tender. If the Tenderer has submitted false, inaccurate or incomplete information, the Government may disqualify the Tenderer pursuant to Paragraph 16.1(b) above.
- 16.5 In providing the information required under Paragraphs 16.2 and 16.3 above, the Tenderer may show cause to satisfy the Government that in relation to any of the events as mentioned in Paragraph 16.1 above, even if it has occurred, it does not cast doubt on the fitness, propriety or capability of the Tenderer to perform the Contract to be awarded in this Invitation to Tender.
- 16.6 If the Tenderer is a company, the expression "related person" of the Tenderer includes any one of the following:
- (a) a shareholder (corporate or individual) which directly or indirectly beneficially owns fifty (50) percent or more of the issued share capital of the Tenderer ("majority shareholder");
 - (b) a holding company or a subsidiary of the Tenderer;
 - (c) a holding company or a subsidiary of a majority shareholder (being a company) of the Tenderer; or
 - (d) a company in which a majority shareholder (being an individual) of the Tenderer directly or indirectly beneficially owns fifty (50) percent or more of its issued share capital or controls the composition of its board of directors.

The expressions "holding company" and "subsidiary" have the meanings given to them in the Companies Ordinance (Chapter 622 of the Laws of Hong Kong).

- 16.7 If the Tenderer is a sole proprietor or partnership, the expression "related person" includes any one of the following:

- (a) any partner of the Tenderer (if it is a partnership);
 - (b) the spouse, parent, child, brother or sister of the Tenderer, and, in deducing such a relationship, an adopted child shall be deemed to be a child both of the natural parents and the adopting parent, and a step child to be a child of both the natural parent and of any step parent; or
 - (c) a company in which the Tenderer or any partner of the Tenderer beneficially directly or indirectly owns fifty (50) percent or more of its issued share capital or controls the composition of its board of directors.
- 16.8 References to related persons of the Tenderer, directors and management staff of the Tenderer or those of a related person in any of the applicable Sub-paragraph of Paragraph 16.1 above include persons who were in such capacity at such time of the event referred to in that Sub-paragraph.
- 16.9 Notwithstanding anything to the contrary in the Tender Documents, the Government reserves the right to disqualify a Tenderer on the grounds that the Tenderer has engaged, is engaging, or is reasonably believed to have engaged or be engaging in acts or activities that are likely to cause or constitute the occurrence of offences endangering national security or otherwise the exclusion is necessary in the interest of national security, or is necessary to protect the public interest of Hong Kong, public morals, public order or public safety.

17. Award of Contract

- 17.1 Subject to the other provisions of the Tender Documents, the Government will award the Contract to the Tenderer which the Government has determined to be capable of fulfilling the terms of the Contract and complies with the following evaluation criteria:
- (a) the Tenderer's Technical Proposal and Price Proposal have respectively passed the completeness check;
 - (b) the Tenderer and its Technical Information conform with all the essential requirements stipulated in the Tender Documents;

- (c) the Tenderer has not been disqualified (or having its Tender not being considered);
- (d) the Tenderer's Technical Proposal and Price Proposal have attained the highest combined score amongst all the Tenders which fulfil the evaluation criteria as specified in (a) to (c) above based on the Marking Scheme;
- (e) delivery of Contract Deposit to the Government pursuant to Clause 20 hereof; and
- (f) other conditions as the Government may specify therein.

17.2 Notwithstanding anything herein to the contrary, the Government is not bound to accept the Tender with the lowest price offer or the Tender with the highest combined score or any Tender and reserves the right to accept all or any part of any Tender at any time within the Tender Validity Period.

18. Acceptance

18.1 A Tender shall not be regarded to have been accepted by the Government unless the Government issues to the successful Tenderer an acceptance in writing ("Tender Acceptance") and send it either by post or facsimile transmission to the successful Tenderer's address or facsimile number (as the case may be) specified in the Appendix A to the Terms of Tender. A binding Contract between the Government and the successful Tenderer is only constituted:

- (a) if the Tender Acceptance is sent by post, at the time of posting; or
- (b) if the Tender Acceptance is transmitted by facsimile, at the time when a transmission report is generated by the Government's facsimile machine, confirming that the Tender Acceptance has been transmitted to the aforementioned facsimile number.

18.2 A duplicate hardcopy of each of the documents comprised in the Contract, including the "Memorandum of Acceptance" duly completed by the Government, will subsequently be delivered to the successful

Tenderer evidencing the earlier acceptance by post or facsimile transmission, as the case may be.

- 18.3 Tenderers who do not receive any notification within the Tender Validity Period should assume that their Tenders have not been accepted.
- 18.4 Where an Electronic Record is used in the formation of the Contract (whether with or without any electronic or digital signature), the Contract shall not be denied validity or enforceability on the sole ground that an Electronic Record was used for that purpose.

19. Financial Vetting

19.1 If the Total Estimated Contract Price exceeds HK\$15 million, the Tenderer has to demonstrate its financial capability before it can be considered for the award of the Contract. For this purpose, the Tenderer is required to submit the following documents for financial vetting:

- (a) Originals (or copies certified by its auditors) of the audited accounts of the Tenderer, and the audited consolidated accounts of the group if the Tenderer is a subsidiary of another company for the three (3) financial years prior to the Tender Submission Date. The audited accounts must comply with the following requirements:
 - (i) The audited accounts must be prepared on the same basis for each year in accordance with accounting principles generally accepted in Hong Kong and the disclosure requirements of the Companies Ordinance (Chapter 622 of the Laws of Hong Kong).
 - (ii) The latest audited accounts must be for the period ending no more than eighteen (18) months before the Tender Submission Date.
 - (iii) The audited accounts must contain the directors' report, auditors' report, statement of financial position (also referred to as balance sheet), statement of profit or loss and other comprehensive income (also referred to as income

statement), statement of changes in equity, statement of cash flows and notes to the accounts.

- (iv) All such accounts must have been audited by certified public accountants (practising) or for a non-Hong Kong company, by auditors recognised by the local law of the place of the company's establishment.
- (v) If any such accounts are 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.
- (vi) If the Tenderer is a joint venture or partnership, audited accounts for each member of the joint venture or partnership must be submitted if the members are incorporated bodies.

Remarks: 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 business where the first accounts are not yet available. For unincorporated businesses, tax records such as profits tax assessment issued by the Inland Revenue Department for the past three (3) financial years (if available) shall be provided. The unaudited accounts and tax records must be certified by the sole proprietor, partners or directors of the Tenderer, certified public accountants or other accountants acceptable to the Government.

- (b) Management accounts with a period ending not more than three (3) months before the Tender Submission Date if this has not been covered by the latest audited accounts. The accounts shall be prepared on the same basis in accordance with accounting principles generally accepted in Hong Kong. They must be certified by (i) the sole proprietor, partners or a director of the Tenderer, or (ii) certified public accountants or other accountants acceptable to the Government as mentioned in Paragraph 19.1(a)(iv) above;
- (c) Projected statement of profit or loss and other comprehensive income and statements of cash flows of the Contract for each contract year and the pre-operating period (if applicable) and, if

possible, those of the Tenderer during the Contract Period, setting out the revenue, details of operating expenses, capital expenditure including the initial investments and the sources of finance, and other particulars showing how the Tenderer will perform the Contract. The projected accounts and statements must comply with the following requirements:

- (i) For a company, they should be certified by a director or company secretary. For a joint venture or partnership, separate certification from each member of the joint venture or partnership is required.
 - (ii) The assumptions used in preparing the projections shall be reasonable and shall be clearly stated. All the supporting schedules and detailed calculations shall also be provided.
 - (iii) The assumptions by the Government included in the Tender Documents shall be reflected in the Tenderer's projections.
- (d) Original letters from bankers, where applicable, confirming lines of credit facilities available to the Tenderer and the current undrawn/unutilised balances of such credit facilities on or after a specified date (shortly before the Tender Submission Date or a date fixed by the Government) and stipulating the expiry date of the facilities;
- (e) Copies (certified by the sole proprietor, partners, directors or company secretary of the Tenderer) of letters of undertaking, minutes of board meetings or returns of allotment of shares to support injection of capital, where applicable; and
- (f) Written confirmation from a guarantor that it is willing to provide financial support or guarantee to the Tenderer, where applicable.

19.2 Tenderers shall upon the request in writing by the Government provide the documents mentioned in Paragraph 19.1 above and any other financial and corporate information as required by the Government for assessment of the financial capability of the Tenderer to undertake the

Contract within the time stipulated in the written request by the Government.

- 19.3 If the successful Tenderer has passed the financial assessment, it shall submit to the Government a Contract Deposit either in cash or in the form of a banker's guarantee in Hong Kong dollars in an amount equivalent to two percent (2%) of the Total Estimated Contract Price in accordance with Paragraph 20.2(a) of the Terms of Tender.
- 19.4 If the successful Tenderer fails in the financial assessment, or it is a newly established company, or it is unable to submit adequate information for conducting a meaningful financial assessment, the Tenderer shall submit to the Government a Contract Deposit either in cash or in the form of a banker's guarantee in Hong Kong dollars in an amount equivalent to five percent (5%) or the percentage specified in the Terms of Tender (Supplement), if any, whichever is the higher, of the Total Estimated Contract Price in accordance with Paragraph 20.2(b) of the Terms of Tender.

20. Contract Deposit

- 20.1 If the Total Estimated Contract Price payable by the Government to the successful Tenderer exceeds HK\$1.4 million, but is less than or equals to HK\$15 million, as security for the due and faithful performance of the Contract by the successful Tenderer, the successful Tenderer shall deposit with the Government via the head of the Procuring Department, within twenty-one (21) days from the Date of the Tender Acceptance, an amount equivalent to two percent (2%) of the Total Estimated Contract Price.
- 20.2 If the Total Estimated Contract Price payable by the Government to the successful Tenderer exceeds HK\$15 million, as security for the due and faithful performance of the Contract by the successful Tenderer, the successful Tenderer shall deposit with the Government via the head of the Procuring Department, within twenty-one (21) days from the Date of the Tender Acceptance, an amount equivalent to:
- (a) two percent (2%) of the Total Estimated Contract Price (if it passes the financial vetting); or

- (b) five percent (5%) or the percentage specified in the Terms of Tender (Supplement), if any, whichever is the higher, of the Total Estimated Contract Price (if it fails the financial vetting or in cases where the financial information available is inadequate for a meaningful assessment of the Tenderer's financial capability to fulfil the Contract requirements to be conducted).

20.3 The successful Tenderer shall pay the Contract Deposit either in cash or in the form of a banker's guarantee. Each Tenderer should state clearly in the Appendix B to the Terms of Tender the method of providing the Contract Deposit. If the successful Tenderer fails to do so, it will be regarded to have undertaken to pay the Contract Deposit to the Government in cash.

20.4 If the successful Tenderer elects to pay the Contract Deposit by way of a banker's guarantee, the proposed guarantor and the form and substance of the banker's guarantee must be subject to the acceptance of the Government. Without prejudice to the generality of the foregoing, the banker's guarantee must comply with the following:

- (a) it must be issued by a bank that holds a valid banking licence issued under the Banking Ordinance (Chapter 155 of the Laws of Hong Kong) and acceptable to the Government;
- (b) unless otherwise agreed by the Government, it must be on the terms set out at the Appendix C to the Terms of Tender; and any authorisation used by the bank for the execution of the banker's guarantee shall be acceptable to the Government; and
- (c) the banker's guarantee shall come into effect on the Date of the Tender Acceptance.

20.5 The Contract Deposit, whether paid by way of cash (if any is remaining) or banker's guarantee, shall be returned to the Contractor or released in accordance with Clause 12.10 of the Conditions of Contract.

21. Complaints about Tendering Process or Contract Award

The tendering process is subject to internal monitoring to ensure that the relevant contract is awarded properly and fairly. Any Tenderer who feels that its Tender has not been fairly evaluated may write to the head of the Procuring

Department who will personally examine the complaint and refer it to the approving authority or relevant tender boards for consideration if the complaint relates to the tendering system or procedures followed. The Tenderer should lodge the complaint within three (3) months after the award of Contract.

22. Documents of Unsuccessful Tenderers

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

23. New Information

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

24. Contractors' Performance Monitoring

If a Tenderer is awarded the 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. Cost of Tender

Each Tenderer shall submit its Tender at its own cost and expense. The Government shall not be liable for any costs and expenses whatsoever incurred by a Tenderer in connection with the preparation or submission of its Tender and the doing of all acts required for the purpose of this Invitation to Tender, including all costs and expenses relating to (a) communication or negotiations with or providing presentation or demonstration to the Government, (b) site visits or surveys made by the Tenderer, (c) presenting the Tenderer's reference sites and equipment to the Government Representative during the site visits, and (d) provision of tender samples, whether before or after the Tender Closing Time.

26. Consent to Disclosure

26.1 The Government may disclose, whenever it considers appropriate, to the public or upon request by any member of the public (which may have

been a Tenderer) without any further reference to or consent from the successful Tenderer or any other Tenderer,

- (a) a brief description of the Services provided or to be provided by the successful Tenderer;
- (b) the Total Estimated Contract Price and any other fees, cost and expense payable to the successful Tenderer pursuant to the Contract;
- (c) the engagement by the Government of the successful Tenderer under the Contract and the name and address of the successful Tenderer; and
- (d) the date of award of the Contract.

26.2 Nothing in Paragraph 26.1 above shall prejudice the Government's power to disclose whenever it considers appropriate information of any nature whatsoever in relation to or concerning any Tenderer (successful or unsuccessful) or its Tender (whether or not the information is specified in Paragraph 26.1 above and including information recorded in whatever media) if the disclosure is made under any one of the following circumstances (even if disclosure may also mean the information will at the same time, or subsequently, become public information):

- (a) the disclosure of any information to any public officer or public body as defined in the Interpretation and General Clauses Ordinance (Chapter 1 of the Laws of Hong Kong) or any other person employed, used or engaged by the Government (including agents, advisers, contractors and consultants);
- (b) the disclosure of any information already known to the recipient;
- (c) the disclosure of any information which is public knowledge (including because of any disclosure under Paragraph 26.2(a) above);
- (d) the disclosure of any information in circumstances where such disclosure is required pursuant to any law of Hong Kong, or an order of a court of Hong Kong or a court or tribunal with competent jurisdiction;

- (e) the disclosure of any information regarding anti-competitive collusive conduct to the Competition Commission of Hong Kong (and other authorities as relevant); or
- (f) without prejudice to the power of the Government under Paragraph 26.1 above, to the extent the information relates to or concerns a Tenderer, with the prior written consent of that Tenderer.

27. Personal Data Provided

- 27.1 All personal data provided in a Tender will be used by the Government for the purposes of the Invitation to Tender and all other purposes arising from or incidental to it (including for the purposes of tender evaluation, the award of the Contract, resolution of any dispute arising from the Invitation to Tender, and the disclosure pursuant to Paragraph 26 of the Terms of Tender).
- 27.2 By submitting a Tender, a Tenderer is regarded to have agreed to, and to have obtained from each individual whose personal data is provided in the Tender, his consent for the disclosure, use and further disclosure by the Government of the personal data for the purposes set out in Paragraph 27.1 above, or the disclosure pursuant to Paragraph 26 of the Terms of Tender.
- 27.3 An individual to whom personal data belongs and a person authorised by him in writing has the right of access and correction with respect to the individual's personal data as provided for in sections 18 and 22 and Principle 6 of Schedule 1 to the Personal Data (Privacy) Ordinance (Chapter 486 of the Laws of Hong Kong). The right of access includes the right to obtain a copy of the individual's personal data provided in the Tender.
- 27.4 Enquiries concerning the personal data collected by means of the Invitation to Tender, including the making of access and corrections, should be addressed to the Personal Data Privacy Officer of the Procuring Department.

28. Licence to use the materials submitted by Tenderers

A Tender once submitted will become the property of the Government. Tenders of unsuccessful Tenderer may be destroyed in accordance with Paragraph 22 of the Terms of Tender. In consideration of the Government considering its Tender, without prejudice to all other rights and powers of the Government under the Tender Documents (including in particular its right to disclose information in the Tenders) and under the Contract, each Tenderer hereby grants and shall upon the demand of the Government at the Tenderer's cost procure that the lawful owner or authorised person of the relevant Intellectual Property Rights will grant, to the Government, its assigns, successors-in-title and authorised users, a royalty-free, non-exclusive, irrevocable, sub-licensable, transferable, world-wide, unrestricted right and licence to use or exercise all or any Intellectual Property Rights subsisting in its Tender for the purposes of tender evaluation and for all other purposes incidental thereto or in connection therewith (including resolution of any dispute arising from the Invitation to Tender). Such right and licence shall continue to subsist so long as all or any Intellectual Property Rights subsist in the Tender (or any part thereof) under any applicable law, including the laws of Hong Kong. Where there is any presentation or demonstration, the aforesaid right and licence shall extend to such presentation and/or demonstration to be conducted by the Tenderer.

29. Warranty against Collusion

- 29.1 The Tenderer must ensure that the Tender is prepared without any agreement, arrangement, communication, understanding, promise or undertaking with any other person (except as provided in paragraph 3 of the Non-collusive Tendering Certificate referred to in Paragraph 29.2 below), regarding, amongst other things, price, tender submission procedure or any terms of the Tender. Bid-rigging is inherently anti-competitive and is considered serious anti-competitive conduct under the Competition Ordinance (Chapter 619 of the Laws of Hong Kong). Tenderers who engage in bid-rigging conduct may be liable for the imposition of pecuniary penalties and other sanctions under the Competition Ordinance.
- 29.2 The Tenderer shall complete and submit to the Government a Non-collusive Tendering Certificate in Schedule 5 of Part 4 of the Tender Documents as part of its Tender.
- 29.3 In the event that a Tenderer is in breach of any of the representations, warranties and/or undertakings in Paragraph 29.1 above or in Non-collusive Tendering Certificate submitted by it under

Paragraph 29.2 above, the Government shall be entitled to, without compensation to any person or liability on the part of the Government:

- (a) reject the Tenderer's Tender;
- (b) if the Government has accepted the Tender, withdraw its acceptance of the Tenderer's Tender; and
- (c) if the Government has entered into the Contract with the Tenderer, terminate the Contract under Clause 15.1 of the Conditions of Contract.

29.4 By submitting a Tender, a Tenderer is regarded to have undertaken to indemnify and keep indemnified the Government against all losses, damages, costs or expenses arising out of or in relation to any breach of any of the representations, warranties and/or undertakings in Paragraph 29.1 above or in Non-collusive Tendering Certificate submitted by it under Paragraph 29.2 above.

29.5 A breach by a Tenderer of any of the representations, warranties and/or undertakings in Paragraph 29.1 above or in Non-collusive Tendering Certificate submitted by it under Paragraph 29.2 above may prejudice its future standing as a Government contractor or service provider.

29.6 The rights of the Government under Paragraphs 29.3 to 29.5 above are in addition to and without prejudice to any other rights or remedies available to it against the Tenderer.

30. Warning against Bribery

30.1 The offer of an advantage to any public officer with a view to influencing the award of the Contract is an offence under the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong). Any such offence committed by a Tenderer or any of its officers (including directors), employees or agents will render its Tender null and void.

30.2 The successful Tenderer shall inform its officers, employees (whether permanent or temporary), agents and sub-contractors who are connected with the provision of the Services that the soliciting or accepting of advantages, as defined in the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong) is not permitted. The

successful Tenderer shall also caution its officers (including directors), employees and agents and sub-contractors against soliciting or accepting any hospitality, entertainment or inducement which may impair their impartiality in relation to the selection of its sub-contractors, if any, or the supervision of the work of the sub-contractors once selected.

