

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

Tender Ref. : AFCD/SET2026

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 Launches Services for Operations of Agriculture, Fisheries
and Conservation Department (Tender Ref.: AFCD/SET2026)”**

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

must be deposited in the Government Logistics Department

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

before 12:00 noon (time) on 23 January 2026 (date) (Hong Kong time). Late Tenders will not be accepted.

PART I — INTERPRETATION

PART II — TERMS OF TENDER

PART III — CONDITIONS OF CONTRACT

PART IV — SCHEDULES

ANNEXES

PART V — OFFER TO BE BOUND

PART VI — MEMORANDUM OF ACCEPTANCE

Dated this 19 day of December 20 25



(CHUN Ka-him)
Government Representative

**Tender for the Provision of Launches Services for Operations of Agriculture,
Fisheries and Conservation Department
(AFCD/SET2026)**

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PART I
INTERPRETATION

1. In the Tender Documents and the Contract, unless the context otherwise requires, the following expressions shall bear the same meanings as set out below:-

“Accepted Innovative Suggestions”	means those innovative suggestions proposed by the Tenderer and accepted by the Government in the version attached to the Memorandum of Acceptance for identification purposes;
“AFCD”	means the Agriculture, Fisheries and Conservation Department of the Government;
“Basic Monthly Fee”	means the basic monthly rate of the Launches as quoted in Schedule 1 of Part IV- Schedules
“Contract Period”	means the contract period of the Contract in accordance with Clause 1.1 of the Conditions of Contract;
“Contract Value”	means the contract value payable by the Government to the Contractor for the Contractor’s performance of the Services in accordance with the terms and conditions of the Contract;
“Contractor”	means the Tenderer whose Tender for the Contract is accepted by the Government;
“Electronic Tendering”	means the making and submission of a Tender through the e-Tender Box whether through the use of a digital certificate or through the use of an Identification Code;
“Estimated Total Contract Value”	means the estimate total contract value as quoted in Schedule 1 – Price Schedule of Part IV- Schedules;
“e-Tender Box” or “ETB”	means the Electronic Tendering platform of the information technology system known as “Procurement and Contract Management System” or “PCMS” of the GLD for ETB Users to view tender notices and tender documents, and prepare and submit tenders electronically whether through the use of a digital certificate or an Identification Code;
“ETB User”	means a person who has registered with the PCMS whether as a GLD supplier, or a GLD subscriber, or a person who is for the time being just an applicant to become a GLD supplier up to the time of the notification of the result of its application;

“Force Majeure Event” means any of the followings:

- (a) any supervening outbreak of war affecting Hong Kong and/or any other parts of the PRC, hostilities (whether war be declared or not), invasion, acts of foreign enemies, rebellion, revolution, military or usurped power, overthrow (whether by external or internal means) of the Government and/or the government of the PRC, civil war, riot, civil disturbances, fire if not caused or contributed to by the Contractor, its related persons (as defined in Clauses 19.6 and 19.7 of the Terms of Tender) or any employee or agent or ex-employee or ex-agent thereof, civil commotion and acts of God;
- (b) any supervening catastrophic event which is similar to the foregoing if not caused or contributed to by the Contractor, its related persons (as defined in Clauses 19.6 and 19.7 of the Terms of Tender) or any employee or agent or ex-employee or ex-agent thereof; or
- (c) any supervening epidemic outbreak in Hong Kong and/or any other part of the PRC;

and which, in any case of (a), (b) and (c) above, prevents the performance of the duties and obligations of any party hereunder;

“Government” means the Government of the Hong Kong Special Administrative Region of the People’s Republic of China;

“Government Property” means all property, equipment, data, documents, information, text, drawings, pictures, diagrams, images, sound or music, and any other materials of whatsoever nature (tangible or intangible) stored, presented or embodied in any medium, and which are provided or to be provided by the Government to the Contractor under or for the purposes of or in relation to the Contract or otherwise the Contractor has access;

“Government Logistics Department” or “GLD” means the Government Logistics Department of the Government;

“Government Representative” means the Director of Agriculture, Fisheries and Conservation acting for and on behalf of Government or any officer authorized by the Director of Agriculture, Fisheries and Conservation to act on his behalf for the purposes of the Contract;

“Hong Kong” means the Hong Kong Special Administrative Region of the People's Republic of China;

“Hourly Rate”	means the hourly rate as quoted in Schedule 1 – Price Schedule of Part IV- Schedules;
“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;
“Invitation to Tender”	means this Government’s invitation to tender for the Contract on the terms and conditions set out in these Tender Documents;
“Launches”	means the two patrol launches to be provided by the Contractor for the provision of the Services under the Contract;
“Launch 1” or “Launch 2”	means either of the Launches;
“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;
“Monthly Charge”	means the monthly remuneration payable by the Government to the Contractor for the Services provided in a particular month calculated in accordance with Clause 10 of the Conditions of Contract subject to and after any adjustment or deductions in respect of that month;
“Non-collusive Tendering Certificate”	means a document known as such and in the form attached to the Tender Form for completion and submission by the Tenderer as part of its Tender under Clause 32.2 of the Terms of Tender;
“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;
“Rates”	means the Basic Monthly Rate and Hourly Rate of the Launches as quoted in Schedule 1 of Part IV- Schedules;
“Payment Officer”	means the public officer identified as such in Clause 39.1 of Conditions of Contract
“Permissible Currency”	means US dollars or any other permissible currency in which the Rates may be quoted as specified in the Terms of Tender;

“Services”	means all services, duties, and obligations to be provided, performed and complied with by the Contractor under the Contract (including the letting of the Launches (with crew) to the Government);
“Tender”	means a tender submitted by a Tenderer in response to this Invitation to Tender;
“Tender Closing Date”	means the latest date and time specified in the Lodging of Tender as the latest date and time before which Tenders must be deposited with the Government, as the same may be extended by the Government 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 prior to the Tender Closing Date;
“Tenderer”	means a person who has submitted a Tender in response to the Invitation to Tender;
“Trip”	means the use of one Launch in one Normal Working Time; and
“working day”	unless otherwise defined, mean a day excluding Saturdays, Sundays, public holidays, and any day on which tropical cyclone signal No. 8 or above is hoisted, or black rainstorm warning or “extreme conditions after super typhoons” announced by the Government is/are in force, at any time between 9:00 am and 6:00 pm.

2. In this document, unless the context otherwise requires, the following rules of interpretation shall apply:-

- 2.1 references to statutes or statutory provisions means references to those statutes or statutory provisions as replaced, amended, modified or re-enacted from time to time, and includes all subordinate legislation made under those statutes;
- 2.2 words importing the singular includes the plural and vice versa; words importing a gender includes all other genders; references to any person includes any individual, firm, body corporate or unincorporate (wherever established or incorporated);
- 2.3 headings are inserted for ease of reference only and do not affect the construction of the Tender Documents or the Contract;
- 2.4 references to a document:
 - (a) include all schedules, appendices, annexes and other materials attached to such document; and
 - (b) mean the same as from time to time amended or supplemented in accordance

with the terms of the Tender Documents or the Contract;

- 2.5 references to "Tenderer" or "Contractor" include its permitted assigns, successors, or any persons deriving title under them;
- 2.6 references to "Government" include its assigns, successors-in-title and persons deriving title under them, regardless of whether or not any of these persons are mentioned separately in the relevant provisions;
- 2.7 references to "law" and "regulation" include any constitutional provisions, treaties, conventions, ordinances, subsidiary legislation, orders, rules and regulations having the force of law and rules of civil and common law and equity;
- 2.8 any word or expression to which a specific meaning has been attached in any part of the Tender Documents bear such meaning whenever it appears in the same and other parts of the Tender Documents;
- 2.9 references to time and dates in the Tender Documents shall be construed as Hong Kong time and dates;
- 2.10 references to a day refers to calendar day; and reference to a working day means any day other than Saturdays and Public Holidays as defined in the Interpretation and General Clauses Ordinance (Cap. 1);
- 2.11 references to a month or a monthly period mean a calendar month;
- 2.12 any negative obligation imposed on any party means if it were also an obligation not to permit or suffer the act or thing in question, and any positive obligation imposed on any party means if it were also an obligation to procure that the act or thing in question be done;
- 2.13 any act, default, neglect or omission of any employee, licensee, agent or subcontractor of the Contractor is deemed to be the act, default, neglect or omission of the Contractor;
- 2.14 words importing the whole are treated as including a reference to any part of the whole;
- 2.15 references to "writing" include typewriting, printing, photography, facsimile and the printed out version of a communication by electronic mail and other modes of representing and reproducing words in a legible form; and
- 2.16 where a general obligation in the Tender Documents or the Contract is followed by more specific obligations, the general obligation is not construed restrictively by reference to the specific obligations or deemed to be fully performed by reason only that the specific obligations have been performed.

3. All rights and powers of the Government under the Contract may be exercised by the Government Representative. If any provision of the Contract provides for a determination of any matter by the Government or the Government Representative, the determination made by the Government or the Government Representative (as the case may be) is, in the absence of manifest error, final and conclusive.