31. Environmental Protection

- 31.1 Tenderers are encouraged to minimise the impact of their activities on the environment and to observe the general guidelines in Guidance Note GN-1 (Environmental Protection) at the Appendix D to the Terms of Tender.
- 31.2 The following environment-friendly measures are recommended to be adopted in the preparation of documents relating to a Tender and the future performance of the Contract:
- (a) all documents should be printed on both sides and on recycled paper. Paper that exceeds 80 gsm should not be used for the text;
 - (b) use of plastic laminates, glossy covers or double covers should be avoided as far as possible. If art board paper has to be used as document covers, recyclable non-glossy paper should be used; and
 - (c) single line spacing should be used and excessive space in the margins and in between paragraphs should be avoided.

32. Tender Briefing Session

- 32.1 A tender briefing session will be held by online video conferencing on 15 July 2024 (Monday) at 11:00 a.m. All interested parties 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.
- 32.2 Tenderers who wish to attend the online tender briefing session must complete and return the Appendix F to the Terms of Tender at or before

12:00 noon on 12 July 2024 (Friday). Each Tenderer may nominate not more than three representatives for the briefing session.

- 32.3 The link / Meeting ID and password for joining the online tender briefing session will be provided through e-mail to the Tenderers that have submitted the Reply Slip latest by 15 July 2024 (Monday) at 10:30 a.m. Only the participants with registered e-mail address provided in the Reply Slip will be allowed to join the online tender briefing session. Late registrations may not be accepted.
- 32.4 In case a Black Rainstorm Warning or Typhoon Signal No. 8 or above is issued or Black Rainstorm Warning Signal or “Extreme Conditions” announced by the Government is/are in force at or after 9:00 a.m. on 15 July 2024 (Monday), the tender briefing session will be cancelled and the AFCD will notify the arrangement of the briefing session to Service Providers who have submitted the reply slip.

33. Tender Evaluation

- 33.1 Only Tenders that are found to have complied with all the essential requirements as stated in Paragraph 6 of the Terms of Tender above will be further evaluated on the basis of their Technical and Price Proposals.
- 33.2 The Government shall use the Marking Scheme and assessment criteria as set out in Appendix E for the evaluation of Tenders. Before submitting their Tenders, Tenderers are advised to note the following steps to be adopted for the evaluation of Tenders.

(a) Stage I – Completeness Check on the Tender Offers Submitted

Technical proposal of all Tenders will be checked to ensure completeness. Only those Tenders which pass the completeness check will proceed to Stage II – Compliance with essential requirement. A Tenderer who failed to submit the duly completed documents required in Paragraph 3.4 of Terms of Tender above by the Tender Closing Time will not be considered further.

(b) Stage II – Compliance with Essential Requirement

The Tenders will be checked against the essential requirements, including but not limited to those set out in the Terms of Tender

and Service Specifications. Only those conforming Tenders which satisfy the essential requirements will enter into Stage III – Technical Assessment.

(c) Stage III – Technical Assessment

The Technical Score of conforming Tenders will be assessed in accordance with the criteria set out under Stage III of the Marking Scheme. Tenderers should note the passing mark of individual criteria (where applicable) for this stage of evaluation. Any Tender failing to score the passing mark of any of the individual criteria in this stage will not be evaluated further.

(d) Stage IV – Price Assessment

The price information of Tenders that have passed Stage III – Technical Assessment will be assessed according to the formula stated under “Stage IV – Price Assessment” of the Marking Scheme.

(e) Stage V – Calculation of Combined Score

The combined score of the Tenders which passed the Stage III – Technical Assessment and Stage IV – Price Assessment will be calculated. Subject to other provisions in the Terms of Tender and the Marking Scheme for Tender Evaluation at Appendix E hereto, the Tender that has achieved the highest combined score will normally be recommended for acceptance.

- 33.3 Subject to the other provisions of the Tender Documents, if two or more Tenderers achieve the same highest combined technical and price score, the AFCD will normally award the Contract to the Tenderer whose Tender obtains the highest technical score.

34. Acceptance of Innovative Suggestions

The Government may, at its absolute discretion, accept one or more of the Innovative Suggestions submitted by the successful Tenderer in its Tender. The Accepted Innovative Suggestions as found in the Innovative Suggestion Schedule in the version attached to the Memorandum of Acceptance shall form part of the Contract.

35. Documents and Items which fall within Clause 3 of Terms of Tender

The Innovative Suggestions comprising the Pro-innovation Proposals and/or ESG Proposals in the Innovative Suggestion Schedule are, amongst others, those items which fall within Clause 3 of the Terms of Tender. They shall be submitted as part of its Tender before the Tender Closing Time or otherwise the Government will evaluate the Tender on an “as is” basis. However, the Government may, but is not obliged to, request clarification or submission of any factual information or document to support any claim or proposal in the Innovative Suggestions under Clause 12 of the Terms of Tender.

Appendix A – Contact Details

Contact Details

Contact details of:

All correspondence with the Government or Government Representative relating to matters concerning the Contract from a potential Tenderer or the Tenderer or the Contractor shall be addressed to contact at (1) and (2) provided that

- (a) all enquiries concerning the Service Specifications or other technical aspects of the Services to be lodged by a potential Tenderer; and
- (b) all correspondence and notices concerning the Order and inspection of the Services from the Contractor.

(1) **the Government (Agriculture, Fisheries and Conservation Department):**

Address: Fisheries Management Division, Aberdeen Fisheries Office, 100A
Shek Pai Wan Road, Aberdeen, Hong Kong

Attn: Dr. Vivian LAM

Facsimile Number: (852) 2814 0018

Email Address: vivian_yy_lam@afcd.gov.hk

(2) **the Tenderer/Contractor:**

Address:

Attn:

Telephone Number:

Facsimile Number:

Email Address:

(3) **Process Agent** (for a Tenderer/Contractor incorporated, formed or established outside Hong Kong):

Address:

Attn:

Telephone Number:

Facsimile Number:

Email Address:

Appendix B – Method of Providing the Contract Deposit

Name of Tenderer in English: _____

Date: _____

Method of Providing the Contract Deposit

If the Contract is awarded to us, we shall pay the Government the Contract Deposit
*in cash/by way of a banker's guarantee.

* Delete as appropriate.

N.B.: If a Tenderer does not complete this Part, it will be regarded to have undertaken to pay the Contract Deposit to the Government in cash.

Appendix C – Form of Banker's Guarantee

Form of Banker's Guarantee

THIS GUARANTEE is made on the day of
By.....

of, a bank within the meaning of the Banking Ordinance
(Chapter 155 of the Laws of Hong Kong) (hereinafter called the "Guarantor")

In favour of

The Government of the Hong Kong Special Administrative Region (hereinafter called the
"Government") of the other part.

WHEREAS

(A) By a contract (hereinafter called the "Contract") dated the of 2024
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/LTMP2024), the Contractor agreed and undertook to provide the Services (as defined in
the Contract) upon the terms and conditions of the Contract.

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

Now this Guarantee executed as a deed witnesses as follows:

(1) Where applicable, words and expressions used in this Guarantee 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 and 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;
- (g) without prejudice to the generality of the foregoing, any fact or event (whether similar to any of the foregoing or not) which in the absence of this provision would or might constitute or afford a legal or equitable discharge or release of or defence to the Guarantor, other than the express release of its obligations.

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

(7) This Guarantee shall have immediate effect on the same date as the Contract and is a continuing security. This Guarantee shall cover all of the obligations and liabilities of the Contractor under the Contract and shall remain in full force and effect and irrevocable until:

- (a) the end of three (3) months from the date of early termination or expiry of the Contract Period; or
- (b) if at the time of expiry or early termination of the Contract Period, there is any outstanding right or claim of the Government, or any outstanding obligation or liability of the Contractor, whether under or arising from or in relation to the Contract, the date on which all such rights and obligations, and claims and liabilities have actually been carried out, completed and discharged (as confirmed by the Government in writing),

whichever is the applicable.

(8) This Guarantee is in addition to and shall not merge with or otherwise prejudice or affect any contractual or other right or remedy or any guarantee, indemnity, lien, pledge, bill, note, charge or any other security which the Government may at any time hold (collectively "Other Security") and this Guarantee may be enforced by the Government without first having recourse to any of the Other Security or taking any steps or proceedings against the Contractor, and notwithstanding any release, waiver or invalidity of the Other Security.

(9) Any demand, notification or certificate given by the Government specifying amounts due and payable under or in connection with any of the provisions of this Guarantee shall be conclusive and binding on the Guarantor.

(10) The obligations expressed to be undertaken by the Guarantor under this Guarantee are those of primary obligor and not as a surety.

(11) This Guarantee shall be governed by and construed according to the laws for the time being in force in the Hong Kong Special Administrative Region of the People's Republic of China ("Hong Kong") and the Guarantor agrees to submit to the exclusive jurisdiction of the courts of Hong Kong.

(12) All documents arising out of or in connection with this Guarantee shall be served:

(a) upon the Government, at the Agriculture, Fisheries and Conservation Department, Aberdeen Fisheries Office, 100A Shek Pai Wan Road, 3/F, Aberdeen, Hong Kong (Attn: Dr. Vivian Lam), facsimile number (852) 2814 0018;

(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 dispatched by mail (whether registered or not), on the day on which they are tendered for delivery by the postal authority in Hong Kong.

(14) The aggregate amount of the Guarantor's liability under this Guarantee shall not exceed _____.

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

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

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

Name of witness:

Title of witness:

Signature of witness:

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

Name of witness:

Title of witness:

Signature of witness:

* Please delete as appropriate

@ See Powers of Attorney Ordinance (Chapter 31 of the Laws of Hong Kong)

Note : When banker's 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.

**Guidance Note GN-1
(Environmental Protection)**

Contractors are encouraged to minimise the impact of their activities on the environment and to observe the following requirements in particular:

- Comply with all applicable legal and other requirements on environmental protection.
- Control the use of materials and resources (e.g. electricity, fuel, chemicals, paper, etc.) to minimise their consumption and unnecessary wastage. Use environment-friendly alternatives where possible during your daily operations.
- Store properly all materials/chemicals to prevent any spillage and leakage.
- Minimise the production of solid waste and chemical waste.
- Ensure all solid waste is properly handled, stored and disposed of in an efficient and sensitive manner to avoid any spillage and leakage. In particular, all chemical waste should be handled, stored and disposed of in accordance with the applicable legal requirements.
- Ensure proper and regular maintenance of all vehicles used for the purpose of conducting business, including controlling their noise and emissions.
- Minimise all air emissions and noise generation where practicable.
- Ensure all waste water is discharged in accordance with the applicable legal requirements.
- Reuse and recycle waste wherever possible.

Appendix E – Marking Scheme and Assessment Criteria

Marking Scheme and Assessment Criteria for Provision of Services to Implement the Long-Term Fisheries Resources Monitoring Programme of Hong Kong

A two-envelope approach with a technical to price weighting of 70:30 will be adopted for tender evaluation whereby price assessment will be conducted only after technical assessment. All Tenders will be assessed in the following manner.

Stage 1 – Completeness Check on the Tender Offers Submitted

2. All Tenders received will be checked on whether all the documents and information required in Paragraph 3.3 of the Terms of Tender have been submitted. Failure to submit any of the information or documents as specified in Paragraph 3.4 of the Terms of Tender **on or before the Tender Closing Time will render a Tender invalid and will not be considered further.**

Stage 2 – Compliance with Essential Requirements

3. Tenders which have passed the Stage 1 will be checked to determine its compliance with all the essential requirements as set out in Paragraph 6 of the Terms of Tender. **A Tender which fails to meet any of the essential requirements will not be considered further.** A Tender which passes Stage 2 will proceed to Stage 3 assessment.

Stage 3 – Technical Assessment (70% of Overall Assessment)

4. The maximum total technical marks are 100 and divided into two parts: Part A on the assessment of the quality of the Execution Plan is allocated a maximum mark of 85; Part B on the assessment of the experience of the members of the Project Team is allocated a maximum mark of 15. There is no passing mark for the total marks scored in the Technical Assessment. A passing mark is set for each of the assessment criteria 1 to 5 in Part A, but not for assessment criterion 6. **Tenders that do not attain the passing mark for assessment criteria 1 to 5 in Part A will not be considered further.**
5. The submission for the Technical Proposal, excluding related annexes and documentary proof, **shall not be more than 80 pages in A4 size paper for text** (with margin not less than 25 mm and character font size not less than 12). For the avoidance of doubt, pages exceeding the specified limit and/or not complying with the specified requirements on margin and/or font size will be considered in the tender evaluation, but marks will be deducted from the total technical marks as follows –

Each excessive page	0.5 marks per page (subject to a maximum of 8 marks)
Non-compliance with the margin requirement	0.5 marks
Non-compliance with the font size requirement	0.5 marks

No.	Assessment Criteria	Maximum Mark	Passing Mark
(A) Execution Plan			
1.	Field survey plan (see Note 1 and Note 6)	10	2.5
2.	Data collection plan (see Note 2 and Note 6)	10	2.5
3.	Data analysis plan (see Note 3 and Note 6)	20	5
4.	Programme evaluation plan (see Note 4 and Note 6)	20	5
5.	Presentation and training plan (see Note 5 and Note 6)	5	1.25
6.	Innovative Suggestions (see Notes 7 and 8)		
	(i) Pro-innovation Proposals – directly relevant to the Services	15	NA
	(ii) ESG Proposals – measures to improve environmental protection, sustainability, social responsibility or governance which may but need not be directly relevant to the Services	5	NA
	Sub-total for (A)	85	NA
(B) Experience of the Members of the Project Team			
7.	Experience of Project Manager		
	(i) Aggregate years of recent experience in managing or conducting marine fisheries resources surveys mainly in Hong Kong waters with statistical analysis of biological survey data in the ten (10) years immediately preceding the Original Tender Closing Date (see Note 9)	3	NA
	(ii) Number of authored or co-authored publications in peer-reviewed journals on	2	NA

No.	Assessment Criteria	Maximum Mark	Passing Mark
	scientific studies related to marine fish or fisheries in the ten (10) years immediately preceding the Original Tender Closing Date (see Note 10)		
8.	Experience of Fisheries Statistics Specialist		
	(i) Number of authored or co-authored publications in peer-reviewed journals, technical manuals and/or textbooks with advanced multivariate time series analysis of long-term ecological / fisheries data in the fifteen (15) years immediately preceding the Original Tender Closing Date (see Note 11)	2	NA
	(ii) Number of marine fisheries projects undertaken for fisheries management agencies or fisheries research institutes by assuming the role of a statistician in the fifteen (15) years immediately preceding the Original Tender Closing Date (see Note 12)	2	NA
9.	Experience of other members of the Project Team		
	(i) Number of Technical Staff with experience in performing taxonomic identification of marine fisheries resources collected by marine fisheries resources surveys in the South China Sea in the five (5) years immediately preceding the Original Tender Closing Date (see Note 13)	2	NA
	(ii) Number of Technical Staff with experience in conducting statistical analysis on marine fisheries resources data collected by marine fisheries resources surveys in the five (5) years immediately preceding the Original Tender Closing Date (see Note 14)	2	NA
	(iii) Number of publications in peer-reviewed journals, technical manuals and/or	2	NA

No.	Assessment Criteria	Maximum Mark	Passing Mark
	textbooks on taxonomic identification of marine fisheries resources in Hong Kong or Mainland China in the fifteen (15) years immediately preceding the Original Tender Closing Date, authored or co-authored by the Project Specialist if proposed by the Tenderer (see Note 15)		
	Sub-total for (B)	15	NA
	Total	100	NA

6. A Tender which has passed Stage 3 assessment shall be considered as a conforming tender. A maximum weighted technical score of 70 will be allocated to the conforming tender with the highest total technical mark, while the weighted technical score for other conforming tenders will be calculated by the following formula: -

$$\text{Weighted Technical Score} = 70 \times \frac{\text{Total technical mark of the conforming tender being assessed}}{\text{The highest total technical mark among the conforming tenders}}$$

[Note: The weighted technical 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.]

Explanatory Notes for Stage 3 – Technical Assessment

Note 1: Assessment Criterion 1 – Field survey plan

The field survey plan (relating to Task 1 as detailed in Paragraph 4.2 under Service Specifications) shall cover the following items:

- (a) technical approach and methodology for field surveys including but not limited to sampling design (i.e. sampling frequency, sample size, sampling effort), sampling protocols, choice of survey sites and fishing gear specifications;
- (b) details of survey schedule covering a period of **two (2) years**;

- (c) details of arrangements for hiring vessels to conduct the surveys as well as storage and delivery of collected samples for subsequent processing and examination; and
- (d) anticipated constraints and proposed solutions.

Marks will be given according to the marking guidelines provided in Note 6 below.

Note 2: Assessment Criterion 2 – Data collection plan

The data collection plan (relating to Task 2 as detailed in Paragraph 4.3 under Service Specifications) shall cover the following items:

- (a) technical approach and methodology for collection of data including but not limited to abundance, size, biomass, species diversity, reproductive status, biological samples for DNA analysis, gonadal analysis, species identification and metadata that may potentially affect fisheries resources;
- (b) a confirmation mechanism for ensuring accurate species identification;
- (c) details of arrangements regarding the gross anatomical examination of gonads of species to ascertain its reproductive status;
- (d) details of arrangements for data entry, processing and cleaning; and
- (e) anticipated constraints and proposed solutions.

Marks will be given according to the marking guidelines provided in Note 6 below.

Note 3: Assessment Criterion 3 – Data analysis plan

The data analysis plan (relating to Task 3 as detailed in Paragraph 4.4 under Service Specifications) shall cover the following items:

- (a) technical approach and methodology for data analysis including but not limited to the overall spatial and seasonal variations of fisheries resources in different water regions of Hong Kong in terms of species composition, abundance, size, biomass, catch per unit effort, yield per unit effort, proportion of adults/juveniles and reproductive status of common species;

- (b) details of arrangements on the identification and use of suitable indicators and/or reference points for reporting the status of Hong Kong's fisheries resources in quantitative and/or qualitative terms;
- (c) details of arrangements for providing succinct summaries of the status of local fisheries resources;
- (d) details on the statistical software(s) to be used; and
- (e) anticipated constraints and proposed solutions.

Marks will be given according to the marking guidelines provided in Note 6 below.

Note 4: Assessment Criterion 4 – Programme evaluation plan

The programme evaluation plan (relating to Task 4 as detailed in Paragraph 4.5 under Service Specifications) shall cover the following items:

- (a) technical approach and methodology for the evaluation of the overall effectiveness of the LTMP using all existing data under the LTMP;
- (b) procedures for the calculation of the number of representative samples to achieve a cost-effective monitoring programme;
- (c) details of arrangements for determining whether the data and the way it was collected are sufficient for the elucidation of trends of local fisheries resources and achieving the objective of assessing the status of the local fisheries resources;
- (d) procedures to evaluate the performance of selected indicators and/or reference points for the regular reporting of the status of the fisheries resources of Hong Kong;
- (e) the key aspects to be addressed in the proposed strategy roadmap, including the identification of knowledge gaps and feasible means to fill those gaps, for the establishment of a system to evaluate and report the status of the fisheries resources in Hong Kong; and
- (f) recommendations on the future implementation of the LTMP.

Marks will be given according to the marking guidelines provided in Note 6 below.

Note 5: Assessment Criterion 5 – Presentation and training plan

The presentation and training plan (relating to Task 5 as detailed in Paragraph 4.6 under Service Specifications) shall cover the following items:

- (a) approach and methodology to present the findings of the LTMP with materials tailored to suit different audience groups;
- (b) approach and methodology on the training programme for AFCD personnel to implement the LTMP in the future; and
- (c) anticipated constraints and proposed solutions.

Marks will be given according to the marking guidelines provided in Note 6 below.