PART II
TERMS OF TENDER

1 Tender Documents

1.1 These Tender Documents identified as AFCD/SET2026 consist of one complete set of the documents in a bound booklet comprising:

- (a) Tender Form;
- (b) Part I – Interpretation;
- (c) Part II – Terms of Tender;
- (d) Part III – Conditions of Contract;
- (e) Part IV – Schedules
 - (i) Schedule 1 – Price Schedule;
 - (ii) Schedule 2 – Details of Tenderer (Section A), Launches (Section B) and Crew members (Section C);
 - (iii) Schedule 3 – Essential Requirements and Checklist (Section A) and Modification Requirements and Checklist (Section B);
- (f) Annexes
 - (i) Annex 1 – Sub-Contractor’s Undertaking;
 - (ii) Annex 2 – Marking Scheme and Assessment Criteria;
 - (iii) Annex 3 – Part I - Method of providing the Contract Deposit
 - (iv) Annex 3 – Part II - Form of Bank Guarantee;
 - (v) Annex 4 – Non-collusive Tendering Certificate;
 - (vi) Annex 5 – Registration Form for the Tender Briefing;
- (g) Part V – Offer to be Bound; and
- (h) Part VI – Memorandum of Acceptance.

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

2 Invitation to Tender

2.1 Tenders are invited for the execution of the whole of the Services (including the letting of the Launches with crew to provide launch services for the operations of Agriculture, Fisheries and Conservation Department) more particularly described in the Conditions of Contract and the Schedules, subject to and in accordance with the terms and conditions set out in the Contract.

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

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

2.4 Each Tenderer should check the numbers of pages of the Tender Documents. If it finds any missing or indistinct pages, it should inform the Government Representative immediately so that the same can be rectified.

2.5 Each Tenderer will be regarded to be thoroughly conversant with all aspects of the Tender Documents (including the Contract) and in general to have obtained all necessary information of any circumstances which may influence or affect its Tender or its performance of the Contract. The Government does not assume any liability in respect of any errors or mistakes made by a Tenderer or any neglect or failure of a Tenderer to obtain any information or clarification relating to the provision of the Services to the Government in accordance with the Contract.

2.6 No error, mistake, neglect or failure by a Tenderer shall affect any provision of the Tender Documents (including the Contract) or relieve the Tenderer from any of its obligations or liabilities under the Tender Documents (including the Contract). For the avoidance of doubt, a successful Tenderer shall not be entitled to any additional payment, compensation, exemption from compliance or observance, or allowance by reason of any such error, mistake, neglect or failure. If a Tenderer is awarded the Contract, it shall not be excused from any obligation or liability under the Contract as a consequence of any misinterpretation by it of any provision in the Tender Documents or the Contract.

2.7 Information, statistics and forecasts set out in the Tender Documents are provided for a Tenderer's reference only. The Government does not warrant or represent that the information, statistics and forecasts are complete, true or accurate. The Government does not bind itself to adhere to such information, statistics and forecasts.

2.8 Without prejudice to Clause 2.7 above, the estimated requirement of the Services specified in the Price Schedule or Service Specifications is/are estimate(s) of the quantity of the Services that may be required by the Government. They are given for a Tenderer's reference only and are not figures to which the Government binds itself to adhere. The Government's actual requirements may vary depending on the actual need of the Government and the successful Tenderer must accept any increase or decrease of the stated estimates.

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

3 Tender Preparation and Submission

3.1 Unless otherwise specified in the Terms of Tender, the Tenderer must bid for all items specified in the Price Schedule by submitting the Rate for each such item. **Where a Tenderer fails to do so, its Tender will not be considered further.**

3.2 Subject to Clause 3.1, the Tenderer must submit all of the following in its Tender before the Tender Closing Time:

(a) (i) (for Paper-based Tendering) a duly signed Part V “Offer to be Bound” of the Tender Form in English or Chinese containing an original signature by or on behalf of the Tenderer. The Offer to be Bound to be submitted (other than the signature on the Offer to be Bound which must be original) shall be Part V of the Tender Form or a printed copy from a softcopy of Part V of the Tender Form or a photocopy or a scanned copy of such hardcopy or printed copy. Any manner of reproduction of Part V of the Tender Form

(including copy-typing) to be submitted as the Offer to be Bound shall not be acceptable and the Tender with the non-conforming Offer to be Bound will not be considered further; or

- (ii) (for Electronic Tendering) the box signifying the Tenderer's agreement with Part V "Offer to be Bound" of the Tender Form must have been checked;
- (b) the Rate quotations for all items in the Schedule 1 - Price Schedule as stated in the Terms of Tender, the Rate quotations for those items;
- (c) Schedule 2 containing details of the proposed Launches and members of its crew proposed to be deployed for the Services, including copies of approved layout drawings or plan for modification, Launches' licences, crew certificates and other documents relevant to the proposed Launches including two colour photographs in 3R size showing full view of the Launches as referred to in Schedule 2, and the documents required to be submitted under Schedule 2 in relation to the proposed crew members;
- (d) (i) (if the Tenderer is the owner of the proposed Launches) a copy of certificate of ownership issued pursuant to section 10 of the Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation (Cap. 548D) should be submitted for evidencing its ownership; or
 - (ii) (if the Tenderer is not the owner of the proposed Launches)
 - (1) a copy of the purchase agreement or lease agreement whereby the Tenderer is to acquire the property in or the right to use the proposed Launches for, inter alia, carrying out the Services during the Contract Period, or a legally binding agreement to enter into such purchase agreement or lease agreement; and
 - (2) a copy of the certificate of ownership issued pursuant to section 10 of the Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation (Cap. 548D) evidencing the ownership;
- (e) Appendix to Schedule 3 containing an undertaking for renewing the licence throughout the Contract Period stated at Clause 1.1 in the Conditions of Contract;
- (f) a Technical Proposal in accordance with Appendix to Annex 2 provided;
- (g) Non-collusive Tendering Certificate (Annex 4) duly completed and signed; and
- (h) such other items and documents as specified in the Terms of Tender whereby it is provided that failure to submit any of them before the Tender Closing Time will immediately lead to the Tender not being considered further.

3.3 Any failure to complete or submit the documents and/or information required under Clause 3.2 may, at the absolute discretion of Government, render a Tender non-conforming and not to be further considered. **However, a Tenderer should note that its Tender will not be considered further if, by the Tender Closing Date, the Tenderer fails to submit:-**

- (a) The Offer to be Bound as required in Clause 3.2 above;
- (b) Schedule 1 containing the price quotations for the Services;
- (c) Schedule 2 containing the details of the proposed Launches for the Services; and
- (d) “Launches Hiring Service Plan” under Execution Plan of technical proposal in accordance with Appendix to Annex 2.

3.4 The Tenderer shall complete and submit all Schedules in either English or Chinese and in accordance with other requirements of the Tender Documents. Where a supporting document in its original form is in a language other than English or Chinese, the Tenderer shall provide translation of that supporting document from the language into English.

3.5 Where it is stated in the Terms of Tender that the two-envelope system shall be adopted, the Tenderer shall submit its Tender in two (2) separate proposals, one as the Technical Proposal and another as the Price Proposal. A Tenderer shall submit, in one of the following manners, its completed Tender. A Tender submitted through a method other than Paper-based Tendering or Electronic Tendering will not be considered.

Tender Submission:

(a) Paper-based Tendering

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

- (i) Documents relating to the price information (i.e. the original and two copies of “Schedule 1”, fully completed, signed and dated) must be enclosed in a sealed envelope clearly marked “Tender for the Provision of Launches Services for Operations of Agriculture, Fisheries and Conservation Department - Price Proposal (Tender Ref.: AFCD/SET2026)”; and
- (ii) Documents relating to the technical information (i.e. the original and two copies of all other remaining information, forms, schedules and documents required by this Invitation to Tender but without any indication on the Rates for Provision of Services) must be enclosed in another sealed envelope clearly marked “Tender for the Provision of

Launches Services for Operations of Agriculture, Fisheries and Conservation Department - Technical Proposal (Tender Ref.: AFCD/SET2026”).

(iii) The Tender comprising both “Price Proposal” and “Technical Proposal” should be enclosed in a sealed envelope marked “Tender for the Provision of Launches Services for Operations of Agriculture, Fisheries and Conservation Department (Tender Ref.: AFCD/SET2026)” and addressed to the person specified in the “Lodging of Tender” section of the Tender Form and deposited to the Tender Box on or before the date and time stipulated in the Quotation Form. Late quotation will not be considered.

(b) Electronic Tendering

The Tender (and where the two-envelope system is applicable, comprising the Technical and Price Proposals) shall be submitted:

- (i) in accordance with the terms and conditions of use of the PCMS and the e-Tender Box; and
- (ii) through the e-Tender Box through the use of any one type of digital certificates recognised by and uploaded to the e-Tender Box or through an Identification Code.

3.6 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.

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

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

Registration Ordinance (Cap. 310 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 Clause 3.7(a)(i), (a)(ii), (a)(iii) or 3.7(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.

3.8 Execution and Submission of Tenders

(a) Paper-based Tendering

(i) A Tender submitted through Paper-based Tendering will be regarded to have been submitted by a Tenderer or authorised to have been submitted by a Tenderer (as the case may be) if the submitted Part V “Offer to be Bound” of the Tender Form is signed in the following applicable manner:

- (1) if the Tenderer is a sole proprietorship, the Tenderer signing the Tender in the name of the Tenderer (or of the sole proprietorship), or a person authorised by the Tenderer signing the Tender for and on behalf of the Tenderer;
- (2) if the Tenderer is a partnership, one or more partner(s) of the Tenderer signing in the name of the partnership (and in the case of limited partnership, that partner must be a general partner); or a person authorised by the partnership, signing the Tender for and on behalf of the Tenderer; or
- (3) if the Tenderer is a company, a director of the Tenderer or one or more persons who are duly authorised by the Tenderer signing the Tender for and on behalf of the Tenderer.

(b) Electronic Tendering

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

- (1) submission of the Tender via the e-Tender Box through the use of an Identification Code; or
- (2) submission of the Tender via the e-Tender Box through the use of such type of digital certificate recognised by the ETB, and uploaded by the Tenderer to the ETB. Save in the case where the Tenderer is a partnership, a Tenderer shall use a digital certificate which is issued in its name as appearing in the applicable document mentioned in Clause 3.7(a), (b) or (c) above; otherwise the Tender will not be considered further. In the case that the Tenderer is a partnership, the

Tenderer may use a digital certificate issued in the name of one of its partners (or a general partner in the case of a limited partnership), or a digital certificate issued in the name of the partnership; otherwise the Tender will not be considered further.

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

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

and such non-compliance of file format, Virus contamination, or file corruption has resulted in failure to submit the relevant proposal, document or information as described in Clause 3.2(a)(ii), (b), (c), (d), (e), (f), (g) or (h) above by the Tender Closing Time, the Tender will not be considered further and its Tenderer will be notified of such.

(iii) In the case where the Tenderer uses a digital certificate for the submission of Tender via the e-Tender Box, the Government will verify the validity of a Tenderer's digital certificate with the relevant certification authority which has issued such digital certificate. If the directory service or revocation list service of that certification authority or its contractor is/are not available for any reason, the Government may postpone the verification process until such time when the directory service or revocation list service (as the case may be) of the certification authority or its contractor is/are resumed or when the Tender is opened, whichever is the later. If the verification process is postponed, the Tenderer will be informed of this through an on-screen message and an on-line acknowledgement of the Tender.

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

3.9 Tender Closing Time

(a) (i) Paper-based Tendering

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

(ii) Electronic Tendering

Transmission of a Tender through the e-Tender Box shall be successfully completed in accordance with the requirements of the e-Tender Box before the Tender Closing Time. Save as otherwise provided for in the Tender Documents, a Tender will not be considered if the relevant proposal, document or information as described in Clause 3.2(a)(ii), (b), (c), (d), (e), (f), (g) or (h) above is not successfully and completely transmitted through the e-Tender Box before the Tender Closing Time.

- (b) In case Tropical Cyclone Warning Signal No. 8 or above is hoisted, or Black Rainstorm Warning Signal or “extreme conditions” 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>).

3.10 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>).

3.11 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.

3.12 Modification of Tender

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

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

(c) Electronic Tendering

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

3.13 Apart from Part V “Offer to be Bound” of the Tender Form (which, in the case of Paper-based Tendering, must be originally signed by or on behalf of the Tenderer as required under Clause 3.2(a)(i) above), wherever there is any provision in the Tender Documents requiring that the original of any document or the document as mentioned in Clause 3.13(a)(ii) below to be submitted as part of the Tender,

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

(b) in the case of Electronic Tendering, the Tenderer shall first submit the certified true copy as described in Clause 3.13(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.

3.14 In addition to the Tender, physical examination might be carried out at the Government’s discretion to determine if a proposed Launch complies with Item 3 set out in Section A of Schedule 3 from time to time during the Contract Period to determine the continued compliance by the Launch (or a replacement Launch) throughout the Contract Period. All costs incurred for the demonstration shall be at the expense of the Tenderer concerned.

4 Tenders to Remain Open

- 4.1 A Tender once submitted by a Tenderer will be binding on the Tenderer. By submitting a Tender, the Tenderer shall be deemed to have represented to the Government that it has done so as the principal but not as an agent of any other person. If the Tenderer submits a Tender as an agent on behalf of another person, full disclosure must be made in the Tender.
- 4.2 It is an essential requirement of this Invitation to Tender that a Tender shall remain valid and open for a period of one hundred and fifty (150) days after the Tender Closing Date (“Tender Validity Period”).
- 4.3 If a Tenderer offers in its Tender a period that is shorter than the applicable Tender Validity Period specified in Clause 4.2 above, or if it rejects the Tender Validity Period prescribed in Clause 4.2 above, its Tender will not be further considered.

5 Prices / Charges

- 5.1 Unless otherwise provided for in the Tender Documents, the Tenderer shall quote the Rates for each Item in the Price Schedule in Hong Kong dollars or the Permissible Currency. The quotations shall be subject to the following deeming provisions:
 - (a) the Rates quoted by the Tenderer for an Item shall be all-inclusive of all amounts chargeable for the performance by the Tenderer of all obligations as stated in the Contract for or concerning or in relation to such Item including without limitation, the Accepted Innovative Suggestions in relation to such Item; and where the Rate is payable recurrently over each billing period, then the foregoing shall apply to the Rate quotation for each such billing period; or
 - (b) where an Accepted Innovative Suggestion does not concern any Item, all Contract Values payable over the entire Contract Period to be calculated only based on the Rate(s) for all items procured under the Contract shall include and be deemed to include all charges payable for such Accepted Innovative Suggestion. No separate amount shall be payable for any Accepted Innovative Suggestion.
- 5.2 Prices quoted by a Tenderer shall only be shown in the Price Schedule. In accordance with the deeming provisions as set out in Clauses 5.1(a) and (b) above, the Tenderer shall not submit any separate price quotation in relation to any item covered by such deeming provisions including any innovative suggestions where it is not expressly asked to do so in the Price Schedule. Any separate price quotation submitted in contravention of the aforesaid restriction shall be disregarded and will not form part of the Contract, or otherwise the Tender will be disqualified.
- 5.3 A Tenderer must quote fixed Rates for all items and the same Rate for the same item regardless of the quantity. A Tender with any price variation clause, including one based on foreign exchange market fluctuation, will not be considered further.

5.4 Each Tenderer shall make sure that all prices and other proposals offered in its Tender are accurate and complete before it submits the Tender. The Tenderer shall be bound by all prices and other proposals offered in its Tender if the Tender is accepted by the Government. The Tenderer may not initiate any request for amendment to its Tender after the Tender Closing Date on any ground (including any mistake made in the Tender). On the other hand, in the event of any apparent arithmetical or typo mistake or inconsistency in a Tender, pursuant to Clause 11 of the Terms of Tender, the Government may, but is not obliged to, ask the Tenderer to clarify, or to confirm another figure to replace the original figure. Where the Tenderer's clarification is not provided or not satisfactory, or the Tenderer refuses to confirm such other figure, or where the Government does not elect to seek clarification or confirmation from the Tenderer, the Government reserves the power to proceed to evaluate the Tender on an as is basis (i.e., in the form as originally submitted prior to the Tender Closing Date) or disqualify the Tenderer on ground that it has provided erratic or inconsistent proposals or quotations for proper evaluation.

5.5 Payment to the Contractor under the Contract will be made either by bank transfer into the designated bank account or through the FPS proxy. The details of the designated bank account or FPS proxy (depending on the election by the Contractor) shall be provided by the Contractor to the Government after the Contract award in accordance with Clause 10.12 of the Conditions of Contract. No other mode of payment will be entertained unless otherwise agreed by the Government.

5.6 Payment through the FPS proxy will not be available to an overseas Tenderer which does not have a bank account or FPS proxy in Hong Kong. By default, all amounts payable under the Contract to such Contractor will be made by telegraphic transfer into the Contractor's overseas designated bank account.

5.7 If the Rates are quoted in a Permissible Currency (where expressly permitted), unless otherwise specified by the Tenderer and agreed by the head of AFCD, payment to the Contractor will be made either in Hong Kong dollars or in such Permissible Currency.

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

6 Compliance with Essential Requirements

A Tenderer shall comply with all the essential requirements, including those in Schedule 3, stipulated in the Tender Documents. If a Tenderer fails to do so, its Tender will not be considered further.

6A. Site Visits

6A.1 For the purposes of evaluating whether the Tenderer will be capable of performing the Contract, the Government may, at its own costs, conduct site visit(s) to any

premises including the premises of the Tenderer (including its registered office and warehouse) and/or the premises of the Tenderer's sub-contractor, with or without prior notice, whether by the Government Representative or any person appointed by the Government. The Tenderer shall make all necessary arrangements to facilitate such site visit(s) and shall complete the contact details including the address(es) of its office and/or sub-contractor's office (if any), facsimile number and email address in the Appendix to Schedule 2.

6A.2 The making of any such site visit does not imply that the Tenderer will be awarded the Contract.

7 Company/Business Organisation Status

7.1 The Tenderer shall provide the following details:

- (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) notwithstanding the deeming provision specified in Clauses 3.8(a)(i) and 3.8(b)(i) of the Terms of Tender, a Tenderer shall provide a certified extract of the Tenderer's board resolution or other documentary evidence acceptable to the Government demonstrating the Tenderer's 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 the Tenderer's 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). In any of the aforesaid applicable situations, the name of the person authorised to sign the Offer to be Bound as shown in the aforesaid board resolution or documentary evidence (as the case may be) shall be the same as shown in the Offer to be Bound, failing which the Government reserves the power to seek clarification;
- (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 Clause 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 17.2(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 Clause 16 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.

7.3 The Government may require a Tenderer to provide, at its own expense, additional legal opinion satisfactory to the Government in all respects issued by a lawyer duly qualified to practise the laws of the place of incorporation, formation or establishment of the Tenderer and acceptable to the Government on any other matters arising from its Tender. Where the opinion on the question specified in Clause 7.2(a) above is negative or otherwise subject to qualifications not satisfactory to the Government, the additional legal opinion shall opine that any ruling made by the arbitrator under the arbitration provision set out in Clause 7.4 below will be recognised and given effect to by the courts of the place of incorporation, formation or establishment of the Tenderer (“additional opinion on arbitration”). Together with the additional opinion on arbitration to be provided, the Tenderer shall also be required to provide a confirmation in writing that in consideration of the award of the Contract, it agrees that Clause 38 of the Conditions of Contract shall be replaced by the arbitration clause in Clause 7.4 below.