Note 6: Marking Guidelines for Assessment Criteria 1 to 5 under Part A

Marks will be given for each of the five parts of the Execution Plan (see Notes 1 to 5 above) in accordance with the following five-grade approach:

Percentage of Maximum Marks	Marking Standard
100%	The proposed plan is highly effective, including comprehensive information and explanation as well as insightful suggestions, demonstrating an excellent understanding of objectives.
75%	The proposed plan is effective with detailed information and explanation, demonstrating a good understanding of objectives.
50%	The proposed plan is practical with basic information provided, demonstrating a fair understanding of objectives.
25%	The proposed plan is simple with brief information provided, demonstrating a basic understanding of objectives.
0%	No plan is submitted, or the proposed plan cannot be executed or is impractical.

Notes 7 and 8: Marking Guidelines for Assessment Criterion 6(i) and 6(ii) – Pro-innovation Proposals and ESG Proposals

Assessment of Pro-innovation Proposals and ESG Proposals

Tenderers are encouraged to make pro-innovation proposals in their proposed plans for Assessment Criteria (1), (3) and (4) and make ESG proposals. 20 out of the maximum

mark of 85 marks for Part A are reserved for assessing innovative suggestions (i.e. maximum marks of 3 marks, 6 marks and 6 marks for pro-innovation proposals in their proposed plans for Assessment Criteria (1), (3) and (4) respectively and 5 marks for ESG proposals).

These marks for innovative suggestions will be given to pro-innovation proposals and ESG proposals as follows:

- (a) Pro-innovation Proposals which are considered directly relevant to, effective and practicable in improving the delivery of the Programme. The benefits that this type of proposals shall bring about are not pre-defined for tender assessment. 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. They may, for example, involve 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. Tenderers may propose pro-innovation proposals, which may not necessarily be technology-related, bringing benefits in terms of the following:

- better quality (e.g. accuracy or precision) of the Services;
- saving of manpower resources for delivering the Services;
- boosting the effectiveness of training participants' satisfaction;
- improving the communication of the programme results; and/or
- any other benefits that can facilitate the operation of the Programme.

Pro-innovation Proposals will be assessed **in comparison to how the Services are previously delivered under the existing contract or the conventional mode of service delivery adopted by the Government.**

- (b) ESG proposals will improve environmental protection, sustainability or governance or social responsibility in the execution of the contract throughout the contract period. They may but need not be directly relevant to the Services but can bring about positive values or benefits to the Government or the public at large. Such positive values or benefits may include, inter alia, the following:

- environmental protection (e.g. reduction in energy consumption, use of renewable energy, such as solar energy, in the execution of the contract, etc.);
- social responsibility (e.g. employment of people with disabilities and/or rehabilitated persons for the contract, etc); and/or
- governance.

Marks will not be given to any Pro-innovation Proposal/ESG Proposal which a tenderer will neither be capable of nor responsible for implementation.

The distribution of marks for pro-innovation proposals in respect of Assessment Criteria (1), (3) and (4) are as follows:

Assessment Criterion	Maximum Mark for pro-innovation proposals
(1) Field survey plan	3
(3) Data analysis plan	6
(4) Programme evaluation plan	6
Total:	15

For Pro-innovation Proposals meeting the requirements under (a) above, marks will be given in accordance with the following rule:

Assessment Criterion (1)

Marks	Marking Standard
3	The proposed plan contains three or more effective and practicable Pro-innovation Proposals.
2	The proposed plan contains two effective and practicable Pro-innovation Proposals.
1	The proposed plan contains one effective and practicable Pro-innovation Proposals.
0	The proposed plan does not contain any effective and practicable Pro-innovation Proposals.

Assessment Criterion (3) and (4)

Marks	Marking Standard
6	The proposed plan contains three or more effective and practicable Pro-innovation Proposals.
4	The proposed plan contains two effective and practicable Pro-innovation Proposals.

2	The proposed plan contains one effective and practicable Pro-innovation Proposals.
0	The proposed plan does not contain any effective and practicable Pro-innovation Proposals.

For ESG Proposals meeting the requirements under (b) above, marks (maximum: 5 marks) will be given in accordance with the following rule:

Marks	Marking Standard
5	The proposed plan contains two or more effective and practicable ESG Proposals.
2.5	The proposed plan contains one effective and practicable ESG Proposals.
0	The proposed plan does not contain any effective and practicable Proposals.

- (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 (“TAP”) 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. Furthermore, a pro-innovation proposal scores marks under one assessment criterion will not earn marks again under the other assessment criteria. If the TAP considers that the pro-innovation proposal could score marks under more than one assessment criterion, it will be taken as scoring marks under the first relevant criterion. For example, if a Tenderer proposes the same pro-innovation proposal which could earn marks under both Assessment Criteria (3) and (4), it will be taken as scoring marks under Assessment Criterion (3) only.
- (d) Tenderers should propose Pro-innovation Proposals and ESG Proposals by filling in the details in the Innovative Suggestion Schedule (in the form of **Schedule 4 under Part 4 of the Tender Documents**) to facilitate tender evaluation.
- (e) Apart from the Innovative Suggestion Schedule mentioned above, 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 –

- if the suggestion is concerned with a kind of technology, equipment, tool, system, material, facility and vehicle, etc.: scope of the services involved, details on how to implement, specifications, catalogues, features, functions, quantity, coverage, locations and outcome, etc. as appropriate;
 - if the suggestion is concerned with a kind of measure, service, scheme and activity, etc.: the objective, scope of the services involved, details on how to implement, functions, quantity, monetary value, scale, coverage, locations, frequency, duration, outcome and number of target beneficiaries, etc. as appropriate; and
 - if the suggestion is related to manpower: the objective, scope of the duties involved, details on how to implement, work shifts (full time or part time), posts, recruitment method, means to approach the target candidates, quantity, monetary value, scale, coverage, locations, frequency, duration, outcome and number of target beneficiaries, etc. as appropriate.
- (f) Tenderers may also 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 the factual supporting documents (e.g. test reports/certificates) provided by the Tenderers upon request by the Government. The demonstration will not be taken into account in marking. It only serves as a means to enable members of the TAP to have a better understanding of the 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) Apart from the proposed plans for Assessment Criteria (1) to (5), all practicable Pro-innovation proposal and ESG Proposals included in the proposed plans submitted by the successful tenderer for Assessment Criteria (1) (3), (4) and accepted by the Government shall also form part of the Contract. Any failure to perform such pro-innovation proposals/ESG proposals would be deemed a breach of the contractual obligation, and the Government would be entitled to take follow-up actions in accordance with the existing mechanism on the handling of breach of contractual obligations e.g. claiming damages and/or termination of the contract.

Important Remarks for Assessment and Calculation of the Years of Experience of Project Team members

The following rules are applicable to both assessment and calculation of years of experience of the Project Team members.

- (a) The aggregate years of experience will be counted in calendar days for the purpose of tender evaluation, where “an aggregate of five (5) years’ experience” is equivalent to have accumulated 1825 days (i.e. 365 days x 5) of working experience. Overlapping periods of experience under different projects would be counted once only for the purpose of calculating aggregate years of relevant experience.
- (b) The aggregate years of experience shall refer to that possessed by the same member of the Project Team (e.g. Project Director, Project Manager, etc.) but not aggregated among different individuals.
- (c) A Tenderer shall submit documentary evidence (e.g. CV, academic transcript or certificate; project title with start and end dates, brief project description, role of staff, survey locations, and project reports for relevant working experience; a copy or cover image for relevant publications; name of the agency/research institute for projects, etc.) in support of the stated experience. Academic qualifications, working experience or publications not substantiated will not be taken into account.

Note 9: Assessment Criterion No. 7(i)

- (a) Assessment will be based on the aggregate years of recent experience in managing or conducting marine fisheries resources surveys **mainly in Hong Kong waters** with statistical analysis of biological survey data in the **ten (10) years** immediately preceding the Original Tender Closing Date possessed by the **Project Manager** proposed by the Tenderer for the Contract.
- (b) Standard scores will be given to Assessment Criterion 7(i) in accordance with the following rule –

<u>Mark</u>	<u>Years of Experience</u>
3	> 4 aggregate years
2	> 2 to ≤ 4 aggregate years
1	>0 to ≤ 2 aggregate years
0	0 aggregate years

- (c) Only experience of projects including marine fisheries resources surveys conducted mainly in Hong Kong waters (i.e. with at least 80% of the survey locations in Hong Kong waters) will be counted for the purpose of tender evaluation.

Note 10: Assessment Criterion No. 7(ii)

- (a) Assessment will be based on the number of publications in peer-reviewed journals on scientific studies related to marine fish or fisheries authored or co-authored by the **Project Manager** in the **ten (10) years** immediately preceding the Original Tender Closing Date.
- (b) Standard scores will be given to Assessment Criterion 7(ii) in accordance with the following rule –

<u>Mark</u>	<u>Number of publications</u>
2	> 6 relevant publications
1.5	5 to 6 relevant publications
1	3 to 4 relevant publications
0.5	1 to 2 relevant publications
0	No relevant publications

Note 11: Assessment Criterion No. 8(i)

- (a) Assessment will be based on the number of publications in peer-reviewed journals, technical manuals and/or textbooks with advanced multivariate time series analysis of long-term ecological / fisheries data in the **fifteen (15) years** immediately preceding the Original Tender Closing Date authored or co-authored by **the Fisheries Statistics Specialist** proposed by the Tenderer for the Contract.
- (b) Standard scores will be given to Assessment Criterion 8(i) in accordance with the following rule –

<u>Mark</u>	<u>Number of publications</u>
2	> 6 relevant publications
1.5	5 to 6 relevant publications
1	3 to 4 relevant publications
0.5	1 to 2 relevant publication
0	0 relevant publications

Note 12: Assessment Criterion No. 8(ii)

- (a) Assessment will be based on the number of marine fisheries projects undertaken for fisheries management agencies or fisheries research institutes by assuming the role of a statistician **in the fifteen (15) years** immediately preceding the Original Tender Closing Date by the **Fisheries Statistics Specialist** proposed by the Tenderer for the Contract.
- (b) Standard scores will be given to Assessment Criterion 8(ii) in accordance with the following rule –

<u>Mark</u>	<u>Number of projects</u>
2	> 6 relevant projects
1.5	5 to 6 relevant projects
1	3 to 4 relevant projects
0.5	1 to 2 relevant projects
0	0 relevant projects

Note 13: Assessment Criterion No. 9(i)

- (a) Assessment will be based on the number of Technical Staff with experience in performing taxonomic identification of marine fisheries resources collected by marine fisheries resources surveys in the South China Sea in the **five (5) years** immediately preceding the Original Tender Closing Date.
- (b) Standard scores will be given to Assessment Criterion 9(i) in accordance with the following rule –

<u>Mark</u>	<u>Experience in species identification</u>
2	≥ 2 Technical Staff have the relevant experience
1	1 Technical Staff has the relevant experience
0	None of the Technical Staff have the relevant experience

Note 14: Assessment Criterion No. 9(ii)

- (a) Assessment will be based on the number of Technical Staff with experience in conducting statistical analysis on marine fisheries resources data collected by marine fisheries resources surveys in **the five (5) years** immediately preceding the Original Tender Closing Date.

- (b) Standard scores will be given to Assessment Criterion 9(ii) in accordance with the following rule –

<u>Mark</u>	<u>Experience in conducting statistical analysis</u>
2	≥ 2 Technical Staff have the relevant experience
1	1 Technical Staff has the relevant experience
0	None of the Technical Staff have the relevant experience

Note 15: Assessment Criterion No. 9(iii)

- (a) Assessment will be based on the number of publications in peer-reviewed journals, technical manuals and/or textbooks on the taxonomic identification of fisheries resources in Hong Kong or Mainland China in the **fifteen (15) years** immediately preceding the Original Tender Closing Date authored or co-authored by the **Project Specialist** if proposed by the Tenderer for the Contract.

- (b) Standard scores will be given to Assessment Criterion 9(iii) in accordance with the following rule –

<u>Mark</u>	<u>Number of publications</u>
2	> 6 relevant publications
1.5	5 to 6 relevant publications
1	3 to 4 relevant publications
0.5	1 to 2 relevant publications
0	No relevant publications or no Project Specialist proposed

Stage 4 – Price Assessment (30% of Overall Assessment)

7. Failure to submit a Price Proposal in the form of Schedule 1 with price information duly completed will render a Tender invalid and will not be considered further. The price assessment is based on the Total Estimated Contract Price of the Tenders which have passed Stage 3 assessment.
8. A maximum weighted price score of 30 will be allocated to the conforming tender with the lowest Total Estimated Contract Price, while the weighted price score for other conforming tenders will be calculated by the following formula –

$$\begin{array}{lcl} \text{Weighted Price} & 30 \times & \text{The lowest Total Estimated Contract Price among the} \\ = \text{Score} & & \text{conforming tenders} \\ & & \hline & & \text{Total Estimated Contract Price of the conforming tender} \\ & & \text{being assessed} \end{array}$$

[Note: The weighted price score of each Tender will be rounded to the nearest 2 decimal places according to the rounding method as shown in the Note under para. 6 above.]

Stage 5 – Calculation of Combined Score

9. The combined score of a conforming tender will be determined by the following formula –

$$\text{Weighted Technical Score} + \text{Weighted Price Score}$$

10. Normally, the Tender with the highest combined score will be recommended for acceptance, subject to the requirement that the Government is satisfied that the recommended Tenderer is fully (including technically, commercially and financially) capable of undertaking the Contract, and that the recommended Tender is the most advantageous tender to the Government in accordance with the tender provisions.

Appendix F – Reply Slip for Tender Briefing Session

Reply Slip for Tender Briefing Session

Agriculture, Fisheries and Conservation Department

(Attn: Dr. Vivian LAM)

Email: vivian_yy_lam@afcd.gov.hk

Fax: (+852) 2814 0018

Ref.: AFCD/LTMP2024

Provision of Services to Implement the Long-Term Fisheries Resources

Monitoring Programme of Hong Kong

*(Please return the completed Reply Slip
on or before 12:00 noon (Hong Kong time), 12 July 2024)*

Representative of _____ (Name of Company) will attend the tender briefing session to be held by online video conferencing at 11:00 a.m. on 15 July 2024 (Monday).

Details of the representative(s) is/are

Name	Contact Phone No. & Email Address

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PART 2 - CONDITIONS OF CONTRACT

1. Contract Period

- 1.1 This Contract shall be for a period of **thirty (30) months** (“Contract Period”) commencing from the Date of Tender Acceptance or any other date specified in the Tender Acceptance, subject to Clause 1.2 and to any provision for early termination or extension provided for in the Contract.
- 1.2 The Government may by serving on the Contractor not less than seven day’s advance notice in writing extend the Contract for a period to an aggregate maximum of 6 months on the same terms and conditions contained in the Contract. The extended Contract Period commences immediately upon the expiry of the current Contract Period.
- 1.3 The Contractor must agree to the extension of the Contract made under Clause 1.2 hereof when the Government exercises its right to extend the Contract.

2. Total Services and Variation of Services

- 2.1 The Contractor must provide the Services in accordance with the terms and conditions of the Contract (including but not limited to the Service Specifications, the Conditions of Contract and the Schedules) at such time and in such manner as the Government Representative may specify from time to time and to the satisfaction of the Government Representative.
- 2.2 The Contractor shall not extend the Services beyond the requirements specified in the Service Specifications, Conditions of Contract and Schedule except as directed in writing by the Government Representative; but the Government Representative may, subject to the proviso hereinafter contained, at any time during the Contract Period by notice in writing direct the Contractor to alter, amend, omit, add to, or otherwise vary any of the Services and/or the Contract Period, and the Contractor shall carry out such variations, and be bound by the same conditions, so far as are applicable, as though the said variations were stated in the Service Specifications, Conditions of Contract and Schedules.
- 2.3 Where a variation has been made to the Contract, the amount to be added to or deducted from the Contract Price in accordance with that variation shall

be determined in accordance with the breakdown of the Total Estimated Contract Price specified in Part A2 in the Price Schedule so far as the same may be applicable and where not applicable, such amount shall be such sum as is reasonable in the circumstances.

3. Contractor's Acknowledgement, Obligations and Contract Performance

- 3.1 The Contractor acknowledges and agrees that when entering into the Contract, it has been supplied with sufficient information to enable it to provide to the Government the Services, which shall comply fully with the requirements set out in the Service Specifications and other provisions of the Contract.
- 3.2 The Contractor further acknowledges that the Government relies on the skill and judgment of the Contractor in the provision of the Services and the performance of its obligations under the Contract. Save to the extent expressly set out in the Contract, the Contractor does not expect, and the Contractor agrees that it is unnecessary for, the Government to do anything to facilitate or assist the Contractor's provision of the Services and the performance of its obligations under the Contract.
- 3.3 The Contractor shall perform its obligations under the Contract:
- (a) with appropriately experienced, qualified and trained personnel and with all due care, skill and diligence; and
 - (b) in accordance with Good Industry Practice.
- 3.4 The Contractor shall comply with all applicable laws and regulations including but not limited to the Fisheries Protection Ordinance (Cap. 171), the Marine Parks Ordinance (Cap. 476) and the Merchant Shipping (Local Vessels) Ordinance (Cap. 548). In addition, the Contractor shall:
- (a) Comply with the Employment Ordinance (Chapter 57 of the Laws of Hong Kong) and the Immigration Ordinance (Chapter 115 of the Laws of Hong Kong). The Contractor shall not employ any persons who are forbidden by the laws of Hong Kong or are not entitled for whatever reasons to undertake any employment in Hong Kong;

- (b) make its own arrangements to provide Mandatory Provident Fund Schemes to its employees in accordance with the provisions of the Mandatory Provident Fund Schemes Ordinance (Chapter 485 of the Laws of Hong Kong); and
- (c) comply with the requirements of the Occupational Safety and Health Ordinance (Chapter 509 of the Laws of Hong Kong) and any other legal provisions pertaining to the health and safety of the personnel, Government staff and others who may be affected by its performance of Services.

3.5 The Contractor shall:

- (a) duly and unconditionally secure, obtain and maintain throughout the Contract Period all and any authorisations, approvals, consents, licences, permits, exemptions and other requirements of any governmental, administrative or other authority or body in any relevant jurisdiction which are or may be required or necessary to authorise the Contractor to execute, deliver and perform the Contractor's obligations under the Contract (including where the Contractor's procedures so require, the consent of its parent company) ("Consents");
- (b) ensure that the Consents are in full force and effect, and the use of the Services by the Government will not contravene any applicable laws, throughout the Contract Period; and
- (c) bear all costs, charges and expenses that may be incurred in obtaining and maintaining the Consents throughout the Contract Period.

3.6 The Contractor shall, through the Government Representative, keep the Government informed of all matters related to the Contract within the actual or constructive knowledge of the Contractor and shall answer all enquiries received from the Government Representative.

3.7 The Contractor shall pay all taxes, duties, fees, charges, assessments of any nature levied by relevant governmental authorities and to pay the fines and penalties imposed for any offence or infringement by the Contractor under any laws or regulations in connection with the performance of the Contract.

- 3.8 The Contractor acknowledges that it does not have the right to provide the Services to the Government on an exclusive basis and nothing in this Contract confers any such exclusive right. Nothing in the Contract shall preclude the Government from procuring any Services from any other person.