7.4 Where the opinion on the question specified in Clause 7.2(a) above is negative or otherwise subject to qualifications not satisfactory to the Government, subject to the obtaining of the additional opinion on arbitration as mentioned in Clause 7.3 above, Clause 38 of the Conditions of Contract shall be deemed deleted and replaced by the following:

“38.1 The Parties shall first refer any dispute or difference arising out of or in connection with the Contract to mediation in accordance with The Government of the Hong Kong Special Administrative Region Mediation Rules prevailing at the time.

38.2 If the said dispute or difference is not settled by mediation according to Clause 38.1 above, the said dispute or difference shall be adjudicated by arbitration to be held in accordance with the Hong Kong International Arbitration Centre Domestic Arbitration Rules prevailing at the time when a notice of arbitration is issued by a Party (“Arbitration Rules”) except that regardless of whether the Arbitration Rules providing anything to the contrary, unless the Parties otherwise agree in writing: (a) the arbitration hearing must be held in Hong Kong and that the Arbitration Ordinance (Chapter 609 of the Laws of Hong Kong) shall apply to the arbitration (including the whole of Schedule 2); and (b) without prejudice to section 18(2) of the Arbitration Ordinance, the Government may on its own disclose any information relating to (i) the arbitral proceedings under the arbitration agreement; and (ii) an award made in those arbitral proceedings, under any of the circumstances mentioned in Clause 28.2 of the Terms of Tender”.

8 Sub-contractors

8.1 If any obligations of the Contractor are proposed to be performed by a sub-contractor, the Tenderer shall submit information of the sub-contractor. Details of the obligations to be performed by the proposed sub-contractor shall be submitted.

- 8.2 The information each proposed sub-contractor shall cover the information as required in Clause 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 whereupon should the Tenderer refuse to do so, its Tender may not be considered further.
- 8.4 A legally binding sub-contractor's undertaking, on the terms set out at Annex 1, will be required to be executed by each proposed sub-contractor. The sub-contractor's undertaking shall be provided within the period as specified in accordance with Clause 11.1 of the Terms of Tender. 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 Clauses 7.2 and 7.3 of the Terms of Tender shall also be provided in relation to the proposed sub-contractor at the same time as the sub-contractor's undertaking.

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 Request for Information

- 11.1 Notwithstanding anything herein to the contrary, in the event that the Government Representative determines that:
 - (a) clarification in relation to any part of the Tender is necessary; or
 - (b) certain document or a piece of information, other than those specified in Clause 3.3 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.

11.2 Any excess proposal or information supplied by a Tenderer which goes beyond what has been requested by the Government pursuant to Clause 11.1 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.

11.3 (Applicable to Paper-based Tendering) For the avoidance of doubt, if the original signature is missing from Part V “Offer to be Bound” of the Tender Form or the entire Part V “Offer to be Bound” is missing from the Tender, the Tenderer will be disqualified and no request for resubmission will be made. Otherwise, for any other missing information to be completed in Part V “Offer to be Bound” or in relation to any ambiguity (including in relation to the signature), the Government may, but is not obliged to, seek clarification from the Tenderer under Clause 11.1(a) above. In the case that the date is missing from the Offer to be Bound, it shall be deemed that the date shall be the Tender Closing Date and no request for clarification will be made.

11.4 By submitting a Tender in response to this Invitation to Tender, the Tenderer gives consent to the Government to obtain from:

- (a) any person whose particulars are required in the Tender Documents to be set out by the Tenderer in its Tender; and
- (b) any issuing body of any of the test reports/ certificates or documentary evidence required in the Tender Documents,

all information which the Government considers appropriate and relevant to the evaluation of the Tender including information to verify the legitimacy, completeness, authenticity and accuracy of any information or document submitted by the Tenderer. If any consent from any other person is required for the Government to obtain any of the aforesaid information or document, the Tenderer undertakes that it can obtain such consent when required by the Government. Further, upon request by the Government, the Tenderer shall provide a written authorisation to the Government if such written authorisation is needed for the Government to obtain information and/or document(s) from the person or issuing body referred to in Sub-clauses (a) and (b) above.

12 Tenderer’s Counter-Proposals

12.1 The Tenderer must not submit any proposal that has the effect of varying or modifying (a) any essential requirements specified in Schedule 3 to the Tender Documents; (b) all provisions in the Tender Documents concerning the preparation, submission and evaluation of Tenders and award of Contract; and (c) those additional provisions which are not permitted to be subject to any counter-proposal as identified in the Terms of Tender.

12.2 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.

12.3 If a Tenderer fails to comply with Clause 12.2 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.

12.4 Counter-proposal to other provisions of the Tender Documents not specified in Clause 12.1 or 12.2 above, whilst not strictly disallowed, is not encouraged. If the Tenderer wishes to submit one or more counter-proposals to any provision in the Tender Documents not of the types specified in Clause 12.1 or 12.2 above (“Counter-Proposals”), the Counter-Proposals shall be submitted in the following manner:

- (a) (i) for Paper-based Tendering, the Counter-Proposals shall be attached to Part V “Offer to be Bound” of the Tender Form; or
- (ii) for Electronic Tendering, the Counter-Proposals shall be attached as a separate attachment and identified as such;
- (b) the original provisions which the Counter-Proposals relate to shall be fully recited before the proposed alteration or deletion;
- (c) the proposed alteration to the original provisions shall be underlined and shall bear the corresponding clause number of the original provisions unless it is an addition;
- (d) if it is an addition, the additional provisions shall be underlined;
- (e) words to be deleted shall be crossed out by a single line only; and
- (f) an explanation shall be given below the alteration or deletion and put in square brackets “[]”.

12.5 Unless the Government otherwise agrees, Counter-Proposals that are not submitted in accordance with Clause 12.4 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.

12.6 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.

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 Clause 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 expressed or implied), and no invitation is made by the Government to any Tenderer or potential Tenderer to rely on such statement. No such statement shall form part of the Tender Documents or alter, negate or constitute a waiver of any provision of the Tender Documents.

14 Communication with the Government

- 14.1 Without prejudice to the requirements set out in Clause 16 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 39 of the Conditions of Contract at the address, facsimile number or email address specified in the Appendix, save that in the case of lodging any enquiries under Clause 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 Section A of Schedule 2 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, customer or client of the Tenderer, related person (as defined in Clauses 19.6 and 19.7 of the Terms of Tender) of the Tenderer, director or management staff of the Tenderer or those of the related person (as defined in Clauses 19.6 and 19.7 of the Terms of Tender) of the Tenderer or any other person directly.

15 Tender Assessment

- 15.1 Tenders will be evaluated based on price as well as technical competence of the Tenderer, understanding of the Government's requirements, relevant job experience and quality of work.

15.2 The Tenders will be assessed using the Marking Scheme and assessment criteria in Annex 2.

16 Acceptance

16.1 The successful Tenderer will be notified within one hundred and fifty (150) days from the Tender Closing Date (such notification is referred to as “Conditional Acceptance of Tender”). Upon receipt of such Conditional Acceptance of Tender, the successful Tenderer shall, within twenty one (21) days of the notification (or such later date as the Government may allow), be obliged to:

- (a) deliver the Contract Deposit as required in Clause 24 below to the Government;
- (b) deliver copies of the insurance policies required in Clause 16 of the Conditions of Contract and receipts evidencing payment of premium thereunder to the Government;
- (c) modify the proposed Launches to ensure that they comply with all those requirements and specifications specified in Section B of Schedule 3 to the satisfaction of the Government Representative. If the Government Representative is not satisfied that the proposed Launches are in compliance with such requirements and specifications, he may, in his absolute discretion, require the Contractor to carry out further modification. Failure of the Contractor to modify the proposed Launches to the satisfaction of the Government Representative within the aforesaid 21-day period or such longer period as the Government may allow shall mean that the Tenderer has failed to fulfil this condition; and
- (d) comply with other conditions as the Government may specify therein.

16.2 Only upon completion of the actions specified in Clause 16.1 from the successful Tenderer in accordance with that Clause, and the Government being satisfied with these actions, the Government will enter into the Contract with the successful Tenderer by issuing the Memorandum of Acceptance pursuant to Clause 16.3 below. The Contract will incorporate the Tender submitted by the successful Tenderer (subject to such other changes as the Government may stipulate in exercise of its powers under the Tender Documents). In the event that the successful Tenderer fails to complete the actions as mentioned in Clause 16.1 (unless and save to the extent they are waived by the Government, if any), the Conditional Acceptance of Tender may be declared void and of no further force by the Government, and the Government may disqualify the Tenderer concerned. Whereupon it may, but not obliged to, award the Contract to another Tenderer. Without prejudice to other rights and claims of the Government at law, the disqualified Tenderer shall be responsible for the difference in the Tender price submitted by that Tenderer and the eventual Contractor who will be awarded the Contract whether appointed pursuant to this Invitation to Tender exercise or another subsequent invitation exercise.

16.3 The successful Tenderer who has complied with Clause 16.1 above to the satisfaction of the Government will receive as an indication of unconditional acceptance the Memorandum of Acceptance in the form set out in Part VI from the

Government. This Memorandum of Acceptance shall constitute a binding Contract. Tenderers who do not receive any notification within the Tender Validity Period shall assume that their Tenders have not been accepted. A duplicate hardcopy of each of the documents constituting the Contract including the “Memorandum of Acceptance” duly completed by the Government, will subsequently be delivered to the successful Tenderer for record.

- 16.4 Without prejudice to the rights and powers under these Terms of Tender, unless and until the Government has issued the Memorandum of Acceptance indicating its unconditional acceptance pursuant to Clause 16.3 above to the successful Tenderer, there is to be no binding Contract with that Tenderer.
- 16.5 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.