4. Warranties and Representations

- 4.1 The Contractor warrants, represents and undertakes that:

- (a) the Contractor, their respective employees and any permitted sub-contractors of the Contractor have the necessary training, skill, experience, qualifications and expertise to provide the Services on the terms and conditions set out in the Contract;
- (b) the Contractor shall carry out the Services with all due diligence and in a timely, safe, proper, skilful and professional manner;
- (c) the Services shall conform in all respects to the Service Specifications and conditions under the Contract;
- (d) the Contractor shall 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;
- (e) it shall not employ any illegal workers to carry out its obligations under the Contract;
- (f) the Contractor has full power, capacity and authority to enter into the Contract and to perform all its obligations under the Contract including without limitation the vesting of the Intellectual Property Rights in the Government, and the granting and/or procuring the grant of the licences to the Government, its authorised users, assigns and successors-in-title in accordance with Clause 17 of the Conditions of Contract;
- (g) the Contract constitutes valid, legally binding obligations of the Contractor enforceable in accordance with its terms;

- (h) all information and documents supplied, and statements and representations from time to time made by or on behalf of the Contractor in or in relation to its Tender and the Contract are genuine, true, accurate and complete;
- (i) throughout the Contract Period, no claim is being made and no litigation, arbitration or administrative proceeding is presently in progress, or to the best of the Contractor's knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;
- (j) throughout the Contract Period, it is not subject to any contractual obligation, or court judgment or ruling order or arbitration decision, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- (k) throughout the Contract Period, no proceedings or other steps have been taken and not discharged (nor to the best of its knowledge, are threatened) for the winding up or bankruptcy of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar office in relation to any of the Contractor's assets or revenue; and
- (l) throughout the Contract Period, it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or on its ability to fulfil its obligations under the Contract.

4.2 The warranties, representations and undertakings, expressed or implied, contained in Clause 4.1 above and in Clause 17.1 of the Conditions of Contract and in other provisions of the Contract, and those made by the Contractor in its Tender for the Contract including all Schedules, during the evaluation of the Tender, and those from time to time made in the course of performance of the Contract, are collectively referred to as "Warranties", and each, a "Warranty".

4.3 Each of the Warranties shall be separate and independent and without prejudice to any other Warranty, and shall not be limited by reference to or inference from any other Warranty or any other provision of the Contract.

4.4 Unless otherwise expressly excluded from or provided to the contrary in the Contract, the rights, duties and liabilities imposed on a service provider and the rights conferred on the party contracting with the service provider under the Supply of Services (Implied Terms) Ordinance (Chapter 457 of the Laws of Hong Kong) apply to bind the Contractor and the Government respectively.

5. Costs and Expenses

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

6. Price Variation

All unit prices quoted for the Services in the Price Schedule shall remain valid throughout the Contract Period and only subject to adjustment in accordance with the provisions set out in the Conditions of Contract (if any).

7. Heat Stroke Prevention

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

(a) making suitable work arrangement such as rescheduling work to cooler periods and cooler places;

(b) conducting risk assessments of heat stress for the specific work taking account of the environmental (including but not limited to airflow, temperature), work (such as physical workload) and personal factors (such as heat acclimatization of employees);

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

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

8. Inspection

- 8.1 The Services performed, such as the field surveys conducted or the laboratory works for processing the fisheries resources specimens, shall be subject to inspection by the Inspecting Officer, and/or the Government Representative. The Contractor shall allow and facilitate such inspection as the Government Representative or his nominee may require.
- 8.2 All costs incurred by the Contractor in complying with this Clause 8 shall be borne by the Contractor and shall not be chargeable to the Government unless and to the extent otherwise expressly specified in the Price Schedule.
- 8.3 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.
- 8.4 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.

9. 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 or agents, 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.

10. Government Premises/Contractor's Premises

- 10.1 The Contractor, shall ensure that all persons engaged by him in carrying out the Contract remain at such parts of Government premises as are necessary for the due discharge of the Contractor's obligations under the Contract.
- 10.2 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.
- 10.3 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.

11. Payment of the Contract Price

- 11.1 In consideration of the Contractor's due and proper performance of all its obligations in accordance with all terms and conditions of the Contract to the satisfaction of the Government and subject always to all and any set-off, deductions or withholding, the Government shall pay the Contractor the

Contract Price by instalments and in accordance with the payment schedule set out in Part B – Payment Schedule of the Price Schedule.

- 11.2 The Government shall not have any obligation to pay the Contractor the Contract Price for such Services unless and until such Services have been accepted by the Government in writing. The Government shall pay the Contractor the Contract Price for such Services within thirty (30) days after the date of receipt of the invoice or written acceptance of such Services, whichever is later.
- 11.3 The Government shall pay the percentage of the Contract Price as set out in Part B – Payment Schedule in the Price Schedule for the Services performed within thirty (30) days after the receipt of the invoice from the Contractor for the instalment in concern (which has included all necessary deductions, set-off and withholding).
- 11.4 Unless specifically stated in the Contract, apart from the Contract Price, no other money shall be payable by the Government to the Contractor or any other person under the Contract. Save as otherwise expressly provided for in the Contract, the Contractor shall perform, comply with and observe all provisions of the Contract and its obligations under the Contract at its own costs and expenses.
- 11.5 Without prejudice to Clause 11.4 above, the Contract Price is inclusive of all charges for provision of the Services (including all costs and charges for the Consents). Save as otherwise expressly provided for in the Contract, the Contractor shall not be entitled to any adjustment in the Contract Price for any reason (including foreign exchange fluctuations).
- 11.6 The Contractor shall invoice the Government for any payment of the Contract Price by instalments. In respect of the provision of the Services which has been accepted and that the Contract Price is payable in the manner specified in Clause 11.2 above, the Contractor shall deliver to the Government an invoice setting out the particulars of the Services provided, the amount of Contract Price payable for the Services after taking into account all applicable deductions, set-off and withholding, and such other information as the Government Representative may require from time to time.

- 11.7 In the case where the Contract Price is payable in instalment in the manner specified in Clause 11.2 above, an invoice for an instalment of the Contract Price shall not be issued unless (a) the scope of the Services as specified in the payment timetable in the Price Schedule for that instalment has been performed and accepted by the Government as confirmed by it in writing; and (b) the invoice must have taken into account all applicable deductions, set-off and withholding.
- 11.8 Notwithstanding any provision of the Contract, the Government is entitled to withhold payment of all or any part of the Contract Price and any other sum payable by the Government to the Contractor under the Contract if:
- (a) the Contractor fails to observe or perform any provision of the Contract;
 - (b) the Government disputes on any reasonable ground its obligation to pay the amount in question;
 - (c) the Government has reasonable grounds to believe that the Contractor is or will be liable to the Government under any provision of the Contract for the loss or damage suffered by the Government; or
 - (d) withholding of payment is required by any applicable law or regulation for tax or otherwise.
- 11.9 No payment made by the Government under the Contract shall prejudice or carry any implication whatsoever on any rights or cause of action which has accrued or may accrue, or any remedy available, to the Government in respect of any breach of the Contract by the Contractor.
- 11.10 The Government shall not be held responsible or liable for any delay in payment and no interest or other surcharge or any other payment howsoever described shall be charged to the Government due to (a) invoices not having been issued in accordance with this Clause 11, or (b) the amount billed in the invoices not having been duly calculated in accordance with the provisions of the Contract (including without limitation not having taken into account all applicable deductions, set-off or withholding), or (c) the Contractor disputing any deductions or set-off or withholding made by the Government pursuant to the Contract, or (d) any invoice or correspondence being improperly addressed contrary to the requirements stipulated in the

Contract. Each invoice shall include all deductions, set-off and withholding which may be made pursuant to the terms of the Contract and shall show the net amount payable. If the Contractor does not render an invoice charging a correctly stated net amount due to its failure to take into account all appropriate deductions, set-off or withholding or otherwise, the Government may, but is not obliged to, pay the net amount which duly takes into account all appropriate deductions, set-off and withholding.

11.11 Payment shall be made in Hong Kong dollars.

11.12 Payment will be made direct to the Contractor's bank account in Hong Kong as stated by the Contractor in Table E of Schedule 2 under Part 4 of the Tender Documents.

12. Contract Deposit

12.1 The Contractor shall pay the Contract Deposit in accordance with Paragraph 20 of the Terms of Tender.

12.2 If the Contractor fails to comply with Clause 12.1 above, the Government shall have the right to terminate the entire Contract pursuant to Clause 15.5 of the Conditions of Contract.

12.3 Without prejudice to Clause 12.2 above, if the Contractor fails to comply with Clause 12.1 above, the Government may deduct from any sum due or payable by the Government to the Contractor from time to time, an amount equal to the Contract Deposit to serve as the Contract Deposit.

12.4 If:

- (a) the Contractor fails to comply with any provision of the Contract, the Government may deduct from the Contract Deposit paid in cash, or call on the banker's guarantee, to recover the amount of costs, losses, damages or expenses suffered or incurred by the Government arising from or relating to such failure; or
- (b) any amount is due or payable by the Contractor to the Government under the Contract, the Government may deduct from the Contract Deposit paid in cash, or call on the banker's guarantee, to recover the amount due or payable,

in each case of Sub-clause (a) or (b) above, irrespective of whether or not a demand for payment has been made against the Contractor.

- 12.5 The Contract Deposit (whether paid in cash or in the form of the banker's guarantee) may be deducted or called on by the Government 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, and may be enforced for any balance due after resorting to any one or more of other means of obtaining payment or discharge of the monies, obligations and liabilities owing by the Contractor to the Government.
- 12.6 If any deduction is made by the Government from the Contract Deposit or a call is made on the banker's guarantee any time prior to the expiry or termination of the Contract, the Contractor shall, within twenty-one (21) days after the date of the written demand by the Government, deposit a further sum or provide a further banker's guarantee, in a sum equal to the amount so deducted or so called, which further sum shall be added to the residue and form part of the Contract Deposit. If the Contractor is required to provide a further banker's guarantee under this Clause, the further banker's guarantee must comply with the requirements in Paragraphs 20.4(a) to (c) of the Terms of Tender.
- 12.7 Where the Contract Price payable for all Services to be procured under the Contract for the whole of the Contract Period is likely to exceed the original Total Estimated Contract Price, the Government may, by written notice to the Contractor, require the Contractor to submit to the Government such additional amount as further Contract Deposit such that the Contract Deposit shall at all times during the Contract Period be an amount equivalent to two percent (2%) of the revised Total Estimated Contract Price specified by the Government in the notice.
- 12.8 If a notice is issued by the Government under Clause 12.7 above, the Contractor shall within twenty-one (21) days deliver to the Government the additional amount of further Contract Deposit required in the notice in the form of either cash or a further banker's guarantee. The further banker's guarantee must comply with the requirements in Paragraphs 20.4(a) to (c) of the Terms of Tender. A further Contract Deposit paid by the Contractor to the Government shall form part of the Contract Deposit.

12.9 If the Contractor fails to comply with Clause 12.6, 12.7 or 12.8 above, the Government shall have the right to terminate the entire Contract pursuant to Clause 15.1 of the Conditions of Contract.

12.10 Upon the expiry or termination of the Contract Period:

- (a) if the Contract Deposit is paid in cash, the Government shall, after deducting the sums due from the Contractor to the Government, return the balance of the Contract Deposit (if any) in cash and without interest to the Contractor by the date specified in (i) or (ii) below, whichever is applicable:
 - (i) the end of three (3) months counting from the date of early termination or expiry of the Contract Period; or
 - (ii) in the case 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).
- (b) if the Contract Deposit is paid by way of a banker's guarantee, the banker's guarantee shall be discharged and released in accordance with the guarantee period as stated therein.

(the applicable period specified in Sub-clause (a) or (b) above is referred to as the "Guarantee Period".)

12.11 Where upon expiry of the Guarantee Period, any claim of the Government or any liability of the Contractor, whether under or arising from or in relation to the Contract cannot yet be quantified or finalised, the Government may, without prejudice to its other rights and remedies, pay the entire Contract Deposit or any part thereof (whether in cash or in banker's guarantee) into a suspense account, for so long as it considers necessary, and pending the quantification or finalisation of the amount of the claim or liability. Upon quantification or finalisation of the amount of all or any claims or liabilities, the Government shall apply the amount in the suspense account in or towards satisfaction of the quantified amount. Where there is

any remaining amount in the suspense account after such application, the Government will return the remaining amount to the Contractor without interest. Where the amount in the suspense account is insufficient to cover all or any claims or liabilities, the Government reserves all rights and remedies against the Contractor in respect of such claims and liabilities.

13. Recovery of Sums Due

Where the Contractor has incurred any liability to the Government, whether at law or in equity and whether such liability is liquidated or unliquidated, the Government may set off, whether by way of equitable set off or at common law the amount of such liquidated liability and a reasonable estimate of the amount of any unliquidated liability, against any sum then due or which at any time thereafter may become due from the Government to the Contractor under the Contract or any other contract made between the Government and the Contractor.

14. Liability and Indemnities

14.1 Neither the Government nor any of its employees or agents shall be under any liability whatsoever for or in respect of:

- (a) any loss of or damage to any of the Contractor's property or that of its employees or agents however caused (whether by any Negligence of the Government or any of its employees or agents or otherwise); or
- (b) any injury to or death of the Contractor (in the case where the Contractor is a natural person) or any of its employees or agents, save and except any such injury or death caused by the Negligence of the Government or any of its employees (in the course of employment).

14.2 Without prejudice to any other provision of the Contract, the Contractor shall indemnify each of the Government, its assigns, successors-in-title, and authorised users (including the employees and agents of the Government) (each an "Indemnified Party") from and against:

- (a) all and any liabilities and indebtedness (including liabilities to pay damages or compensation), losses, damage, costs, charges and expenses incurred or suffered by an Indemnified Party of whatsoever nature (including all legal and expert costs, charges and expenses on a full indemnity basis); and

- (b) all and any demands, claims, actions, arbitrations, proceedings, threatened, brought or instituted by any person against an Indemnified Party or by an Indemnified Party against any person (regardless of whether or not they have been settled or compromised) (collectively, “Claims” and each a “Claim”) and everything stated in Sub-clause (a) above incurred or suffered by an Indemnified Party in all and any such Claims,

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

- (i) the breach of any provisions of the Contract by the Contractor;
- (ii) the negligence, recklessness, tortious acts or wilful act or omission of the Contractor, 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 14.1 above save and except injury or death caused by the Negligence of the Government or any of its employees (in the course of employment); or
- (viii) any injury or death of any third party, or any loss or damage to property sustained by any third party, in consequence of any act, omission, default, or negligence of the Contractor or any of its employees, agents and sub-contractors.

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

- 14.3 In the event of any person suffering any injury or death in the course of or arising out of the Contract and whether there be a claim for compensation or not, the Contractor shall verbally inform the Government Representative as early as practicable and deliver to the Government a written report within seven (7) working days after the occurrence of the injury or death, or on an earlier date specified by the Government Representative.
- 14.4 For the purposes of this Clause 14, “Negligence” (appearing in upper case) shall have the same meaning as that assigned to it in section 2(1) of the Control of Exemption Clauses Ordinance (Chapter 71 of the Laws of Hong Kong).
- 14.5 The indemnities, payment and compensation given in pursuance of the Contract by the Contractor shall not be affected or reduced by reason of any failure or omission of the Government in enforcing any of the terms and conditions of the Contract.

15. Termination of Contract

- 15.1 Without prejudice to any right and claims of the Government under the Contract or otherwise at law, the Government will be entitled to forthwith terminate the Contract if any of the following events occurs:
- (a) the Contractor fails to perform any Services pursuant to the Contract;
 - (b) any Services are rejected pursuant to the Contract;
 - (c) the Contractor is in breach of any provision of the Contract which in the opinion of the Government is not capable of remedy;
 - (d) 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;

- (e) any Warranty is incorrect, inaccurate, incomplete or misleading;
- (f) the Contractor has made a material misrepresentation (including submission of false statement or inaccurate information) during the tendering process of the Contract;
- (g) the Contractor, any officer (including director), employee, agent or sub-contractor of the Contractor commits an offence under the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong) or any law of a similar nature in relation to the Contract or any other contract made by the Contractor with the Government;
- (h) the Contractor abandons the Contract in whole or in part;
- (i) 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; or
- (j) any event or circumstance occurs which enables the Government to terminate the Contract under any one of the following provision of the Conditions of Contract:
 - (i) Clause 12 - Contract Deposit;
 - (ii) Clause 20 - Probity;
 - (iii) Clause 27 - Force Majeure;
 - (iv) Clause 28 - Illegal Workers;
 - (v) Clause 35 - Admission of Contractor Personnel to Government Premises; or
 - (vi) Clause 29 of the Terms of Tender - Warranty against Collusion),

the Government may by seven (7) days' written notice to the Contractor terminate the Contract immediately.

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

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

reconstruction or solvent amalgamation the terms of which have been approved by the Government in advance);

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

15.3 Separate from the event mentioned in Clause 15.1(j)(iii) above and Clause 27.3 of the Conditions of Contract, where there is a Force Majeure Event, the Government may terminate the Contract in part or in whole pursuant to Clause 27.7 of the Conditions of Contract.

15.4 Notwithstanding anything herein to the contrary, the Government may at any time and from time to time during the Contract Period, at its discretion and without cause, suspend or terminate the Contract or any part thereof by giving the Contractor one month's written notice of such suspension or termination. In the case of suspension, the written notice shall specify the period of the suspension ("Suspension Period") and the scope of the suspension (viz., the Item(s) of the Services to be suspended, which may be all or any of the Items of the Services covered by the Contract) ("Suspended Services").

- 15.5 Each of the grounds entitling the Government to terminate the Contract as specified in Clauses 15.1 to 15.4 above and in each Sub-clause of Clauses 15.1 and 15.2 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.

16. Termination Consequences

- 16.1 Upon expiry or early termination of the Contract (howsoever occasioned) (“Termination”):

- (a) the Contract shall be of no further force and effect, but without prejudice to:
 - (i) the Government’s rights and claims under the Contract or otherwise at law against the Contractor arising from antecedent breaches of the Contract by the Contractor (including any breach(es) which entitle the Government to terminate the Contract);
 - (ii) the rights and claims which have accrued to a Party prior to the Termination; and
 - (iii) the continued existence and validity of those provisions which are expressed to or which in their context by implication survive the Termination (however occasioned);
- (b) the Government shall not be responsible for any claim, legal proceeding, liability, loss (including any direct or indirect loss, any loss of revenue, profit, business, contract or anticipated saving), damages (including any direct, special, indirect or consequential damages of whatsoever nature) or any cost or expense, suffered or incurred by the Contractor arising out of or in relation to the Termination;
- (c) without prejudice to the other rights and claims of the Government including the right to seek indemnity under Clause 14.2 of the Conditions of Contract, in the event of the Termination under Clause 15.1 or 15.2 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 amount in excess of the Total Estimated Contract

Price incurred by the Government in engaging another contractor to complete the uncompleted Services and all costs and expenses incurred in making the arrangements for the same including conducting tender for the uncompleted Services; and (ii) any additional expenditure incurred by the Government in connection with a default by the Contractor referred to in Clause 15.1 or 15.2 of the Conditions of Contract. If the Contract is so terminated, until the Government has established the final cost of making other arrangements contemplated under this Clause, no further payments shall be payable by the Government to the Contractor for the Services provided by the Contractor prior to Termination and in accordance with the Contract for which payment has yet to be made by the Government;

- (d) the Contractor shall immediately return to the Government all 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;
- (e) 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;
- (f) 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; and
- (g) 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.

Further, upon request by the Government and/or in the event of the expiry or termination (howsoever occurred) of the Contract, the Contractor shall at its sole costs and expenses promptly deliver to the Government the Materials (including any drafts and copies thereof) then in the Contractor's custody, control or possession, whether in their completed forms or not.