17 Offer to be Binding

- 17.1 All parts of these Tender Documents submitted and offered by the Tenderer shall be binding on the Tenderer. A Tenderer is deemed to have satisfied itself as to the correctness of its Tender. In the event that a Tenderer discovers an error in its Tender after the Tender has been deposited, the Tenderer may correct the same in a separate letter before the Tender Closing Date. No request for adjustment or variation whatsoever shall be allowed or entertained after the Tender Closing Date.
- 17.2 By signing the Part V – Offer to be Bound, a Tenderer confirms that its offer has been made subject to the terms and conditions contained in these Tender Documents, and any variation or adjustment agreed with the Government and upon acceptance by the Government will be incorporated into and form part of the Contract.

18 Negotiation

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

19 Government Discretion

- 19.1 Notwithstanding anything to the contrary in this Tender Documents, the Government reserves the right to disqualify a Tenderer on grounds including any one of the following:
 - (a) a petition is presented or a proceeding is commenced which has not been withdrawn any time prior to the Contract award or an order is made or a resolution is passed for the winding up or bankruptcy of the Tenderer or a related person of the Tenderer;
 - (b) the Tenderer has made or submitted a false, inaccurate or incomplete statement or representation or a forged document in the Tender or in any

subsequent submission by the Tenderer or communication between the Government and the Tenderer since submission of that Tender;

- (c) in the event of (i) a claim or an allegation by any person, or a ruling or judgment by a court, or decision by a competent tribunal or arbitration body that any thing(s), service(s) or material(s) to be supplied or recommended by the Tenderer in its Tender infringes any Intellectual Property Rights or any other rights of any person (“IPR infringement”) (and in the case of any claim or allegation, it was made any time during a period of seven (7) years preceding the Tender Closing Date and up to the time of Contract award); or (ii) the Government having grounds to believe there is or will be such IPR infringement; or (iii) an agreement has been entered into whether by the Tenderer or any other person to settle or compromise any claim or allegation about IPR Infringement (regardless of whether on an admission basis or non-admission basis) which agreement is still valid and subsisting at any time during a period of seven (7) years preceding the Tender Closing Date and up to the time of Contract award;
- (d) any time during the thirty-six (36) months prior to the Tender Closing Date or between the Tender Closing Date and the award of the Contract, the Tenderer or a related person of the Tenderer (as defined in Clauses 19.6 and 19.7 below and including those who were in such capacity any time within the same period, i.e., thirty-six (36) months prior to the Tender Closing Date or between the Tender Closing Date and the award of the Contract) has committed significant or persistent default(s) or deficiency(ies) in the performance of any requirement or obligation under any other Government contract regardless of the procurement department of such other Government contract, regardless of whether the default(s) or deficiency(ies) led to the actual termination of the relevant Government contract and regardless of whether such default(s) or deficiency(ies) occurs before or after the termination or expiry of the relevant Government contract, and in the case of the latter, provided that the default(s) or deficiency(ies) relates to any provisions which survive such termination or expiry, and regardless of whether such default(s) or deficiency(ies) has been remedied (“Contract Default(s”)); and the Government Representative in its sole judgment is satisfied that such Contract Default(s) casts a reasonable doubt on the capability of the Tenderer to perform the Contract to be awarded in this Invitation to Tender;
- (e) (i) the Tenderer; or (ii) a related person of the Tenderer; or (iii) a director or management staff of the Tenderer or those of the related person of the Tenderer, has been convicted by the final judgment (i.e. judgment not subject to any appeal to a higher court prior to the Contract award) in respect of one or more serious offences including conviction of offences involving bribery, false accounting, corruption, dishonesty or employment handed down any time during a period of five (5) years preceding the Tender Closing Date and thereafter up to the time of Contract award;
- (f) in the event of the professional misconduct or acts or omissions having been committed during a period of five (5) years preceding the Tender Closing Date and up to the time of Contract award that adversely reflect on the commercial integrity of the Tenderer or a related person of the Tenderer or

a director or management staff of the Tenderer or those of the related person of the Tenderer; professional misconduct includes any breach of the Good Industry Practice;

- (g) any failure of the Tenderer to pay taxes to the Government during a period of five (5) years preceding the Tender Closing Date and up to the time of Contract award; or
- (h) the Government considers that the Tenderer will not be capable of fulfilling the terms of the Contract.

The grounds specified in Clauses 19.1(a) to 19.1(h) above are separate and independent, and shall not be limited by reference to or inference from the other of them.

19.2 For the purposes of Clause 19.1 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 in relation to itself and its related person or its director or management staff (which is reasonably relevant to facilitate the Government's determination as to whether to exercise its right of disqualification), including but not limited to the following:

- (a) details of any petition or proceeding mentioned in Clause 19.1(a) above;
- (b) details of all infringement claims, allegations, rulings, judgments, decisions or settlement agreements as mentioned in Clause 19.1(c) above;
- (c) details of all Contract Defaults as mentioned in Clause 19.1(d) above;
- (d) details of conviction as mentioned in Clause 19.1(e) above in Hong Kong or any overseas jurisdiction;
- (e) details of any professional misconduct or act or omission as mentioned in Clause 19.1(f) above; and
- (f) details of any failure to pay taxes as mentioned in Clause 19.1(g) above.

If none of the events as mentioned in Clauses 19.1(a) to 19.1(g) above has ever occurred within the applicable period as mentioned above, the Tenderer shall provide a statement to that at the time of submission of its Tender. If found missing, the Government reserves the right to seek clarification pursuant to Clause 19.3 below. The information provided by the Tenderer is not conclusive. The Government may independently verify the veracity and completeness of any information provided. In the case of Contract Default, the Government will form an assessment as to whether or not such Contract Default has occurred.

19.3 In addition to the information mentioned in Clause 19.2 above, the Government reserves the right (but not obligation) to request from a Tenderer, proposed subcontractor, customer or client of the Tenderer, a related person (as defined in Clauses 19.6 and 19.7 of the Terms of Tender) of the Tenderer, a director or management staff of the Tenderer or those of the related person (as defined in

Clauses 19.6 and 19.7 of the Terms of Tender) of the Tenderer, or any other person or independent sources, such other information that is reasonably relevant to facilitate the Government’s determination as to whether to exercise its right of disqualification under Clause 19.1 above.

19.4 If the Tenderer fails to comply with the request made by the Government pursuant to Clause 19.3 above within such time as required by the Government, the Government may disqualify the Tenderer pursuant to Clause 11 of the Terms of Tender. If the Tenderer has submitted false, inaccurate or incomplete information, the Government may disqualify the Tenderer pursuant to Clause 19.1(b) above.

19.5 In providing the information required under Clauses 19.2 and 19.3 above, the Tenderer may show cause to satisfy the Government that in relation to any of the events as mentioned in Clause 19.1(a) to 19.1(g) 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.

19.6 If the Tenderer is a company, the expression “related person” of the Tenderer includes any one of the following:

- (a) a shareholder (corporate or individual) which directly or indirectly beneficially owns fifty (50) percent or more of the issued share capital of the Tenderer (“majority shareholder”);
- (b) a holding company or a subsidiary of the Tenderer;
- (c) a holding company or a subsidiary of a majority shareholder (being a company) of the Tenderer; or
- (d) a company in which a majority shareholder (being an individual) of the Tenderer directly or indirectly beneficially owns fifty (50) percent or more of its issued share capital or controls the composition of its board of directors.

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

19.7 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.

- 19.8 References to related persons of the Tenderer, directors and management staff of the Tenderer or those of a related person in any of the applicable Sub-clause of Clause 19.1 above include persons who were in such capacity at such time of the event referred to in that Sub-clause.
- 19.9 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.

20 Provision of Services

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

21 Supplementary Information/Tender Addenda

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

22 New Information Relevant to Qualified Status

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

23 Financial Vetting

- 23.1 If the Estimated Total Contract Value for all Items of a Tender 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 in accordance with accounting principles generally accepted in Hong Kong and the disclosure requirements of the Companies Ordinance (Cap. 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 Closing 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 prepared in a language other than Chinese or English, translations, certified as accurate by the respective consulate or a notary public registered in Hong Kong, must be provided; and
- (vi) If the Tenderer is a joint venture or partnership, audited accounts for each of the members/participants of the joint venture or partnership must be submitted if the members are incorporated bodies;

(b) Management accounts up to a period of not more than three (3) months before the Tender Closing Date should be provided if this has not been covered by the latest audited accounts. 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 Clause 23.1(a)(iv) above;

(c) Unaudited accounts are acceptable only if the Tenderer is an unincorporated business where audited accounts are not mandatorily required or the Tenderer is a newly established company where the first accounts are not yet available;

(d) The management accounts or unaudited accounts mentioned in Sub-clauses (b) and (c) hereof must be certified by the sole proprietor, partners, directors of the Tenderer or by certified public accountants or other accountants acceptable to the Government;

(e) Projected profit and loss accounts and cash flow statements of the contract and for each contract year and the pre-operating period (if applicable) complying with the following requirements:

- (i) They should be certified by the company's 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 should be reasonable and must be clearly stated. All the supporting schedules and detailed calculations should also be provided;
- (iii) The projections should at least include the projected revenue, details of operating expenses, capital expenditure including the initial investments

and sources of finance, and other particulars showing how the Tenderer will deal with the Contract; and

(iv) The assumptions by the Government included in the Tender Document must be reflected in the Tenderer's projections;

(f) Copy of the latest annual return filed with the Companies Registry if the Tenderer is a corporate entity or similar statutory filings showing the authorized and issued share capital, name of shareholders and directors if the Tenderer is an overseas company; and

(g) Tenderers shall upon the request in writing by the Government provide any other financial and corporate information as required by the Government for assessment of the financial capability of the Tenderer to undertake the Contract on or before such date as stated in the written notification by the Government.