16.2 Upon the issue of a suspension notice pursuant to Clause 15.4 of the Conditions of Contract in relation to the Suspended Services for the Suspension Period specified therein ("Suspension"):

- (a) the Contract in relation to the Suspended Services shall be of no force and effect during the Suspension Period but subject to the same provisions set out in Clauses 16.1(a)(i) to (iii) above save that references therein to Termination shall mean Suspension;
- (b) the Contract in relation to the Suspended Services shall resume immediately upon expiry of the Suspension Period (or such other date as the Government may subsequently stipulate by varying the Suspension Period by serving at least fourteen (14) days' notice on the Contractor);
- (c) unless and to the extent waived by the Government Representative in writing, Clauses 16.1(b) and (e) shall apply in the case of a Suspension save that references therein to Termination shall mean Suspension;
- (d) the Government has no obligation to pay any outstanding Contract Price (or any part thereof) to the Contractor for any Suspended Services performed but unpaid as at the date when the Suspension comes into effect or at any time during the Suspension Period; and any such obligation shall only resume as the Contract resumes pursuant to Clause 16.2(b) above but strictly on and subject to the terms and conditions of the Contract; any Contract Price paid in advance of the Suspension need not be refunded; no Contract Price shall be payable during the Suspension Period; and
- (e) the Contractor shall not and has no obligation to perform its obligations in relation to the Suspended Services as at the date when the Suspension comes into effect or at any time during the Suspension Period; and save as directed by the Government in relation to any uncompleted part of the Contractor's obligations in relation to the Suspended Services as at the date of the Suspension, any such obligation will resume as the Contract resumes pursuant to Clause 16.2(b) above whereupon the Contractor shall resume its

obligations in relation to the Suspended Services strictly on and subject to the terms and conditions of the Contract.

17. Intellectual Property Rights

- 17.1 The Government shall be the exclusive owner of the Materials. Except for the Third Party Materials, all the Intellectual Property Rights in the Materials shall vest in the Government immediately upon creation. Subject to Clause 17.3 below, the Contractor warrants that such Materials shall be original works created, developed or made by or on behalf of the Contractor.
- 17.2 The Contractor shall not use or allow to be used directly or indirectly the Materials except for the performance of its obligations under the Contract or except with the prior written approval of the Government. “Use” includes any acts restricted by copyright (including reproduction) set out in sections 22 to 29 of the Copyright Ordinance (Chapter 528 of the Laws of Hong Kong).
- 17.3 If any materials of which the Intellectual Property Rights are owned by third parties and incorporated into the Materials or supplied or used by the Contractor in the performance of the Contract (“Third Party Materials”), the Contractor shall identify the Third Party Materials to the Government and keep the Government informed in writing of such Third Party Materials. The Contractor hereby grants or in case it is not empowered to do so, shall at its own costs and expenses procure that there will be granted, in favour of the Government, its authorised users, assigns and successors-in-title a royalty-free, non-exclusive, irrevocable, perpetual, worldwide and sub-licensable licence, for all purposes contemplated by the Contract, to use (including doing any of the acts restricted by copyright set out in sections 22 to 29 of the Copyright Ordinance (Chapter 528 of the Laws of Hong Kong)) the Third Party Materials.
- 17.4 The Contractor warrants that:
- (a) prior to the use and incorporation of the Third Party Materials into the Materials or in providing the Services, the Contractor shall have obtained from the third party Intellectual Property Rights owners the grant of all necessary clearances and licences for itself and its authorised users and for the Government, its authorised users, assigns and successors-in-title to use the Third Party Materials in the manner and for any of the purposes

contemplated by the Contract. The costs of the above clearances and licences shall be borne by the Contractor;

(b) the provision of the Materials, Services and Third Party Materials by the Contractor and the use or possession by the Government, its authorised users, assigns and successors-in-title of the Materials and the Third Party Materials for any of the purposes contemplated by the Contract does not and will not infringe any Intellectual Property Rights or any other rights of any person; and

(c) the exercise of any of the rights granted under the Contract by the Government, its authorised users, assigns and successors-in-title will not infringe any Intellectual Property Rights or any other rights of any person.

17.5 The Contractor hereby irrevocably waives and undertakes to procure, at its own costs and expenses, its officers, employees, agents, sub-contractors and all authors concerned to irrevocably waive all moral rights (whether past, present or future) in respect of the Materials and Third Party Materials. Such waiver shall operate in favour of the Government, its authorised users, assigns and successors-in-title and shall take effect upon creation of the Materials or upon the grant of the licence to the Government, its authorised users, assigns and successors-in-title or upon the delivery of the Third Party Materials to the Government (as the case may be).

17.6 The Contractor shall at its own costs execute or procure the execution of any further assignments, deeds, licences, documents and instruments and do or procure the doing of any further things as may be required by the Government to give full effect to Clauses 14.2, 17 and 19 of the Conditions of Contract, and shall provide all such assignments, deeds, licences, documents and instruments to the Government within fourteen (14) days from the date of the Government's written request or such longer period as may be agreed by the Government in writing.

17.7 The provisions of this Clause 17 shall survive the expiry or termination of the Contract and shall continue in full force and effect notwithstanding such expiry or termination.

18. Conflict of Interest

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

- (a) ensure that it (including each and every officer and employee of the Contractor) and each of its sub-contractors and each of their respective employees and officers 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
- (b) 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.

18.2 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.

18.3 In the Contract:

- (a) “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;
- (b) “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;
- (c) “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;
- (d) “director” means any person occupying the position of a director by whatever name called and includes a de facto or shadow director;
- (e) “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
- (f) “Restricted Group” has the meaning given to it in Clause 18.1 above.

19. Confidentiality

- 19.1 The Contractor shall not disclose and shall treat as proprietary to the Government and confidential all Government Data, any other information, report, document, plan, record, data (including any personal particulars records and personal data (as defined in the Personal Data (Privacy) Ordinance (Chapter 486 of the Laws of Hong Kong)), database, code or particulars (a) furnished or disclosed by or on behalf of the Government or

by any other person to the Contractor; or (b) otherwise is accessible by or available to the Contractor in the course of performing the Contract; or (c) any Materials, advice, recommendations, reports or any other materials containing information belonging to the Government or specifically relating to or relevant to the Services provided to the Government (collectively “Confidential Information”) in whatever form or media. The restrictions on disclosure contained in this Clause 19.1 shall not apply to the disclosure of any Confidential Information if:

- (a) such disclosure to any person employed, used or engaged by the Contractor in performing the Contract is made in circumstances where such disclosure is necessary in the reasonable opinion of the Contractor 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 Confidential Information to a third party;
- (b) such Confidential Information is already known to the recipient other than as a result of disclosure by the Contractor or any other member of the Restricted Group; or
- (c) such Confidential Information is or becomes public knowledge other than as a result of disclosure by the Contractor or any other member of the Restricted Group;
- (d) such disclosure is made in circumstances where such disclosure is required pursuant to any laws of Hong Kong or an order of a court of Hong Kong; or
- (e) with the prior consent in writing of the Government.

19.2 Without prejudice to any other provision of the Contract, the Contractor shall indemnify and keep indemnified each of the Government, its assigns successors-in-title and authorised users from and against everything stated in Clauses 14.2(a) and 14.2(b) of the Conditions of Contract which the Government (or any of its assigns or successors-in-title or authorised users) may suffer or incur directly or indirectly as a result of or arising from or in connection with or in relation to:

- (a) a breach of confidence (whether under the Contract or general law) by the Contractor or any other member of the Restricted Group;

- (b) any actions or claims made in respect of information subject to the Personal Data (Privacy) Ordinance (Chapter 486 of the Laws of Hong Kong), which action and/or claim would not have arisen but for the act, negligence or omission of the Contractor or any of its employees, agents or sub-contractors in connection with the performance of the Contract; and
- (c) any act done or omission in the performance of the Contract that contravenes the Unsolicited Electronic Messages Ordinance (Chapter 593 of the Laws of Hong Kong).

19.3 The Contractor shall use the Confidential Information solely for the purposes of the Contract. The Contractor shall not, at any time whether during the Contract Period or after the expiry or termination (howsoever occasioned) of the Contract, use, disclose, publish or reproduce, and shall procure and ensure each person who may be imparted with any Confidential Information in accordance with Clause 19.1 above shall not use, disclose, publish or reproduce, the Confidential Information for any other purposes without the Government's prior written consent.

19.4 When requested by the Government, the Contractor shall forthwith require any of its officers or employees or agents or sub-contractors as the Government may stipulate, and such other persons to whom disclosure is made pursuant to Clause 19.1 above, to execute a written undertaking in favour of the Contractor and the Government in a form to be determined by the Government agreeing to the restrictions attached to the Confidential Information set out in this Clause 19 and the Contractor agrees to provide certified true copies of any such undertakings to the Government within fourteen (14) days from the date of request by the Government. The Contractor further agrees that, if so required by the Government, it will, at its own cost and expense, take such actions and steps as are lawful and necessary to enforce such undertaking in the event of any breach thereof by anyone who has executed such undertaking.

19.5 The Contractor shall establish and maintain all necessary security measures and procedures for the safe custody of the Confidential Information in the Contractor's possession or under its control and to prevent unauthorised access thereto or use thereof.

19.6 The Contractor shall not, and shall ensure that no other member of the Restricted Group will, save to the extent necessary for performing the Contract, peruse, retain possession or control of, or duplicate, any

Confidential Information or any copy thereof (in whatsoever media or format).

- 19.7 The Contractor shall ensure that each of its employees, agents, sub-contractors, and any other persons involved in the performance of the Contract are aware of and comply with the provisions of this Clause 19 and the Official Secrets Ordinance (Chapter 521 of the Laws of Hong Kong).
- 19.8 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 19.
- 19.9 The Contractor acknowledges that any unauthorised disclosure or use of the Confidential Information can cause irreparable harm and significant injury to the Government, the degree of which may be difficult to ascertain or that damages may not be an adequate remedy. Accordingly, the Contractor agrees that the Government shall have the right to obtain and be immediately granted an injunction prohibiting any breach of this Clause 19 and/or specific performance ensuring the compliance of this Clause 19 in light of any threatened or actual breach of this Clause 19, without prejudice to its other rights and claims including those available under the Contract or at law arising from such breach.
- 19.10 Without prejudice to the generality of the foregoing provisions, the Contractor further undertakes that it will not at any time itself or through any associate or associated person or employee, sub-contractor or agent use, sell, license, sub-license, create, develop or otherwise deal in any Confidential Information.
- 19.11 The Government may request the Contractor in writing at any time that any Confidential Information disclosed pursuant to the terms of this Clause 18 and any copies, analyses, compilations and extracts thereof whether in hardcopies, electronic format or other media be returned, destroyed and/or deleted with a written statement to the effect that upon such return, destruction and/or deletion it has not retained in its possession or under its control, either directly or indirectly, any Confidential Information in whatever form and medium. The Contractor shall comply with any such request from the Government within seven (7) days of receipt of such request.

20. Probity

20.1 The Contractor acknowledges it has been reminded that:

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

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

20.3 The Government shall have the right to terminate the entire Contract pursuant to Clause 15.1 of the Conditions of Contract in the event that the Contractor or any of its officers, employees, and sub-contractors is convicted of an offence under the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong), the Theft Ordinance (Chapter 210 of the Laws of Hong Kong) or the Crimes Ordinance (Chapter 200 of the Laws of Hong Kong).

21. Insurance

21.1 Where and to the extent it is stated to be required in the Conditions of Contract, the Contractor shall effect and keep in force, and renew upon expiry, throughout the Applicable Period (as defined in Clause 21.3 below):

21.1.1 a public liability insurance policy in the joint names of (i) the Contractor and (ii) the Government, (with appropriate cross-indemnity clause as if a separate policy has been issued to each of them) subject to a maximum

indemnity amount in the sum of not less than an indemnity amount of HK\$10,000,000 or such other amount as stated in the Conditions of Contract for each claim or a series of claims arising from one event, but otherwise unlimited in the aggregate indemnity amount for all claims arising during the entire period of insurance (“public liability insurance policy”); and

21.1.2 any other insurance policies specified in the Conditions of Contract (if any);

- (a) with an insurance company authorised under the Insurance Ordinance (Chapter 41 of the Laws of Hong Kong) and on such terms and conditions as shall be approved by the Government; and
- (b) (applicable to the public liability insurance policy under Clause 21.1.1 above) against liability to pay damages and compensation for injury or death of any person and loss or damage to any property.

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

21.3 The Applicable Period for the public liability insurance policy shall be the Contract Period.

21.4 Without prejudice to Clauses 21.1 and 21.3 above, the Contractor shall effect and maintain employer’s liability insurance in respect of all its employees and other staff in accordance with all applicable laws and regulations.

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

21.6 For all insurance policies required under the Contract, the Contractor shall comply with and observe duly and punctually all terms and conditions set out in these policies. The Contractor shall be responsible for lodging claims with the insurance company and shall notify the insurance company within

the time period specified in the policy of the occurrence of any event liable to give rise to a claim covered by the relevant insurance policy.

- 21.7 If the Contractor fails to give effect to or maintain any insurance policy required under the Contract, the Government may make such alternative arrangements as it considers appropriate to protect its interests and may recover from the Contractor the costs of putting such in place and maintaining such arrangements.
- 21.8 No provision including any indemnity limit specified in any insurance policy required under the Contract shall relieve the Contractor of any liability under the Contract or be construed as a cap on the liability of the Contractor under the Contract. It is the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability under the Contract.

22. Failure to carry out Accepted Innovative Suggestions

- 22.1 The Contractor undertakes and warrants that it shall carry out all Accepted Innovative Suggestions. In the event that the Contractor fails to carry out in full any of the Accepted Innovative Suggestions in relation to during a relevant billing period, the Services or any part thereof; the Contractor shall, subject to Clauses 22.2 to 22.4, pay to the Government a sum of money calculated according to the applicable formula as liquidated damages for **EACH** of such non-complied Accepted Innovative Suggestions::
- 22.2 Liquidated damages relating to the Contractor's failure to fully carry out an Accepted Innovative Suggestion in relation the Services or any part thereof during a billing period (L1)

$$L1 = CI \times W(T) \times \frac{M(IS)}{M(TP)}$$

where $CI =$ *the Contract Price payable during the relevant billing period for the Services or any part thereof in respect of which the Contractor fails to carry out the relevant Accepted Innovative Suggestion (but the amount shall be before the deduction of liquidated damages for all non-complied Accepted Innovative Suggestions covered by this formula)*

$W(T)$ = *the weighting, expressed as a percentage, of the technical assessment in the overall marking scheme*

$M(IS)$ = *(depending on whether the non-complied Accepted Innovative Suggestion is a Pro-innovation Proposal or an ESG Proposal) the marks that would be given to one (1) Pro-innovation Proposal or ESG Proposal (as the case may be) in accordance with the Marking Scheme (regardless of whether marks are actually given during tender evaluation to the non-complied Accepted Innovative Suggestion)*

$M(TP)$ = *the maximum technical marks for the Technical Proposal in the Marking Scheme*

22.3 Liquidated damages relating to the Contractor's failure to fully carry out an Accepted Innovative Suggestion which is not related to Services (L2)

$$L2 = C2 \times W(T) \times \frac{M(IS)}{M(TP)} \times \frac{P}{CP}$$

where $C2$ = *the total amount of Contract Price payable under the whole of the Contract (but the amount shall be before the deduction of liquidated damages for all non-complied Accepted Innovative Suggestions covered by this formula)*

$W(T)$ = *the weighting, expressed as a percentage, of the technical assessment in the overall marking scheme*

$M(IS)$ = *(depending on whether the non-complied Accepted Innovative Suggestion is a Pro-innovation Proposal or an ESG Proposal) the marks that would be given to one (1) Pro-innovation Proposal or ESG Proposal (as the case may be) in accordance with the Marking Scheme (regardless of whether marks are actually given during tender evaluation to the non-complied Accepted Innovative Suggestion)*

$M(TP)$ = *the maximum technical marks for the Technical Proposal in the marking scheme*

P = duration of time expressed in number of days during which the Contractor fails to fully carry out the relevant Accepted Innovative Suggestion within the Contract Period up to the day the amount of the liquidated damages is determined for the time being or up to the end of the Contract Period as the case may be

CP = Contract Period expressed in number of days

The amount calculated in accordance with the above formula represents a reasonable sum proportionate to the Government's legitimate interest in the enforcement of the relevant Accepted Innovative Suggestion.

- 22.4 The number of Accepted Innovative Suggestions which are Pro-innovation Proposals that the Contractor fails to fully carry out and upon which liquidated damages are payable under the applicable formula in Clauses 22.2 and 22.23 above shall not exceed the minimum number of Pro-innovation Proposals to which full marks could be awarded to a Tenderer in the Marking Scheme. The same for those Accepted Innovative Suggestions which are ESG Proposals. However, there is no limit on the number of billing periods in respect of which liquidated damages shall be payable under the first formula of Clauses 22.2 and 22.3 above.
- 22.5 The aggregate amount of liquidated damages payable pursuant to the first formula and the second formula in Clauses 22.2 and 22.3 above may not exceed 5% of the Total Estimated Contract Value.
- 22.6 The liquidated damages payable pursuant to the first formula in Clauses 22.2 and 22.3 may be deducted from the Contract Price payable in respect of Services over the billing period to which the non-complied Accepted Innovative Suggestion relates or from any other Contract Price payable during the Contract Period. The Government reserves the right to demand the payment of the liquidated damages from time to time including the time when the invoice in respect of the relevant billing period is to be settled or in respect of any subsequent billing period or at the end of the Contract Period whether by setting off from any invoiced amount or from the Contract Deposit (if any). The liquidated damages payable pursuant to the second formula in Clauses 22.2 and 22.3 above may likewise be deducted in the same manner from any Contract Price or from the Contract Deposit. Alternatively, any such amount shall be settled by the Contractor in cash as per the demand of the Government within seven (7) days.

- 22.7 For the avoidance of doubt, for any billing period during which the Services should be performed that an Accepted Innovative Suggestion is not complied with, liquidated damages shall be calculated separately under Clauses 22.2 and 22.3 above for each such billing period.

23. 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.

24. Assignment and Sub-contracting

- 24.1 Unless otherwise provided for in the Contract, the Contractor shall not, without the prior written consent of the Government, assign, transfer, sub-contract or otherwise dispose of any of its interests, rights, benefits or obligations under the Contract. The performance of the Contract by the Contractor shall be personal to it.
- 24.2 Acceptance of the Tender does not signify the Government's acceptance of any sub-contracting proposal set out in the Tender.
- 24.3 The Contractor shall remain fully liable for the performance of any part of the Contract. The Contractor shall be responsible for all acts, defaults, omissions and neglect of any of its officers, employees, and employees and of any such sub-contractor as if they were its own.

25. Disclosure of Information

- 25.1 The Contractor hereby irrevocably authorises, consents and agrees that the Government may, whenever it considers appropriate or upon request by any person (written or otherwise) and without any further reference to the Contractor, disclose to any person in such form and manner as the Government considers fit:

- (a) a brief description of the Services provided or to be provided by the Contractor;

- (b) the Total Estimated Contract Price and any other fees, cost and expense payable to the Contractor pursuant to the Contract;
- (c) the engagement by the Government of the Contractor under the Contract and the name and address of the Contractor; and
- (d) the date of award of the Contract.

25.2 Disclosure may also be made by the Government under any of the circumstances specified in Paragraph 26.2 of the Terms of Tender in relation to any information concerning or relating to the Contractor or the Contract or the Services or the Materials, recorded in whatever media.

25.3 Nothing in this Clause 25 or in Paragraph 26.2 of the Terms of Tender shall imply or be construed that the Government owes any duty of confidentiality to the Contractor including without limitation in relation to any information of or concerning this Contract or the Contractor or the Services or the Materials.

26. Publicity

26.1 Whether before, during or after the expiry or termination of the Contract Period, the Contractor shall not use the Government's name in any document, publication, advertisement or publicity material without the prior written consent of the Government.

26.2 Subject to Clause 26.1 above, the Contractor shall submit to the Government Representative for approval all the proposed advertising or other publicity material relating to the Contract, the Services or other services provided or other work done in connection with the Contract wherein the Government's name is mentioned or language used from which a connection with the Government can reasonably be inferred or implied.

26.3 Notwithstanding any consent or approval given under Clause 26.1 or 26.2 above, whenever required by the Government, the Contractor shall remove all advertisement and publicity material relating to the Contract wherein the Government is mentioned or language used from which a connection with the Government can reasonably be inferred or implied and the Contractor must comply with such request.

27. Force Majeure

- 27.1 If the Contractor becomes aware of any matter likely to constitute a Force Majeure Event, the Contractor shall forthwith notify the Government in writing concerning such matter and provide the Government with all relevant information as the Government may request.
- 27.2 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.
- 27.3 Provided the Government is satisfied with the Contractor's claim of a Force Majeure Event which has materially prevented and/or will continue to materially prevent it from performing its obligations under the Contract or such part thereof, the Contract or such part thereof strictly to the extent of such prevention shall be suspended during the subsistence of such Force Majeure Event commencing from a date to be agreed between the Parties ("Suspension due to Force Majeure"). Where the Government is not so satisfied about any alleged claim of a Force Majeure Event, there shall be no Suspension due to Force Majeure. The Contractor may not allege or claim any event as a Force Majeure Event. Any failure by the Contractor to perform any obligation under the Contract shall be treated as default and entitles the Government to terminate the Contract under any applicable Subclause of Clause 15.1 or Clause 15.2 of the Conditions of Contract or partially terminate the Contract under Clause 15.5 of the Conditions of Contract.
- 27.4 Without prejudice to the generality of Clause 27.3 above, whilst the Suspension due to Force Majeure subsists:
- (a) the Contractor shall not be required to perform any part of its obligations under the Contract strictly to the extent it is materially prevented from doing so by the Force Majeure Event ("Affected Obligations") but it shall use its best endeavours to remove or mitigate the effect of the Force Majeure Event on the Affected Obligations;

- (b) the Government may make alternative arrangements for the performance of the Affected Obligations, whether by another person or otherwise, without compensation to the Contractor;
- (c) the Contractor shall not be entitled to any payment of money in respect of the Affected Obligations (if any money would have been payable in the first place);
- (d) notwithstanding anything in the Contract to the contrary, no compensation shall be payable by either Party to the other due to any losses or damage arising from the Suspension due to Force Majeure; and
- (e) the Contractor shall continue to fully and punctually perform and observe all of its other obligations which are not affected by the Force Majeure Event in full accordance with the requirements of the Contract including those obligations which are not Affected Obligations, and to that extent, all terms and conditions of the Contract shall continue to apply and be in full force and effect.

27.5 Following the issue of a notice by the Contractor under Clause 27.1 above which has led to Suspension due to Force Majeure under Clause 27.3 above, the Contractor shall keep the Government informed once every week or at such longer frequency as may be allowed by the Government, and in any event from time to time upon the request of the Government, of:

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

27.6 As soon as the relevant Force Majeure Event has terminated or otherwise that the Government considers that the Mitigation Actions have minimised the effect of the Force Majeure Event on the ability of the Contractor to perform the Affected Obligations, the Contractor shall forthwith notify the Government, or the Government may on its own, after consultation with the Contractor, by notice in writing to the Contractor, determine the appropriate date for resuming the performance of the Affected Obligations

(“Resumption Date”). The Contractor shall immediately after the termination of the Force Majeure Event or with effect from Resumption Date as determined by the Government in the aforesaid manner, resume performance of the Affected Obligations in accordance with the terms and conditions of the Contract. In the event of any disagreement between the Government and the Contractor on the appropriate Resumption Date, the Government’s decision shall be final in the absence of manifest error.

- 27.7 Should a Suspension due to Force Majeure subsists for more than thirty (30) days, the Government shall be entitled to, but is not obliged to, terminate the Contract (whether in whole or in part) pursuant to Clause 15.3 of the Conditions of Contract (depending on the election of the Government).

28. 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 15.1 of the Conditions of Contract or partially terminate this Contract pursuant to Clause 15.5 of the Conditions of Contract.

29. Notices

- 29.1 Each notice, demand, invoice, correspondence or other communication given or made under the Contract by a Party shall be in writing and delivered or sent to the other Party at the applicable postal address, facsimile number or email address mentioned in the Appendix (or such other 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).

- 29.2 Such notices, demands, invoice, correspondence or other communications shall be addressed as provided in Clause 29.1 above and, if so addressed, shall be deemed to have been duly given or made as follows:

- (a) if sent by personal delivery during normal business hours on a working day, upon delivery at the address of the relevant Party;

- (b) if sent by post (regardless of whether during or outside normal business hours), two (2) working days (for any place in Hong Kong) and seven (7) working days (for any place outside Hong Kong) after the date of posting which is a working day;
- (c) if sent by facsimile during normal business hours on a working day, when despatched with confirmed receipt as evidenced by the transmission report generated at the end of the transmission of such facsimile by the facsimile machine used for such transmission; or
- (d) if sent by email during normal business hours on a working day, upon despatch unless the sender has received a non-delivery notification from his own computer system.

29.3 Notice, demand, invoice, correspondence or other communication to the Contractor from the Government in the prescribed manner specified in Clause 29.2 above specified in Appendix 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 the Appendix.

29.4 Notice, demand, correspondence or other communication to the Government shall be to the applicable contact(s) as specified in the Appendix (as the same may from time to time be revised) depending on the subject matter to which it relates.

29.5 Nothing in this Clause 29 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 29.2 above shall be deemed to have been duly given or made on the next working day following from the date of personal delivery or fax or email. Where posting is not done on a working day, it shall be deemed to have been done on the next working day after such day.

30. Entire Agreement

30.1 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.

30.2 All of the provisions of the Contract shall remain in full force and effect notwithstanding the completion of the Services (except insofar as those obligations which have been fully performed).

31. Execution of Further Documents

The Contractor shall at its own cost and expense do and execute any further things and document(s) (or procure that the same be done or executed) as may be required by the Government to give full effect to the provisions in this Contract and shall provide all such documents and materials to the Government within fourteen (14) days of the date of the Government's written request or such longer period as may be agreed by the Government in writing.

32. Variations

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

33. 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.

34. Waiver

34.1 Time shall be of the essence of the Contract but no failure, delay, forbearance or indulgence by any Party to the Contract to exercise any right, power or remedy available to it under the Contract or at law or in equity shall operate as a waiver thereof; nor shall any single or partial exercise of the same preclude any other or further exercise thereof or the exercise of any other right, power or remedy. A right or a remedy of each Party under

the Contract shall be cumulative and not exclusive of any other rights, power or remedies provided by the Contract, at law or in equity. Without limiting the foregoing, no waiver by any Party of any breach by the other Party of any provision hereof shall be deemed to be a waiver of any subsequent breach of that or any other provision hereof.

- 34.2 Without prejudice to the generality of Clause 34.1 above, any right of termination of the Contract or any other right, power or remedy of whatsoever nature conferred upon the Government under the Contract shall be exercisable by it in addition to and without prejudice to any other rights and remedies available to it under the Contract or at law (and, without prejudice to the generality of the foregoing, shall not extinguish any right to damages to which the Government may be entitled in respect of the breach of the Contract) and no exercise or failure to exercise a right of termination shall constitute a waiver by the Government of any other right, power or remedy.

35. Admission of Contractor Personnel to Government Premises

- 35.1 Upon request from time to time by the Government, the Contractor shall provide to the Government a list of the names, posts, staff identity card numbers, addresses and telephone numbers of all Contractor's employees, agents, sub-contractors and those employees and agents of the aforementioned sub-contractors (collectively "Relevant Personnel") 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.
- 35.2 The Contractor shall ensure that while any of the Relevant Personnel is on the Government's premises they will conform to the Government's normal codes of staff and security practice.
- 35.3 The Government Representative reserves the right to refuse to admit to the Government premises any person, whose admission would be, in the reasonable opinion of the Government Representative, undesirable.

- 35.4 In the event that the Contractor fails to comply with this Clause 35 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 15.1 of the Conditions of Contract.

36. Assistance in Legal Proceedings

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

37. 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.

38. Joint and Several Obligations

38.1 Where the Contractor comprises more than one person, each such person assumes all obligations of the Contractor under or arising from or in connection with or in relation to the Contract on a joint and several basis.

38.2 A reference to the Contractor in this Contract is a reference to each of the persons constituting the Contractor.

39. Governing Law and Jurisdiction

39.1 The Contract shall be governed by and construed in accordance with the laws of Hong Kong.

39.2 The Parties hereby agree to submit to the exclusive jurisdiction of the courts of Hong Kong in relation to any matters or dispute arising out of or in connection with or in relation to the Contract.

40. Contracts (Rights of Third Parties) Ordinance

The Parties hereby declare that nothing in this Contract confers or purports to confer on any person not being a Party to this Contract any benefit or any right to enforce any term of this Contract under or pursuant to or for the purposes of the Contracts (Rights of Third Parties) Ordinance (Chapter 623 of the Laws of Hong Kong).

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

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

42. Order of Precedence

42.1 In the event of, and only to the extent of, any conflict or inconsistency amongst or between any provisions of the Contract, the following order of precedence shall be applied, but only in so far as is necessary to resolve that conflict or inconsistency:

- (a) Service Specifications;
- (b) Conditions of Contract;
- (c) Schedules;
- (d) Terms of Tender;
- (e) Interpretation;
- (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.

43. Delegation of Powers

The Government Representative may delegate any of the powers and functions vested in him/her to other officers. If the Contractor is dissatisfied with a decision or instruction of any such officer the matter shall be referred to the Government Representative for a ruling.

44. Replacement of Staff

44.1 No change in the Project Team shall be made without prior written approval from the AFCD. The Contractor shall ensure that the substitute or replacement is no less qualified in terms of relevant experience and qualifications than the outgoing individual as at the date of its proposed joining of the Project Team and is available at the relevant time to act as replacement or substitute. The Contractor shall forward the relevant resume and documentary proof of the proposed substitute or replacement to the AFCD for approval as soon as staff change is anticipated. In the event that the AFCD, in its judgment, is not satisfied with any of the nominated substitutes or replacements, the Contractor must forthwith provide other candidates to the Government Representative until a suitable replacement is selected. The replacement member proposed would be contractually binding in terms of qualifications and experience throughout the contract period; and the replacement, if any, should be on par with or better than the binding offer.

44.2 The AFCD shall be entitled to require on reasonable grounds the removal or replacement of the member of the Project Team in the provision of the Services. The Contractor shall replace the member of the Project Team so removed as soon as possible by a competent substitute that fulfils all relevant requirements stipulated in the Contract. The substitute shall be no less qualified than the outgoing member of the Project Team or sub-contractor in terms of relevant experiences and qualifications. The Contractor must be solely responsible for all direct, indirect and consequential costs or losses that may arise from such substitution or replacement.

44.3 The AFCD shall in no circumstances be liable either to the Contractors, its outgoing member of the Project Team in respect of any liability, loss or damage occasioned by such removal.

45. Transport

The Contractor is required to provide all the necessary transportation covering any locations and proper transport of fisheries resources samples (e.g. with ice) for the execution of the Contract.

46. Survey Record and Report

The Contractor shall keep a record of attendance of the Contractor's personnel during the field surveys and laboratory sessions in two separate records. For the field surveys, the record shall show the number of Contractor's Personnel who are on duty together with their names, survey location, vessel and gears used and the starting and ending times for the survey. For the laboratory sessions, the record shall show the number of Contractor's personnel who are on duty together with their names, date of laboratory session and the arrival and departure times of the Personnel.

47. Execution of Further Documents

The Contractor shall at its own cost and expense do and execute any further things and documents (s) (or procure that the same be done or executed) as may be required by the Government to give full effect to the provisions in this Contract and shall provide all such documents and materials to the Government within fourteen (14) days of the date of the Government's written request or such longer period as may be agreed by the Government in writing.

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PART 3 - SERVICE SPECIFICATIONS

1. Purpose

The Government acting through the AFCD wishes to appoint a Contractor to implement and refine the long-term fisheries resources monitoring programme of Hong Kong (“LTMP”).

2. Background of the Services

- 2.1 Long-term fisheries resources monitoring plays a crucial role in providing the fundamental data necessary for assessing and understanding changes in local fish populations, providing the basis for evaluating the effects of management actions and environmental conditions. The AFCD commissioned a consultancy study in 2019 to develop suitable options for a long-term monitoring programme to collect comprehensive and up-to-date information on the fisheries resources in Hong Kong waters. The study represents an important step towards building a comprehensive dataset and a robust scientific foundation for the long-term management of the local fisheries resources. On the basis of the study, the AFCD intends to implement the LTMP and commence the fisheries surveys at a suitable time.
- 2.2 To ensure that the LTMP meets its objectives and achieves cost effectiveness, it is imperative to periodically review the data collected from the LTMP, enhance the sampling strategies, and refine the programme in an iterative and adaptive process. This approach provides for the continuous improvement of the LTMP, enabling the Government to promptly address emerging management questions and effectively respond to evolving environmental, anthropogenic, and socio-economic conditions.
- 2.3 With the goal of implementing the LTMP and further refining the programme after its launch, AFCD seeks to engage a qualified Contractor to provide the Services as stipulated in this Service Specifications.

3. Objectives

- 3.1 The objectives of the Services are:
 - (a) To conduct fisheries resources surveys for the LTMP and to collect information for assessing the status of fisheries resources in Hong Kong waters;

- (b) To investigate the spatial and temporal patterns of local fisheries resources based on available survey data;
- (c) To interpret and report on the status of the local fisheries resources using suitable indicators and/or reference points based on available biological data;
- (d) To evaluate the overall effectiveness of the LTMP in achieving its objectives in assessing the status of fisheries resources of Hong Kong and to make recommendations for its future implementation; and
- (e) To present the findings of the Services to different audience groups and enhance the capacity of AFCD personnel in implementing the LTMP.

4. Scope of Service

- 4.1 The Contractor shall perform the tasks (each of them referred to as a “Task” with a total of five tasks) as set out under paragraphs 4.2 to 4.6 below, with a view to meeting the objectives mentioned in paragraph 3.1 above.
- 4.2 The Contractor shall conduct field surveys for territory-wide fisheries-independent monitoring of Hong Kong’s fisheries resources for assessing the status of fisheries resources in Hong Kong waters (“**Task 1**”).
 - (a) The field surveys on fisheries resources, anticipated to be commenced in the second half of 2024, shall cover a survey period of two (2) years. The Contractor shall adopt a stratified random sampling design to cover the territorial waters of Hong Kong.

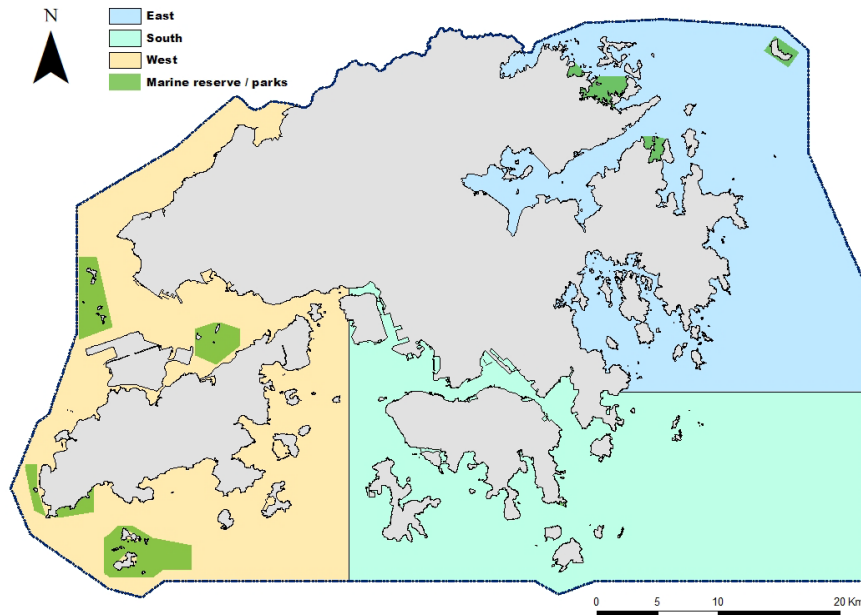


Figure 1. Map of Hong Kong waters.

- (b) The field surveys shall be conducted monthly in three regions (East, South, West) throughout the year. For each fishing method (cage trap, gillnet and longline), a minimum of 600 locations should be sampled every year, with the survey effort allocated evenly amongst months and regions as far as practicable. To carry out the field surveys for all three fishing methods within one region on a single day, it is recommended that at least two fishing vessels should be used.
- (c) The locations to be surveyed shall be randomly selected from each region prior to the field survey. On each survey day, the sampling locations for the same fishing method shall be separated by a minimum distance of 4 km. Sampling locations for different fishing methods, however, can be closer to one another (i.e. less than 4 km apart) provided the different fishing gears will not interfere with each other.
- (d) Due consideration should be given to the selection of potential sampling locations for each gear type. Factors such as habitat, depth and accessibility should be considered for the selection of relevant locations. The relevant locations within Hong Kong waters that are suitable for a specific gear type should be considered in the random sampling process. A meeting with the Government Representative shall be conducted to agree on the coverage of suitable sampling locations prior to commencement of the field surveys.
- (e) Each unit of gear shall be deployed for at least three (3) hours, with the following specifications for each fishing method:

Gear	Specifications
Cage Trap	20 cage traps (rabbitfish and/or crab cages) with a 200m set length. Rabbitfish cage shall be 50-60cm in diameter and 30-40 cm in height, with a mesh size of 25mm. Crab cage shall be 30-40cm in height, with a mesh size of 25mm. Baits used shall be standardised, consisting of a mix of fish and/or shrimp.
Gillnet	6 gillnets with a 200m set length. Each net shall be 1.5m in stretch depth, 30m in length and comprised of 3 layers, with two 20 cm stretch mesh size sandwiching a 5cm stretch mesh size.
Longline	One 200m longline containing 100 hooks (size #13-14), baited with shrimp, with 2m between hooks

- (f) All field surveys shall be properly planned and supervised. Support by local fishermen on the field surveys should be arranged wherever practicable for matters such as effective operation of fishing methods and choice of suitable sites for fishing gear deployment. Unnecessary disturbance to the water quality and marine life during the course of the surveys shall be avoided. The surveys shall be conducted in strict compliance with Fisheries Protection Ordinance (Cap. 171) as well as any other relevant laws and regulations, and the Contractor shall be responsible for applying for the research fishing permits if necessary. The fisheries resources samples collected from the field surveys shall be properly stored and delivered timely for subsequent processing and examination.
- (g) The Contractor shall confirm the detailed survey schedule and survey methodology for agreement by the Government Representative at least two (2) weeks prior to the start of the surveys.
- (h) The Government Representative shall be entitled to request from time to time amendments of the survey methodology to suit the needs and requirements of the Government.

4.3 The Contractor shall collect information of key biological parameters and conduct species identification of the fisheries resources collected from the field surveys (“**Task 2**”).

- (a) The Contractor shall collect information including but not limited to abundance, size, biomass, species diversity, reproductive status of fish species collected from the field surveys. All samples collected shall be counted and sized individually in both length and weight, and shall be recorded and identified, as far as possible, to species level. Species taken in

large quantities may be subsampled and the subsampling procedures shall be approved by the Government Representative.

- (b) Apart from biological information, all metadata relevant to the field surveys and fisheries resources collected shall be recorded, including but not limited to the survey date, duration of survey, site GPS coordinates, benthic habitat, weather condition, water depth, temperature, vessel/gear changes and other environmental parameters that may affect fisheries resources (e.g. nutrients, dissolved oxygen, harmful algal blooms, etc.).
- (c) Gross anatomical examination of the gonads shall be conducted on specimens collected to identify the reproductive status and cycles of common species.
- (d) The Contractor shall ensure that the staff involved in surveys and subsequent laboratory work are competent in providing accurate species identification for local and regional taxonomic groups that may be found in Hong Kong waters. When in doubt, the Contractor shall obtain biological samples for DNA analysis to confirm species identification and consult with expert(s) in the relevant area.
- (e) To facilitate species identification, high resolution photos of every species collected in the field surveys shall be submitted to the Government Representative together with the survey reports (as set out in paragraph 7.2 of the Deliverables). Fresh samples shall be used for the photos and the photos taken shall be of professional quality of a standard that clearly show the characteristics of the species (e.g. meristic features) according to Good Industry Practice.
- (f) In addition, the Contractor shall keep at least one specimen of each species frozen or in other preservation methods as agreed by the Government Representative and shall submit to the Government Representative every three (3) months.
- (g) All data shall be inputted in a systematic manner using standardized templates provided by the Government Representative and shall be submitted to the Government Representative at the same time as the submission of Survey Report No. 1 in paragraph 7.2(b), Survey Report No. 2 in paragraph 7.2(c) and Survey Report No. 3 in paragraph 7.2(d). The Government Representative shall be entitled to request from time to time amendments of the data templates to suit the needs and requirements of the Government.