23.2 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 Estimated Total Contract Value in accordance with Clause 24.2(a) of the Terms of Tender.

23.3 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%) of the Estimated Total Contract Value in accordance with Clause 24.2(b) of the Terms of Tender.

24 Contract Deposit

24.1 If the Estimated Total Contract Value payable by the Government to the successful Tenderer exceeds HK\$1.36 million, but is less than or equals to HK\$15 million, 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 AFCD according to Clause 16.1 above, an amount equivalent to two percent (2%) of the Estimated Total Contract Value.

24.2 If the Estimated Total Contract Value 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 Estimated Total Contract Value (if it passes the financial vetting); or

(b) five percent (5%) of the Estimated Total Contract Value (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).

24.3 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 Part I of Annex 3 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. For the successful Tenderer, and if the Contract Deposit is paid in cash, the successful Tenderer shall also indicate how the Contract Deposit (if any is remaining) shall be repaid to the successful Tenderer under Clause 11.8 of the Conditions of Contract.

24.4 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 Part II of Annex 3; 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.

24.5 The balance of 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 11.7 of the Conditions of Contract.

25 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.

26 Complaints About Tender Process or Contract Award

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

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 Clause 28 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 Clause 27.1 above, or the disclosure pursuant to Clause 28 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 personal data as provided for in Sections 18 and 22, and Principle 6 of Schedule 1 of the Personal Data (Privacy) Ordinance (Cap. 486). The right of access includes the right to obtain a copy of the Tenderer's personal data provided in the Tender.

27.4 Enquiries concerning the personal data collected by means of this Invitation to Tender, including the making of access and corrections should be addressed to Personal Data Privacy Officer of AFCD.

28 Consent to Disclosure

28.1 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 Estimated Total Contract Value 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.

28.2 Nothing in Clause 28.1 shall prejudice the Government's power to disclose whenever it considers appropriate information of any nature whatsoever (whether or not specified in Clause 28.1) if the disclosure is made under any one of the following circumstances:

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

- (e) the disclosure of any information regarding anti-competitive collusive conduct to the Competition Commission of Hong Kong (and other authorities as relevant); or
- (f) without prejudice to the power of the Government under Clause 28.1, to the extent the information relates to a Tenderer, with the prior written consent of that Tenderer.

29 Contractors' Performance Monitoring

If a Tenderer is awarded a Contract, their subsequent performance will be monitored and may be taken into account when their future tenders are evaluated.

30 Costs of preparing the Tender

A Tenderer shall submit its Tender at its own cost and expense. The Government shall not be liable for any costs and expenses whatsoever incurred by a Tenderer in connection with the preparation or submission of its Tender, including all costs and expenses relating to (a) communication or negotiations with or providing presentation to the Government, (b) attending the briefing session, and (c) conducting demonstration to the Government specified in Clause 3.14 above, whether before or after the Tender Closing Date.

31 Offering Gratuities

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

32 Anti-collusion

- 32.1 The Tenderer must ensure that the Tender is prepared without any agreement, arrangement, communication, understanding, promise or undertaking with any other person (except as provided in Clause 3 of the Non-collusive Tendering Certificate referred to in Clause 32.2 below), regarding, amongst other things, price, Tender submission procedure or any terms of the Tender. Bid-rigging is inherently anti-competitive and is considered serious anti-competitive conduct under the Competition Ordinance (Cap. 619). Tenderers who engage in bid-rigging conduct may be liable for the imposition of pecuniary penalties and other sanctions under the Competition Ordinance.
- 32.2 The Tenderer shall complete and submit to the Government a Non-collusive Tendering Certificate (in the form set out in Annex 4) as part of its Tender.
- 32.3 In the event that a Tenderer is in breach of any of the representations and/or warranties in Clause 32.1 above or in the Non-collusive Tendering Certificate submitted by it under Clause 32.2 above, the Government shall be entitled to, without compensation to any person or liability on the part of the Government:
 - (a) reject the Tenderer's Tender;

- (b) if the Government has accepted the Tender, withdraw its acceptance of the Tender; and
- (c) if the Government has entered into the Contract with the Tenderer, forthwith terminate the Contract.

32.4 By submitting a Tender, a Tenderer is regarded to have undertaken to indemnify and keep indemnified the Government against all losses, damages, costs or expenses arising out of or in relation to any breach of any of the representations and/or warranties and/or undertakings in Clause 32.1 or in the Non-collusive Tendering Certificate submitted by it under Clause 32.2.

32.5 A breach by a Tenderer of any of the representations and/or warranties and/or undertakings in Clause 32.1 may prejudice its future standing as a Government contractor or tenderer.

32.6 Clause 32.1 shall have no application to the Tenderer's communications in strict confidence with its own insurers or brokers to obtain an insurance quotation for computation of the prices quoted in its Tender, or with its professional advisers, consultants or sub-contractors to solicit their assistance in preparation of its Tender.

32.7 The rights of the Government under Clauses 32.3 to 32.5 are in addition to and without prejudice to any other rights or remedies available to it against the Tenderer.

33 Briefing Session

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

Time: 10:00 am
Date: 30 December 2025 (Tuesday)
Venue: Room 702
7/F., Cheung Sha Wan Government Office
303 Cheung Sha Wan Road,
Kowloon.

Tenderers wishing to attend the briefing session must complete and return by facsimile (fax no. 2314 2866) the registration form at the Annex 5 on or before 29 December 2025.

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

PART III

CONDITIONS OF CONTRACT

1. Contract Period

- 1.1 The Contract shall be for a term of 36 months commencing from 1 June 2026 to 31 May 2029, both dates inclusive, or such other date as specified in the Memorandum of Acceptance, unless or until earlier terminated or extended in accordance with Clause 1.2.
- 1.2 The Government shall have the option to extend the Contract Period for additional period(s) of not more than six (6) months in aggregate. The Government shall be entitled to exercise such option, not less than one (1) week prior to the expiry of the original Contract Period (as last extended, as the case may be) by giving the Contractor a written notice to that effect specifying in such notice the period of extension.
- 1.3 There is no limit on the number of times the Government exercises its option to extend or the period of each extension pursuant to Clause 1.2 provided that the maximum extended period(s) (excluding the original period of 36 months) do not exceed 6 months.
- 1.4 Upon the Contract Period is extended pursuant to Clause 1.2, the Contract shall continue to be in full force and effect (including this Clause 1) on and subject to the same terms and conditions.

2. Contractor's Acknowledgement, Obligations and Contract Performance

- 2.1 The Contractor shall throughout the Contract Period lease to the Government two (2) Launches complying with all specifications and requirements set out in Schedule 3 (where applicable) and all applicable laws and regulations including the Merchant Shipping (Local Vessels) Ordinance (Cap. 548).
- 2.2 The Contractor shall provide at least such number of crew members as specified in Clause 9 below to navigate and operate the Launches in accordance with the instructions of the Government Representative and the officers on board of the Launches.
- 2.3 The Contractor shall maintain the Launches in a clean, tidy and efficient operational condition to the satisfaction of the Government Representative and shall at its cost be responsible for the procurement all labour, spare parts, consumables, and fuel to be used in navigating, operating and maintaining the Launches.
- 2.4 The Contractor shall carry out all necessary repairs or other works, and if any of the Launches is no longer fit for Services, replace it with another one which complies with all requirements and specifications set out in Schedule 3 (where applicable), in accordance with Clauses 12 and 13 below.
- 2.5 The Government as lessee shall be entitled to unrestricted possession and usage of the Launches. Without prejudice to the generality of the foregoing, any person from

time to time authorised by the Government, or the Director of Agriculture, Fisheries and Conservation may board the Launches without any restriction whatsoever.

- 2.6 The Contractor shall make no changes in the structure of the Launches without the prior written consent of the Government Representative. The Government Representative shall, from time to time be entitled to put in place such special arrangements on the Launches for special Government functions or operations as the Government Representative shall deem fit and the Contractor shall give all necessary assistance and facilities for such special arrangements.
- 2.7 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.
- 2.8 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.
- 2.9 Without prejudice to Clause 2.8 of the Conditions of Contract, if required by the Government, the Contractor shall attend:
 - (a) any contract briefing session held by the Government at the time specified in the Special Conditions of Contract, or if no time is so specified, within fourteen (14) days from the Date of Tender Acceptance or such other time as the Parties may agree, which aims to acquaint the Contractor with the contractual requirements and obligations; and
 - (b) any meetings held by the Government during the Contract Period to discuss the progress, issues and requirements related to the Contract.
- 2.10 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.
- 2.11 The Contractor shall comply with all applicable laws and regulations. In particular, 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.

2.12 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.

2.13 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.

2.14 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.

2.15 To the extent that the Government considers it reasonably necessary and that the information (in whatever media) is in the possession of the Government and is not subject to any confidentiality restriction, the Government may at the request initiated by the Contractor (but not otherwise required in the Contract), provide all such information for the Contractor's guidance in the execution of the Contract free of charge provided such request from the Contractor is made in a timely manner to avoid any delay on the part of the Contractor to perform the Contract. If required by the Government, the Contractor shall return all such information (in whatever media) to the Government upon the expiry or early termination of the Contract or at the time specified in the Special Conditions of Contract.

2.16 The Contractor shall be responsible for the completeness and accuracy of all drawings, documents and information supplied by the Contractor to the Government in connection with the Services. Without prejudice to any other

provisions of the Contract, the Contractor shall indemnify the Government in accordance with Clause 15.2 of the Conditions of Contract in connection with, any discrepancies, errors or omissions therein.