- 4.4 The Contractor shall conduct analysis of the fisheries data collected, assess the overall spatial and seasonal variations of fisheries resources in different

water regions of Hong Kong and identify suitable indicators and/or reference points for reporting the status of local fisheries resources (“**Task 3**”).

- (a) Upon collection of data, the Contractor shall conduct standard biological analyses including but not limited to areas such as abundance, size, biomass, catch per unit effort, yield per unit effort, species diversity, proportion of adults/juveniles of fisheries resources and the reproductive patterns of common species.
- (b) The Contractor shall conduct univariate and multivariate time-series analysis, where appropriate, for the data collected in the field surveys. All data analyses shall be conducted using proper statistical software (e.g. R, SPSS, PRIMER, etc.).
- (c) The Contractor shall identify suitable indicators and/or reference points for the regular reporting of the yearly status of Hong Kong’s fisheries resources in quantitative and/or qualitative terms in the analyses.
- (d) The Contractor shall provide succinct summaries of the status of local fisheries resources in formats suitable for presentation to different audiences (e.g. academics, non-governmental organizations, professionals in the fisheries industry, the general public, international organisations, etc.).
- (e) Survey Report No. 2 in paragraph 7.2(c), Survey Report No. 3 in paragraph 7.2(d) and the Final Report in paragraph 7.2(e) shall include an overview and succinct status report in describing the status of Hong Kong’s fisheries supported by clear and concise analysis of a suite of suitable indicators and/or reference points for reporting the status of Hong Kong’s fisheries resources in quantitative and/or qualitative terms, with a view that the report is to be produced annually or every few years.

4.5 The Contractor shall evaluate the overall effectiveness of the LTMP based on all existing data and shall propose refinements to further improve its effectiveness (“**Task 4**”).

- (a) The Contractor shall conduct analyses on all existing data under the LTMP programme and evaluate the overall effectiveness of the LTMP.
- (b) The evaluation by the Contractor shall aim to ensure that the LTMP can acquire representative samples of fisheries resources in a cost-effective manner and explore whether the sampling effort may be further reduced while maintaining data quality to improve cost effectiveness.

- (c) The Contractor shall evaluate the programme in its entirety, including the sampling design, achieving representative samples at various levels, operational difficulties and solutions to overcome them and identify knowledge gaps to improve the programme.
 - (d) The Contractor shall also evaluate and advise whether the LTMP will be able to generate datasets suitable for the elucidation of trends of local fisheries resources as well as evaluating the status of local fisheries resources as more monitoring data are collected in the future.
 - (e) The Contractor shall evaluate the performance of selected indicators and/or reference points for the regular reporting of the status of the fisheries resources of Hong Kong.
 - (f) Based on the results of the analyses and evaluation, the Contractor shall identify knowledge gaps and propose recommendations on the future implementation of the LTMP and the findings in the Final Report in paragraph 7.2(e).
 - (g) The Contractor shall propose a brief strategy roadmap on necessary actions and timeline for the establishment of a system to evaluate the status of fisheries resources in Hong Kong in the long run. The roadmap shall address questions such as the different types of data and the minimum number of years of data required for different stock assessment methods, as well as the various approaches that can be used for data-poor and multispecies fisheries, etc.
- 4.6 The Contractor shall report and present the findings of the surveys to different audience groups and provide training to AFCD personnel on the operational aspects of the LTMP (“**Task 5**”).
- (a) The Contractor shall prepare summary reports and presentation materials that are tailored to suit different audience groups.
 - (b) The Contractor shall give up to three (3) seminars for external parties (such as non-government experts, academics, fisheries organisations and stakeholders) as directed by the Government Representative to present the findings and respond to enquiries.
 - (c) The Contractor shall hold up to three (3) workshops for training AFCD personnel on conducting field surveys for fisheries resources monitoring and identification, data collection, statistical data analyses in accordance with the methodology of the LTMP as refined under this Services.

- (d) The Contractor shall provide the powerpoint and other presentation materials for agreement by the Government Representative at least two (2) weeks prior to the specific seminar / training.

5. Other Requirements

- 5.1 The Contractor shall hand over all data, photos, databases, script obtained and developed under the Services to Government Representative, which shall remain the property of AFCD. The Contractor shall not transfer them thereof to any third party, use or publish any detail of the Services without the prior written permission from Government Representative.
- 5.2 Prior to performing any parts of the Services, the Contractor shall present the proposed methodology for agreement by the Government Representative.
- 5.3 The Contractor shall take cognisance of studies, reports, projects or interface issues related to or having implications to the Services.
- 5.4 The Contractor should maintain an office in Hong Kong for the duration of the Services as far as practicable so as to manage the Services and coordinate the survey work effectively.

6. Control of Services

- 6.1 A Government Representative will act as the AFCD liaison officer between the Contractor and the Government in relation to the Services.
- 6.2 The Contractor and all members of the Project Team shall take instructions only from the Government Representative.
- 6.3 The Government Representative and the Contractor shall hold meetings at regular intervals to discuss the progress of the Services and any problems encountered. The Project Director and Project Manager shall be readily contactable throughout the Contract Period by ordinary means of communication including telephone, video conference, in-person conference and email.
- 6.4 The Contractor shall be required to attend meetings of the Advisory Committee on Agriculture and Fisheries, its sub-committees or working groups and other government departments and organizations, agencies, committees and parties as may be directed by the Government.

- 6.5 The Contractor shall provide professional advice and responses to any questions or requests made by the Government Representative, the Advisory Committee on Agriculture and Fisheries, its sub-committees or working groups in connection with the Services.
- 6.6 The Contractor shall comply with all reasonable instructions as the Government Representative may give in relation to the Services.

7. Service Schedule and Deliverables

- 7.1 The Contractor shall commence the Services on the Date of Tender Acceptance or any other date specified in the Tender Acceptance. The Services must be completed by the Contractor within **thirty (30) months** from the commencement date of the Contract Period as referred to in Clause 1.1 of the Conditions of Contract, unless otherwise agreed by the Government in writing.
- 7.2 The Contractor shall submit the deliverables to the Government Representative to the satisfaction of the Government in accordance with and as outlined in the following timetable (“**Deliverables**”):

<u>Deliverables</u>	<u>Submission Deadline</u>	<u>No. of Copies Required</u>
(a) Inception Report – outlining the project scope, technical approach, methodology, work programme, preliminary observations and confirmed Project Team members.	Within two (2) weeks after the commencement of the Contract.	Two (2) hardcopies and one (1) softcopy
(b) Survey Report No. 1 – setting out the Contractor’s progress and findings for the first three months of field surveys from performing Task 1 and Task 2 as required under paragraphs 4.2 to 4.3 above.	Within thirty (30) days after the completion of surveys for the first three months	Two (2) hardcopies and one (1) softcopy

<u>Deliverables</u>	<u>Submission Deadline</u>	<u>No. of Copies Required</u>
(c) Survey Report No. 2 – setting out the Contractor’s progress and findings for the first twelve months of field surveys from performing Task 1, Task 2 and Task 3 as required under paragraphs 4.2 to 4.4 above.	Within thirty (30) days after the completion of surveys for the first twelve months.	Two (2) hardcopies and one (1) softcopy
(d) Survey Report No. 3 – setting out the Contractor’s progress and findings for all field surveys (i.e. 24 months) from performing Task 1, Task 2 and Task 3 as required under paragraphs 4.2 to 4.4 above.	Within forty-five (45) days after the completion of 24 months of surveys.	Two (2) hardcopies and one (1) softcopy
(e) Final Report with an executive summary setting out all the findings and recommendations from performing Task 1, Task 2, Task 3 and Task 4 as required under paragraphs 4.2 to 4.5 above together with the completed data files subject to requirement for Chinese version in paragraph 7.3 below.	Within thirty (30) months after the commencement of the Contract	Three (3) hardcopies and one (1) softcopy
(f) Presentation of findings and training for AFCD personnel relevant to performing Task 5 as required under paragraph 4.6 above	Within thirty (30) months after the commencement of the Contract	One (1) softcopy

7.3 All Deliverables shall be written in English apart from the executive summary which shall be written in both English and Chinese. The Chinese version of the executive summary shall be submitted within three (3) weeks upon the Contractor’s submission of the English version.

- 7.4 None of the Deliverables shall be deemed to have been completed until and unless the Government Representative has confirmed acceptance of the same in writing.

8. Staff Requirement

- 8.1 The Contractor shall deploy personnel with relevant expertise in the Project Team to perform the Services. The Project Team shall include at least five (5) members.
- 8.2 The **Project Director** of the Project Team shall assume the role of team leader and be responsible for the overall direction and management of the Services. The Project Director shall be assisted by the **Project Manager**, who shall assume the role as a liaison officer for communicating with the Government Representative.
- 8.3 The **Fisheries Statistics Specialist** of the Project Team shall be responsible for supervising all statistical analyses to be performed for the Services.
- 8.4 The Project Team shall include at least **two Technical Staff** who shall be responsible for performing technical services including but not limited to conducting field surveys, processing samples, analyzing data and performing taxonomic identification, etc.
- 8.5 All members of the Project Team must meet the relevant essential requirements under paragraph 6 of the Terms of Tender (as applicable) and be acceptable to the Government.
- 8.6 The **Project Manager** and at least **two Technical Staff** must be stationed in Hong Kong throughout the Contract Period for provision of the Services.
- 8.7 In addition to the required Project Team members described above, the Contractor may deploy additional **Project Specialist(s)** to join the Project Team for supervising specific tasks such as taxonomic identification of marine fisheries resources if deemed appropriate by the Contractor.
- 8.8 The Government reserves the right to request for replacement of the any member(s) of the Project Team.
- 8.9 The Contractor shall obtain the Government Representative's prior written approval for any proposed addition or change of any member(s) of the Project Team. The Contractor shall ensure that a substitute or replacement of any member of the Project Team is no less qualified in terms of relevant

experience and qualifications than the outgoing individual and is available at the relevant time to act as a replacement or substitute.

9. **Qualification Requirements / Essential Requirements**

9.1 Please refer to Paragraph 6 of the Terms of Tender.

10. **Desirable Requirements**

10.1 It is **preferred** for proposals to meet the **desirable requirements** set out in paragraphs 10.2 below, which would be considered favourably in the assessment of proposals.

10.2 Proposed Project Team

(a) It is preferred that the **Project Manager** should have:

- (i) recent experience in managing or conducting marine fisheries resources surveys mainly in Hong Kong waters with statistical analysis of biological survey data in the **ten (10) years** immediately preceding the Original Tender Closing Date; and
- (ii) authored or co-authored publications in peer-reviewed journals on scientific studies related to marine fish or fisheries in the **ten (10) years** immediately preceding the Original Tender Closing Date.

(b) It is preferred that the **Fisheries Statistics Specialist** should have:

- (i) expert knowledge of advanced multivariate time series analysis of long-term ecological / fisheries data as demonstrated by authored or co-authored publications in peer-reviewed journals, technical manuals, and/or textbooks in the **fifteen (15) years** immediately preceding the Original Tender Closing Date; and
- (ii) experience in undertaking marine fisheries projects undertaken for fisheries management agencies or fisheries research institutes by assuming the role of a statistician in the **fifteen (15) years** immediately preceding the Original Tender Closing Date.

(c) It is preferred that individual **Technical Staff** should have experience in performing taxonomic identification of marine fisheries resources collected by marine fisheries resources surveys in the South China Sea

in the **five (5) years** immediately preceding the Original Tender Closing Date.

- (d) It is preferred that individual **Technical Staff** should have experience in conducting statistical analysis on marine fisheries resources data collected by marine fisheries resources surveys in the **five (5) years** immediately preceding the Original Tender Closing Date.
- (e) It is preferred that one (1) member of the Project Team (i.e. a **Project Specialist** deployed by the Contractor as deemed appropriate) should have the expertise, experience, and skills in performing **taxonomic identification of marine fisheries resources** in Hong Kong or Mainland China at the expert level, as demonstrated by authored or co-authored publications on taxonomic identification of marine fisheries resources in Hong Kong or Mainland China in peer-reviewed journals, technical manuals, and/or textbooks in the **fifteen (15) years** immediately preceding the Original Tender Closing Date.

10.3 Tenderers shall take note of the following rules which will be adopted when assessing the years of experience of the Project Team members:

- (a) The aggregate years of experience will be counted in calendar days for the purpose of tender evaluation, where “an aggregate of five (5) years’ experience” is equivalent to have accumulated 1825 days (i.e. 365 days x 5) of working experience. Overlapping periods of experience under different projects would be counted once only for the purpose of calculating aggregate years of relevant experience.
- (b) The aggregate years of experience shall refer to that possessed by the same member of the Project Team (e.g. Project Director, Project Manager, etc.) but not aggregated among different individuals.
- (c) A Tenderer shall submit documentary evidence (e.g. CV, academic transcript or certificate; project title with start and end dates, brief project description, role of staff, survey locations, and project reports for relevant working experience; a copy or cover image for relevant publications; name of the agency/research institute for projects, etc.) in support of the stated experience. Academic qualifications, working experience or publications not substantiated will not be taken into account.

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PART 4 – SCHEDULES

Provision of Services to Implement the Long-Term Fisheries Resources Monitoring Programme of Hong Kong

Schedule 1: Price Schedule

**[Please complete and insert into Price Proposal (Envelope A).
This page should NOT be included in the Technical Proposal]**

Name of Tenderer in English (in Block Letters): _____

Part A1 – Total Estimated Contract Price

Description	Total Estimated Contract Price (HK\$)
Provision of Services to Implement the Long-Term Fisheries Resources Monitoring Programme of Hong Kong	

Name of Tenderer in English (in Block Letters): _____

Part A2 – Breakdown of Total Estimated Contract Price

Please provide the breakdown of the Total Estimated Contract Price into staff costs and other costs and expenses for the Services as required in the Tender:

Part I – Staff Costs

Project Team Members	Fee per man-hour (HK\$)	No. of man-hours	Amount (HK\$)
Project Director			
Project Manager			
Fisheries Statistics Specialist			
Technical Staff (1)			
Technical Staff (2)			
Project Specialist (if applicable)			
Other Staff / Specialist (if applicable)			
Sub-total (Part I – Staff Costs) (HK\$)			

Part II – Other Costs and Expenses

Other Service Costs (Please specify, if any)	Amount (HK\$)
E.g. Costs and expenses related to field surveys, data processing and analysis, reporting, transportation and miscellaneous tasks (please specify, if any)	
Sub-total (Part II – Other Costs and Expenses) (HK\$)	
Total (Part I + Part II) (HK\$) *	

*Must be equal to the Total Estimated Contract Price stated in Schedule 1 (Part A1) above.

Part B – Payment Schedule

Name of Tenderer in English (in Block Letters): _____

Subject to the other provisions of the Contract, the Contract Price shall be paid to the Contractor by instalments in accordance with the following schedule and in accordance with Clause 11 of the Conditions of Contract:

Instalment number	Services to be performed and Materials to be produced and delivered for the instalment to become payable	Amount of the instalment (in percentage of the Contract Price)
1	Inception Report as required in paragraph 7.2(a) of the Service Specifications to the satisfaction of the Government	10%
2	Survey Report No. 1 as required in paragraph 7.2(b) of the Service Specifications to the satisfaction of the Government	15%
3	Survey Report No. 2 as required in paragraph 7.2(c) of the Service Specifications to the satisfaction of the Government	20 %
4	Survey Report No. 3 as required in paragraph 7.2(d) of the Service Specifications to the satisfaction of the Government	20 %
5	Final Report with an Executive Summary as required in paragraph 7.2(e) of the Service Specifications above to the satisfaction of the Government	25 %
6	Presentation of findings and training for AFCD personnel	10%
Total:		100 %

Part C – Payment Discount

Name of Tenderer in English (in Block Letters): _____

1. Tenderers are requested to indicate in the spaces provided below the discount they would allow on the Contract Price or other amount payable under the Contract (if any) if payment is made in full within –
 - (a) **7** working days from the date of receipt of an invoice or from the due date for such payment as specified in the Contract, whichever is the later:
_____ % discount;
 - (b) **8 to 14** working days from the date of receipt of an invoice or from the due date for such payment as specified in the Contract, whichever is the later:
_____ % discount.
2. Tenderers are requested to insert the word “Nil” in the spaces provided above if they do not offer any payment discount.
3. Tenderers are requested to ensure that no more than two (2) digits after the decimal places are quoted for the above discount.
4. The period of 7 or 14 working days for payment discount shall be calculated from the date of the receipt by the Government of an invoice or the date the relevant payment falls due, whichever is the later.
5. Any payment discount offered by a Tenderer will not be taken into consideration in the tender price assessment, exception when there is more than one Tenderer fully capable of undertaking the Contract and the same Total Estimated Contract Price.

Part D – Contract Deposit Reply Slip

For the purpose of Clause 20.3 of the Terms of Tender,

I/We select to furnish the Contract Deposit by *Cheque / Cashier's Order / Banker's Guarantee.

*Delete whichever if not applicable.

If the Tenderer elects for payment to be made by telegraphic transfer, please provide the following details:

- (a) Banker's Name : _____
- (b) Banker's Address : _____
- (c) Name of Account : _____
- (d) Account Number : _____
- (e) Sorting Code : _____

**Provision of Services to Implement the Long-Term Fisheries Resources
Monitoring Programme of Hong Kong**

Schedule 2: Information Schedule

[Please complete and insert into Technical Proposal (Envelope B)]

Name of Tenderer in English: _____

Table A – Information and documents required under Paragraph 7.1 of the Terms of Tender:

(a)	Name of the Tenderer	
(b)	Principal place of business of the Tenderer (in address form)	
(c)	Type of business entity of the Tenderer	company / sole proprietorship / partnership / statutory corporation /others* (*Please delete whichever is not applicable.)
(d)	Shareholders/partners/proprietor of the Tenderer and their percentage of ownership	
(e)	Length of business experience (in years)	
(f)	Names of the following: (i) managing director and other directors; (ii) partners; or (iii) sole proprietor	
(g)	Place and date of incorporation or formation	
(h)	Business profile information of the Tenderer including the number and location of full time/contract employees, core business strategies and strength, and industry expertise	

(i)	Names and addresses of banks which are prepared to provide references or other relevant financial data which indicate the financial viability of the Tenderer	
(j)	A copy of a valid Business Registration Certificate issued under the Business Registration Ordinance (Chapter 310 of the Laws of Hong Kong) or documentary evidence showing that the Tenderer is exempted from business registration under the Business Registration Ordinance (Chapter 310 of the Laws of Hong Kong); or if the Tenderer does not carry on business in Hong Kong, the equivalent documents issued by the place of business of the Tenderer	Please attach if applicable.
(k)	(if the Tenderer is a company) a copy of the Memorandum (if any) and Articles of Association, Certificate of Incorporation, Certificate of Change of Name (if any) or equivalent documents issued by the authority of the place of incorporation of the Tenderer	Please attach if applicable.
(l)	(if the Tenderer is a company incorporated in Hong Kong or is registered as a non-Hong Kong company under the Companies Ordinance, Chapter 622 of the Laws of Hong Kong) a copy of the latest annual return filed with the Companies Registry and all subsequent filings since the latest annual return; or (if not) the equivalent documents	Please attach if applicable.

	issued by the authority of the place of incorporation of the Tenderer	
(m)	Employee's Compensation Insurance Policy Name of insurer: Policy no.: Expiry date:	
(n)	A certified extract of board resolution or other documentary evidence acceptable to the Government demonstrating authorisation and approval for the submission of its Tender. This requirement shall always be applicable to a Tenderer which is a company regardless of the mode of submission of Tender. In the case that a Tenderer is a sole proprietorship or a partnership, documentary evidence acceptable to the Government demonstrating authorisation and approval for the submission of its Tender shall also be required if (a) (in the case of Paper-based Tendering), the signatory of the Offer to be Bound, or (b) in the case of Electronic Tendering using an Identification Code, the person submitting the Tender, is not the sole proprietor or a partner (or a general partner in the case of a limited partnership) (as the case may be)	Please attach if applicable.