- 2.17 Any drawings and specifications reasonably required for the Contractor's guidance in the execution of the Contract shall be provided by the Government free of charge but shall be returned to the Government on completion of the Contract.
- 2.18 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.

3. Services to be provided by the Contractor

The Contractor shall provide and operate two Launches as specified in the Schedule 2, or the replacement Launch(es) provided pursuant to Clauses 2, 12 and 13 hereof, with crew during the Contract Period to provide launch services for use by the Government in Hong Kong waters (as defined in the Interpretation and General Clauses Ordinance, Cap. 1, "Hong Kong Waters") in accordance with the provision of this Contract.

3A. Site Visits

The Government may, at any time during the Contract Period, at its own costs, conduct site visit(s) to any premises, including the Contractor's premises (including its registered office and warehouse) and sub-contractor's premises, with or without prior notice, whether by the Government Representative or any person appointed by the Government. The Contractor shall make all necessary arrangements to facilitate such site visit(s).

4. Normal Working Time

- 4.1 During the Contract Period, the Contractor shall keep the Launches ready for use by the Government. "Normal Working Time" means a continuous nine (9) hours duration, on irregular hours and ad hoc basis, from Mondays to Sundays, including public holidays and any period during which strong monsoon signal, rainstorm signal, tropical cyclone warning signals no.1 or no.3 and thunderstorm warning are valid.
- 4.2 The maximum number of Trips for each calendar month is set as forty (40) Trips which should be a mix-drawn number by using Launch 1 and Launch 2. A "Trip" means the use of one Launch in one Normal Working Time.
- 4.3 The use of Launches more than the said forty (40) Trips, or the use of Launches other than Launch 1 and Launch 2 with overlapping period of time (i.e. more than two Launches operation at the same time), would be considered as Services rendered outside Normal Working Time mentioned in Clause 5 in this part.

5. Services Rendered Outside Normal Working Time

- 5.1 Should the Launch be required by the Government for Services outside the Normal Working Time, four (4) hours advance notice of the requirement will be given by

the Government Representative to the Contractor and such Services must be performed and carried out by the Contractor as specified in the notice (except that the Services are consecutively provided before or after the Normal Working Time). Services required under this clause shall commence and complete at such times as the Government Representative may direct. Suitable relieving of coxswain and crew members should be arranged by the Contractor without causing the delay of Government Representative.

- 5.2 The Government shall hire Launch for a minimum of four (4) hours each time when it requires the Services outside Normal Working Time except that the Services are consecutively provided before or after the Normal Working Time.
- 5.3 For general information only, the estimated number of hours for the Services rendered outside the Normal Working Time is two thousand nine hundred (2,900) hours for the Contract Period. For the avoidance of doubt, information, statistics, forecasts and estimated requirement of the Services set out are provided for reference only. The Government does not warrant or represent that the information, statistics and forecasts are complete, true or accurate. The Government's actual requirements of the Services may vary depending on the actual need and the Contractor must accept any increase or decrease of the stated estimates.

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

- 6.1 The Contractor warrants and undertakes to the Government that throughout the Contract Period:-
 - (a) the Contractor shall carry out the Services with all due diligence and in a proper, skilful and professional manner and shall perform the Services to the satisfaction of the Government Representative;
 - (b) the Launches shall comply with all requirements and specifications set out in Schedule 3 (where applicable), and all applicable laws and regulations;
 - (c) the Contractor shall keep the Government Representative informed of all matters relating to the Services and shall answer all reasonable enquiries made by the Government Representative;
 - (d) the Contractor shall comply with all applicable laws and regulations in the provision of the Services, including the paying of all fees or levies and obtaining and renewing all necessary licences or permits;
 - (e) the Contractor shall comply with all reasonable instructions and directions in all matters relating to the Contract as the Government Representative may from time to time issue to the Contractor;
 - (f) the Contractor shall take all necessary measures to ensure the safety of all persons aboard or otherwise coming upon or near the Launches;
 - (g) in the event of any of the Contractor's employees, agents or sub-contractors suffering any injury or death in the course of or arising out of the Services and whether there be a claim for compensation or not, the Contractor shall

within seven (7) working days give notice in writing of such injury or death to the Government Representative;

- (h) the Contractor shall comply with the Employment Ordinance (Cap. 57), the Mandatory Provident Fund Schemes Ordinance (Cap. 485), the Employees' Compensation Ordinance (Cap. 282), the Immigration Ordinance (Cap. 115) and other applicable laws in the employment of its staff for the performance of the Contract or other Government contracts; and
- (i) in relation to the Launches provided by it for performing the Services, the Contractor is either the beneficial owner with valid certificate of ownership issued pursuant to the Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation (Cap. 548D), or the lessee under valid and subsisting lease agreement granted by the lawful owners of the Launches.

6.2 The Contractor gives consent to the Government (“Consent”) to obtain from:

- (a) any person whose particulars are provided or required to be provided by the Contractor under the Contract; and
- (b) any issuing body of any test reports/ certificates or documentary evidence required under the Contract,

all information which the Government considers appropriate and relevant for the enforcement and administration of the Contract, including information to verify the legitimacy, completeness, authenticity and accuracy of any information or document submitted by the Contractor. The Consent shall be valid throughout the Contract Period. If any consent from any other person is required for the Government to obtain any of the aforesaid information or document, the Contractor undertakes that it can obtain such consent when required by the Government. Further, upon request by the Government, the Contractor shall provide a written authorisation to the Government if such written authorisation is needed for the Government to obtain information and/or document(s) from the person or issuing body referred to in Sub-clauses (a) and (b) above.

7. Service Area and Reporting and Releasing Place

- 7.1 The Government may require the Launches to be navigated in any navigable areas within Hong Kong Waters as the Government Representative or his nominee may specify from time to time (including the officer on board of the Launches).
- 7.2 The Launches shall report to the Government at the time and place as may be specified by the Government Representative or his nominee, and may be released to the Contractor at any place within Hong Kong Waters.

8. Safety of Operation

The Contractor undertakes and warrants that the coxswain and crew employed, engaged or provided by it in the Launches shall:

- (a) use all proper and professional skill, care and diligence in the management, maintenance, navigation, operation and control of the Launches;

- (b) take special care and precautions to avoid causing danger to the persons on board the Launches or other persons or vessels using Hong Kong Waters and pay special regard to the increasing congested condition of Hong Kong Waters; and
- (c) stay alert, listen to and observe all relevant bulletins regarding the weather and the state of the Hong Kong Waters.

9. Coxswain and Crew

- 9.1 Each of the Launches shall be manned on all voyages with a coxswain who shall be assisted by a minimum of one of competent, duly qualified and trained crew to ensure that all necessary assistance and services are provided to the passengers and the Government efficiently. The Contractor shall ensure that the coxswain and the crew of each of the Launches wear proper and tidy outfits to the satisfaction of the Government Representative or his nominee. In the event that the Government Representative or his nominee is not reasonably satisfied with the conduct and/or performance of the coxswain or any member of the crew of the Launches, the Government Representative or his nominee may give notice thereof to the Contractor requiring the Contractor to arrange for the substitution or replacement of the coxswain or member concerned and upon receipt of such notice, the Contractor shall at its own expense and as soon as practicable arrange to substitute or replace the coxswain or member concerned.
- 9.2 The Contractor warrants that all coxswain and/or crew deployed for performing this Contract possess the qualifications and/or experience given in Schedule 3 throughout the Contract Period. The Contractor shall show that the appointment or replacement of any coxswain and/or crew for the Launch has no lesser qualifications and/or experience than the outgoing coxswain or crew.

10. Payment

- 10.1 In consideration of and subject to the provision by the Contractor of the Services strictly in accordance with the terms and conditions of the Contract to the satisfaction of the Government Representative, provided that a proper invoice has been issued, the Government shall, subject further to any Government rights to make deductions or set-off, pay the Contractor in arrears within thirty (30) days after the end of each month of the Contract Period the Monthly Charges in accordance with the following formula:

$$MR + (HR \times N) - D$$

where MR = Basic Monthly Rate covering forty (40) Trips under Normal Working Time by Launch 1 and Launch 2

HR = Hourly Rate outside Normal Working Time

N = Number of hours for Services rendered outside Normal Working Time

D = Such sums the Government is entitled to deduct pursuant to other provisions of the Contract

10.2 For each calendar month, whether or not forty (40) Trips were completely used up, the Basic Monthly Rate shall be paid to the Contractor for each calendar month unless the Contractor is unable to provide Services as required by the Government Representatives under Normal Working Time. In the case where the Contractor is unable to provide Services as required by the Government Representatives under Normal Working Time, deduction of 1/360 of the Basic Monthly Rate (i.e. Basic Monthly Rate divided by (40 Trips × 9 hours)) for each hour of unavailability of Services will be made.

10.3 Payment for the use of, and the Services rendered hereunder in respect of any of the Launches outside the Normal Working Time of less than an hour shall be computed as follows:

- (a) use of the Launch and the Services rendered for a period of thirty (30) minutes or less shall be paid half of the Hourly Rate set out in Schedule 1; and
- (b) use of the Launch and the Services rendered for a period of more than thirty (30) minutes shall be paid the full Hourly Rate.

10.4 Subject to the rights and powers of the Government under the Contract, the Monthly Charges payable by the Government shall be paid within thirty (30) days after receipt by the Government of the Contractor's invoice in respect thereof, or after the due date specified in Clause 10.1, whichever is later. All invoices shall be addressed and despatched in the manner specified in Clause 39. Payment will be made in Hong Kong Dollars.