Table B – Information required under Paragraph 8 of the Terms of Tender:

Name of Tenderer in English (in Block Letters): _____

(a)	Name of the proposed sub-contractor	
(b)	Place of business of the proposed sub-contractors (in address form)	
(c)	Obligations proposed to be performed by the proposed sub-contractor	

Table C – Information required under Paragraph 16.2 of the Terms of Tender:

Name of Tenderer in English (in Block Letters): _____

* **(a)** I/We confirm that none of the events as mentioned in Paragraphs 16.1(a) to 16.1(k) of the Terms of Tender has ever occurred.

* **(b)** I/We confirm that the following event(s) as mentioned in Paragraphs 16.1(a) to 16.1(k) of the Terms of Tender has occurred:

Date	Details of the Event

Note: * Please delete whichever is not applicable.

Table D – Information required under Clause 6 of the Terms of Tender and Clause 10 of the Service Specifications

Tenderers are required to state the experience¹ of each individual member of the Project Team and provide documentary evidence² as set out hereunder. The submitted information will form part of the Tender to be evaluated by the Government. **Supplementary sheet(s) may be used if necessary.**

(a) Experience of Project Director

- ☐ **Name of proposed Project Director:** _____
- ☐ **Aggregate year(s) of relevant experience:** _____ day(s)/365 days = _____ year(s)
- ☐ Please provide documentary evidence proving that the **Project Director** has a postgraduate degree in fisheries science, marine biology, or related subjects as required in **Paragraph 6.4(a)(ii) of the Terms of Tender**.
- ☐ Please provide details of the experience of the **Project Director** with reference to **Paragraph 6.4(a)(i) of the Terms of Tender** in chronological order (old to new):

Number	Start Date (dd/mm/yy)	End Date (dd/mm/yy)	Duration in Days	Project Title	Project Role
1					
2					
3					

¹ The aggregate years of experience will be counted in calendar days for the purpose of tender evaluation, where “an aggregate of five (5) years’ experience” is equivalent to have accumulated 1825 days (i.e. 365 days x 5) of working experience. Please provide the specific start and end date of projects. Overlapping periods of experience under different projects would be counted once only for the purpose of calculating aggregate years of relevant experience.

² If the Tenderer fails to submit documentary proof to substantiate its claim for qualification and experience, the Government may evaluate the experience on an as-is basis.

Number	Start Date (dd/mm/yy)	End Date (dd/mm/yy)	Duration in Days	Project Title	Project Role
4					
5					
6					
7					
8					
9					
10					
11					
12					

(b) **Experience of Project Manager**

- ☐ **Name of proposed Project Manager:** _____
- ☐ **Aggregate year(s) of relevant experience:** _____ day(s)/365 days = _____ year(s)
- ☐ Please provide documentary evidence proving that the **Project Manager** has a postgraduate degree in fisheries science, marine biology, or related subjects as required in **Paragraph 6.4(b)(ii) of the Terms of Tender**.
- ☐ Please provide details of the experience of the **Project Manager** with reference to **Paragraph 6.4(b)(i) of the Terms of Tender** and **Paragraph 10.2(a)(i) of the Service Specifications** in chronological order (old to new):

Number	Start Date (dd/mm/yy)	End Date (dd/mm/yy)	Duration in Days	Project Title	Surveys mainly³ in Hong Kong waters	Project Role
1					<input type="checkbox"/> Yes <input type="checkbox"/> No	
2					<input type="checkbox"/> Yes <input type="checkbox"/> No	
3					<input type="checkbox"/> Yes <input type="checkbox"/> No	
4					<input type="checkbox"/> Yes <input type="checkbox"/> No	

³ Only experience of projects including marine fisheries resources surveys with at least 80% of the survey locations in Hong Kong waters will be counted for the purpose of tender evaluation. Please refer to Note 9 in Appendix E of the Terms of Tender for details.

5					<input type="checkbox"/> Yes <input type="checkbox"/> No	
6					<input type="checkbox"/> Yes <input type="checkbox"/> No	
7					<input type="checkbox"/> Yes <input type="checkbox"/> No	
8					<input type="checkbox"/> Yes <input type="checkbox"/> No	
9					<input type="checkbox"/> Yes <input type="checkbox"/> No	
10					<input type="checkbox"/> Yes <input type="checkbox"/> No	
11					<input type="checkbox"/> Yes <input type="checkbox"/> No	
12					<input type="checkbox"/> Yes <input type="checkbox"/> No	

- ☐ Number of publications on scientific studies related to marine fish or fisheries: _____ publications
- ☐ Please provide full citation of the relevant publication in the table below, and submit documentary evidence (such as the abstract or a full copy of the journal paper) that the **Project Manager** has authored or co-authored the relevant publications as stipulated in **Paragraph 10.2(a)(ii)** of the **Service Specifications**:

Number	Full Citation of Relevant Publication
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	

(c) **Experience of Fisheries Statistics Specialist**

- ☐ **Name of proposed Fisheries Statistics Specialist:** _____
- ☐ **Aggregate year(s) of relevant experience:** _____ day(s)/365 days = _____ year(s)
- ☐ Please provide documentary evidence proving that the **Fisheries Statistics Specialist** has a postgraduate degree in statistics, mathematics, or related subjects as required in **Paragraph 6.4(c)(ii)** in the **Terms of Tender**.
- ☐ Please provide details of the experience of the **Fisheries Statistics Specialist** with reference to **Paragraph 6.4(c)(i)** of the **Terms of Tender** and **Paragraph 10.2(b)(ii)** of the **Service Specifications** in chronological order (old to new):

Number	Start Date (dd/mm/yy)	End Date (dd/mm/yy)	Duration in Days	Project Title	For fisheries management agencies/ fisheries research institutes	Project Role
1					<input type="checkbox"/> Yes <input type="checkbox"/> No	
2					<input type="checkbox"/> Yes <input type="checkbox"/> No	
3					<input type="checkbox"/> Yes <input type="checkbox"/> No	
4					<input type="checkbox"/> Yes <input type="checkbox"/> No	
5					<input type="checkbox"/> Yes <input type="checkbox"/> No	

6					<input type="checkbox"/> Yes <input type="checkbox"/> No	
7					<input type="checkbox"/> Yes <input type="checkbox"/> No	
8					<input type="checkbox"/> Yes <input type="checkbox"/> No	
9					<input type="checkbox"/> Yes <input type="checkbox"/> No	
10					<input type="checkbox"/> Yes <input type="checkbox"/> No	
11					<input type="checkbox"/> Yes <input type="checkbox"/> No	
12					<input type="checkbox"/> Yes <input type="checkbox"/> No	

- ☐ Number of publications related to advanced multivariate analysis of long-term ecological/fisheries data:_____ publications
- ☐ Please provide full citation of the relevant publication in the table below and submit documentary evidence (such as the abstract or a full copy of the journal paper, cover image or other information of the technical manuals/textbooks) that the **Fisheries Statistics Specialist** has authored or co-authored the relevant publications as stipulated in **Paragraph 10.2(b)(i)** of the **Service Specifications**.

Number	Full Citation of Relevant Publication
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	

(d) **Experience of Technical Staff (1)**

- ☐ **Name of proposed Technical Staff (1):** _____
- ☐ **Aggregate year(s) of relevant experience:** _____ day(s)/365 days = _____ year(s)
- ☐ Please provide documentary evidence proving that the **Technical Staff (1)** has a university degree in fisheries science, marine biology, or related subjects as required in **Paragraph 6.4(d)(ii) in the Terms of Tender**.
- ☐ Please provide details of the experience of the **Technical Staff (1)** with reference to **Paragraph 6.4(d)(i) in the Terms of Tender** as well as **Paragraphs 10.2(c) and 10.2(d) of the Service Specifications** in chronological order (old to new):

Number	Start Date (dd/mm/yy)	End Date (dd/mm/yy)	Duration in Days	Project Title	Project Role
1					<input type="checkbox"/> Field work <input type="checkbox"/> Taxonomic identification <input type="checkbox"/> Statistical analysis
2					<input type="checkbox"/> Field work <input type="checkbox"/> Taxonomic identification <input type="checkbox"/> Statistical analysis
3					<input type="checkbox"/> Field work <input type="checkbox"/> Taxonomic identification <input type="checkbox"/> Statistical analysis
4					<input type="checkbox"/> Field work <input type="checkbox"/> Taxonomic identification <input type="checkbox"/> Statistical analysis
5					<input type="checkbox"/> Field work <input type="checkbox"/> Taxonomic identification <input type="checkbox"/> Statistical analysis

6					<input type="checkbox"/> Field work <input type="checkbox"/> Taxonomic identification <input type="checkbox"/> Statistical analysis
7					<input type="checkbox"/> Field work <input type="checkbox"/> Taxonomic identification <input type="checkbox"/> Statistical analysis
8					<input type="checkbox"/> Field work <input type="checkbox"/> Taxonomic identification <input type="checkbox"/> Statistical analysis
9					<input type="checkbox"/> Field work <input type="checkbox"/> Taxonomic identification <input type="checkbox"/> Statistical analysis
10					<input type="checkbox"/> Field work <input type="checkbox"/> Taxonomic identification <input type="checkbox"/> Statistical analysis
11					<input type="checkbox"/> Field work <input type="checkbox"/> Taxonomic identification <input type="checkbox"/> Statistical analysis
12					<input type="checkbox"/> Field work <input type="checkbox"/> Taxonomic identification <input type="checkbox"/> Statistical analysis

(e) **Experience of Technical Staff (2)**

- ☐ **Name of proposed Technical Staff (2):** _____
- ☐ **Aggregate year(s) of relevant experience:** _____ day(s)/365 days = _____ year(s)
- ☐ Please provide documentary evidence proving that the **Technical Staff (2)** has a university degree in fisheries science, marine biology, or related subjects as required in **Paragraph 6.4(d)(ii) in the Terms of Tender**.
- ☐ Please provide details of the experience of the **Technical Staff (2)** with reference to **paragraph 6.4(d)(i) in the Terms of Tender** as well as **Paragraphs 10.2(c) and 10.2(d) of the Service Specifications** in chronological order (old to new):

Number	Start Date (dd/mm/yy)	End Date (dd/mm/yy)	Duration in Days	Project Title	Project Role
1					<input type="checkbox"/> Field work <input type="checkbox"/> Taxonomic identification <input type="checkbox"/> Statistical analysis
2					<input type="checkbox"/> Field work <input type="checkbox"/> Taxonomic identification <input type="checkbox"/> Statistical analysis
3					<input type="checkbox"/> Field work <input type="checkbox"/> Taxonomic identification <input type="checkbox"/> Statistical analysis
4					<input type="checkbox"/> Field work <input type="checkbox"/> Taxonomic identification <input type="checkbox"/> Statistical analysis
5					<input type="checkbox"/> Field work <input type="checkbox"/> Taxonomic identification <input type="checkbox"/> Statistical analysis

Number	Start Date (dd/mm/yy)	End Date (dd/mm/yy)	Duration in Days	Project Title	Project Role
6					<input type="checkbox"/> Field work <input type="checkbox"/> Taxonomic identification <input type="checkbox"/> Statistical analysis
7					<input type="checkbox"/> Field work <input type="checkbox"/> Taxonomic identification <input type="checkbox"/> Statistical analysis
8					<input type="checkbox"/> Field work <input type="checkbox"/> Taxonomic identification <input type="checkbox"/> Statistical analysis
9					<input type="checkbox"/> Field work <input type="checkbox"/> Taxonomic identification <input type="checkbox"/> Statistical analysis
10					<input type="checkbox"/> Field work <input type="checkbox"/> Taxonomic identification <input type="checkbox"/> Statistical analysis
11					<input type="checkbox"/> Field work <input type="checkbox"/> Taxonomic identification <input type="checkbox"/> Statistical analysis
12					<input type="checkbox"/> Field work <input type="checkbox"/> Taxonomic identification <input type="checkbox"/> Statistical analysis

(f) **Experience of Project Specialist (if proposed by the Tenderer for the Contract)**

- ☐ **Name of proposed Project Specialist:** _____
- ☐ Number of publications on taxonomic identification of fisheries resources: _____ publications
- ☐ Please provide full citation of the relevant publication in the table below and submit documentary evidence (such as the abstract or a full copy of the journal paper, cover image or other information of technical manuals/textbooks) that the proposed **Project Specialist** has authored or co-authored the relevant publications as stipulated in **paragraph 10.2(e)** of the **Service Specifications**.

Number	Full Citation of Relevant Publication
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	

Table E – Details of Bank Account

Unless otherwise agreed by the Government, payment will be made to the Contractor's bank account. A Tenderer is requested to provide the following information for payment:

- (a) Banker's Name : _____
- (b) Banker's Address : _____
- (c) Name of Account : _____
- (d) Account Number : _____
- (e) Sorting Code : _____

**Provision of Services to Implement the Long-Term Fisheries Resources
Monitoring Programme of Hong Kong**

Schedule 3: Execution Plan

[Please complete and insert into Technical Proposal (Envelope B)]

Name of Tenderer in English: _____

The Execution Plan shall contain a field survey plan, a data collection plan, a data analysis plan, a programme evaluation plan and a presentation and training plan, with the items stated under Note 1 to Note 5 of the Marking Scheme (Appendix E of the Terms of Tender). The Execution Plan shall cover the following aspects: demonstration of understanding of the service objectives; identification of key issues of the Services; identification of project constraints and special requirements; proposed technical approach and methodology for achieving the objectives and performing the tasks of the Services; proposed work programme for major tasks and submission of Deliverables; and the proposed Project Team members (paragraph 6 of Terms of Tender) for performing the Services as detailed in the Service Specifications. The submitted information will form part of the Tender to be evaluated by the Government. Any information that may assist in the assessment of the proposal apart from those requested may be included here. Please use supplementary sheets if necessary and note the requirements for the submission for the Technical Proposal detailed in Clause 5 in Appendix E of the Terms of Tender.

Provision of Services to Implement the Long-Term Fisheries Resources Monitoring Programme of Hong Kong

Schedule 4: Innovative Suggestion Schedule

[Please complete and insert into Technical Proposal (Envelope B)]

Tenderers should provide details of the proposed Pro-innovation Proposals and ESG Proposals in the following tables. If there is not enough space, please use supplementary sheets if necessary. Please refer to Notes 7 and 8 in Appendix E of the Terms of Tender.

Assessment Criterion (1) – Field survey plan

Pro-innovation Proposals – Improving the Delivery of the Services

Item No	Pro-innovation proposals	Brief description on improvements/benefits/positive values that can bring about	Implementation Details	Supporting documents (if any)

Name of Tenderer in English (in Block Letters): _____

Assessment Criterion (3) – Data analysis plan**Pro-innovation Proposals – Improving the Delivery of the Services**

Item No	Pro-innovation proposals	Brief description on improvements/benefits/positive values that can bring about	Implementation Details	Supporting documents (if any)

Assessment Criterion (4) – Programme evaluation plan**Pro-innovation Proposals – Improving the Delivery of the Services**

Item No	Pro-innovation proposals	Brief description on improvements/benefits/positive values that can bring about	Implementation Details	Supporting documents (if any)

ESG Proposals – Measures to Improve Environmental Protection, Sustainability or Governance or Social Responsibility which may but need not be directly relevant to the Services

Item No	ESG proposals ⁴ (E) for environmental protection or sustainability (S) for social responsibility (G) for governance	Brief description on improvements/benefits/positive values that can bring about	Implementation Details	Supporting documents (if any)

Name of Tenderer in English (in Block Letters): _____

⁴ Please identify whether the ESG Proposal is for environmental protection or sustainability OR for social responsibility OR for governance by filling in (E) or (S) or (G) as the case may be. Unless otherwise expressly specified, it shall be assumed that the ESG Proposal shall apply to all of the Services.

**Provision of Services to Implement the Long-Term Fisheries Resources Monitoring
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Schedule 5: Non-collusive Tendering Certificate

[Please complete and insert into Technical Proposal (Envelope B)]

To: the Government

Dear Sir/ Madam,

Non-collusive Tendering Certificate

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

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

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

Disclosure of subcontracting

4. Without prejudice to other requirements set out in the Tender Documents concerning sub-contracting arrangement, in particular, the requirement to seek the Government's prior written approval before sub-contracting, I/We understand that I/we 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 Paragraph 29.1 of the Terms of Tender, the Government may exercise any of the rights under Paragraphs 29.3 to 29.5 of the Terms of Tender in addition to and without prejudice to any other rights or remedies available to it against me/us.

6. Under the Competition Ordinance (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 :

Provision of Services to Implement the Long-Term Fisheries Resources Monitoring Programme of Hong Kong

Schedule 6: The Completeness Check Schedule

[Please complete and insert into Technical Proposal (Envelope B)]

Name of Tenderer in English (in Block Letters): _____

The Tenderer is requested to check and ensure that all of the following proposals, documents and information are submitted with its Tender. The Tenderer shall note **Paragraph 3.4 of the Terms of Tender** that failure to submit the proposals, documents and information as stipulated therein (viz., items (a), (b), parts of (c), and (d) specified below) in the Specified Tender Box as specified in the “Lodging of Tender” section of the Tender Form before the Tender Closing Time will lead to the Tender not being considered further. Please check the box below to confirm that the item specified opposite is indeed submitted.

☐

(a) In the case of Paper-based Tendering, an Offer to be Bound set out in Part 5 of the Tender Form (English or Chinese version) 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 5 of the Tender Form or a printed copy from a softcopy of Part 5 of the Tender Form or a photocopy or a scanned copy of such hardcopy or printed copy. Any manner of reproduction of Part 5 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.

☐

(b) The duly completed Price Schedule (Schedule 1) in Hong Kong dollars or a Permissible Currency (see Paragraph 5 of the Terms of Tender).

☐

(c) The duly completed Information Schedule (Schedule 2).

☐

(d) Execution Plan (Schedule 3).

- ☐ (e) Innovative Suggestion Schedule (Schedule 4)
- ☐ (f) The signed Non-collusive Tendering Certificate (Schedule 5) for Paper-based Tendering (see Paragraph 29.2 of the Terms of Tender).
- ☐ (g) The Completeness Check Schedule (Schedule 6)
- ☐ (h) A certified extract of board resolution or other documentary evidence acceptable to the Government demonstrating authorisation and approval for the submission of its Tender. This requirement shall always be applicable to a Tenderer which is a company regardless of the mode of submission of Tender. In the case that a Tenderer is a sole proprietorship or a partnership, documentary evidence acceptable to the Government demonstrating authorisation and approval for the submission of its Tender shall also be required if (a) (in the case of Paper-based Tendering), the signatory of the Offer to be Bound, or (b) in the case of Electronic Tendering using an Identification Code, the person submitting the Tender, is not the sole proprietor or a partner (or a general partner in the case of a limited partnership) (as the case may be).
- ☐ (i) Appendix A to the Terms of Tender (Contact Details).
- ☐ (j) Appendix B to the Terms of Tender (Method of providing the Contract Deposit)
- ☐ (k) Appendix C to the Terms of Tender (Form of Banker's Guarantee)