10.5 Unless specifically stated in the Contract, apart from the Contract Value, 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.

10.6 Without prejudice to Clause 10.5 above, save to the extend specified otherwise in the Conditions of Contract, the Contract Value is inclusive of all charges for provision of the Services (including all costs and charges for the Consents, and the Accepted Innovative Suggestions). For the avoidance of doubt, where an Accepted Innovative Suggestion does not concern any provision of the Services, all Contract Values payable and/or having been paid under the Contract over the entire Contract Period shall be deemed to cover and shall have covered the charge for such Accepted Innovative Suggestion. No separate charges shall be payable. Save as otherwise expressly provided for in the Contract, the Contractor shall not be entitled to any adjustment in the Contract Value for any reason.

10.7 The Contractor shall invoice the Government for any payment of the Contract Value. In respect of the provision of the Services which has been accepted and that the Contract Value is payable in the manner whether specified in Clause 10.4 above, the Contractor shall deliver to the Government an invoice setting out the particulars of the Services provided (including the Rates), the amount of Contract Value

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. All references to “invoices” including those in Clause 10.4 above shall refer to invoices complying with the aforesaid requirements only. Where the location(s) are multiple Government departments and/or bureaux, or multiple locations within the same Government department or bureau, the invoice for Services delivered to a Government department or bureau or a location shall be issued and delivered to the Inspection Officer of that Government department or bureau or the Inspection Officer of the location (unless otherwise specified in the Conditions of Contract).

10.8 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.

10.9 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.

10.10 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 10, 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, or (e) the payment by bank transfer or telegraphic transfer into the designated bank account or through the FPS proxy (as the case may be) has failed for whatever reason (excluding any fault on the part of the Government). 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.

- 10.11 In the event that the Contractor fails to pay any sum of money on the date it falls due or upon demand by the Government under the Contract, it shall pay interest on such sum to accrue from the due date up to the date of actual payment in full at the rate of 1% above the rate per annum which shall be a simple average of the rates per annum announced by the note-issuing banks of Hong Kong from time to time to be their prime lending rates for Hong Kong dollars. Such interest shall accrue on a daily basis and shall be computed on the basis of a 365-day year (“default interest rate”). For the applicable interest rate when a court judgment or an award from the arbitrator is obtained (if any), the interest rate to accrue on such judgment sum or awarded sum shall be the aforesaid default interest rate, or such rate as may be determined from time to time by the Chief Justice of Hong Kong by order for judgment debt interest (whichever rate is the higher rate).
- 10.12 Subject to Clause 10.14 below, the Contractor shall provide details of either the designated bank account or the FPS proxy (depending on which payment method it elects) to receive the Contract Value and other amounts under the Contract to the Government within fourteen (14) days from the date of the Memorandum of Acceptance or such other time as specified in the Conditions of Contract. The Contractor shall use the form prescribed by the Government to provide all necessary details plus supporting documents as requested in that prescribed form. The contact details of the Government for providing the aforesaid information shall be as specified in Clause 39.1 of Conditions of Contract.
- 10.13 Depending on the payment instruction to be provided under Clause 10.12 above and provided that the Contractor has provided the necessary details and by the time as specified therein, the Government will pay the Contract Value or any other amount payable under the Contract as per such payment instruction on or before the due date for such Contract Value or such other amount. Otherwise, the Government will not be responsible for any delay in the payment.
- 10.14 Other than payment by bank transfer into the designated bank account or through the FPS proxy, the Government will not accept any other payment method unless the Government agrees in writing on a case by case basis. Furthermore, for an overseas Contractor without any bank account or FPS proxy in Hong Kong, the Government will only make the payment via telegraphic transfer into the designated bank account to be provided under Clause 10.12 above.
- 10.15 For any payment into an overseas designated bank account, whether under this Clause 10, or for the return of the Contract Deposit paid in cash (if any is remaining and if applicable), all charges imposed by the banks outside Hong Kong shall be borne by the Contractor. Regardless of the applicable payment method, any charges imposed by a bank or a stored value facility service provider in Hong Kong or an overseas bank for refusing any payment even when the payment instruction provided under Clause 10.12 has been followed or for carrying out any special request(s) by the Contractor shall be borne by the Contractor, or the Contractor shall reimburse the Government for the same if the Government has settled such charges with the bank or the stored value facility service provider.
- 10.16 In light of the above, it is incumbent on the Contractor to pay extra care to find out the transaction and storage limits for receiving payment via FPS from its own bank or stored value facility service provider before deciding on the payment method under Clause 10.12 above.

10.17 Where the Contractor proposes to make any change to the payment instruction provided under Clause 10.12 above, it shall do so by not less than one month's prior written notice to the Government attaching another prescribed form as specified in Clause 10.12 duly completed together with the accompanying documents requested therein. Where the Contractor has failed to comply with the foregoing, the Government shall be entitled to treat the existing payment instruction as valid and the Government will not be responsible for any delay arising from the refusal of the relevant bank or stored value facility service provider to accept payment due to invalid payment instruction.

11. Contract Deposit

11.1 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.

11.2 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.

11.3 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 11.3, the further banker's guarantee must comply with the requirements in Clauses 24.4(a) to (c) of the Terms of Tender.

11.4 Where the total 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 Estimated Total Contract Value, 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%) (or five percent (5%) if the Contractor failed in the financial assessment under Clause 23 of the Terms of Tender in the tender evaluation stage) of the revised Estimated Total Contract Value specified by the Government in the notice.

- 11.5 If a notice is issued by the Government under Clause 11.4 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 Clause 24.4(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.
- 11.6 If the Contractor fails to comply with Clause 11.3, 11.4 or 11.5 above, the Government shall have the right to terminate the entire Contract pursuant to Clause 17.1 of the Conditions of Contract or partially terminate the Contract pursuant to Clause 17.6 of the Conditions of Contract, depending on the election of the Government.
- 11.7 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), 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”.)

11.8 For the return of the Contract Deposit then paid in cash (if any is remaining), the Contractor shall provide to the Government the payment details in the same manner as mentioned in Clause 10.12 of the Conditions of Contract for such payment method applicable to the return of the Contract Deposit in cash at least two (2) months before the scheduled return of such amount (or such other time as the Government may allow). If the earlier payment instruction provided under Clause 10.12 above shall equally apply to the return of the Contract Deposit, the Contractor shall provide such confirmation in writing to the Government by the same deadline mentioned above. The Government will not be responsible for any delay in return of the Contract Deposit if the Contractor has failed to provide all necessary information and supporting documents within the time specified in this Clause.

11.9 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.

11.10 Where the Contract Period is more than three (3) years, the Government may conduct periodic financial vetting of the Contractor with a view to ensuring that the Contractor remains financially healthy for the performance of the Contract and depending on the results, take necessary actions as the Government considers appropriate. Periodic financial vetting may be conducted at an interval of every three (3) years of the Contract Period. Upon request of the Government, the Contractor shall within seven (7) days provide all such information to the Government for such periodic financial vetting which may include information as specified in Clauses 23.1(a) of the Terms of Tender

12. Inspection and Replacement

12.1 The Government Representative or his nominee may inspect any of the Launches at any time and may require the Contractor to replace the same at no extra cost to the Government if it is considered in his opinion to be unsuitable for this Contract in any respect. The Contractor shall allow and facilitate such inspection free of charge as the Government Representative or his nominee may require. The Government Representative or his nominee may inspect the replacement Launch at any time when replacement is needed. The Contractor shall, ensure that the replacement Launch meets all the requirements and specifications set out in Schedule 3, allow and facilitate such inspection free of charge as the Government Representative or his nominee may require.

12.2 Where the Government Representative is satisfied that in any particular case that the Contractor has failed to provide the Services in accordance with any terms and

conditions or any provisions of the Contract, the Government Representative may (without prejudice to any rights or remedy that the Government has or may have against the Contractor) require the Contractor by either verbal or written instructions to remedy or rectify the failure in order to comply fully therewith. The Contractor shall take immediate and necessary action to rectify such rejected Services within such time as may be specified in the Government notification, unless otherwise justified by the Contractor within such stipulated time period and agreed to by the Government Representative in writing.

- 12.3 Without prejudice to the above, the Government shall also have the right to reject the Services or any part thereof that is performed by the Contractor and to withhold payment of the Monthly Charges until the failures or defects have been rectified by the Contractor.
- 12.4 If the Contractor shall fail to rectify such rejected Services in accordance with Clause 12.3, the Government may, without prejudice to any other rights and remedies available to the Government, carry out and complete such Services by its own resources or by engaging other contractors. All costs and expenses whatsoever which may be incurred by the Government thereof shall be recoverable in full from the Contractor forthwith.

13. Replacement due to Maintenance etc.

If for any reason, any of the Launches is withdrawn from service due to maintenance, dry docking or licensing, the Contractor shall forthwith provide and operate a replacement Launch at no extra cost to the Government. The Government Representative or his nominee may inspect the replacement Launch at any time when replacement is needed. The Contractor shall ensure that the replacement Launch meets all requirements and specifications set out in Schedule 3.

14. Failure to deliver Accepted Innovative Suggestions

- 14.1 The Contractor warrants that it shall perform the Contract in full compliance with all Accepted Innovative Suggestions. In the event that the Contractor fails to deliver any of the Accepted Innovative Suggestions, the Contractor shall, subject to Clauses 14.2 and 14.3, pay to the Government a sum of money calculated according to the following formula as liquidated damages for EACH of such Accepted Innovative Suggestions which it fails to deliver:

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

where

C = the Estimated Total Contract Value

$W(T)$ = the weighting, expressed as a percentage, of the technical assessment in the overall Marking Scheme

$M(IS)$ = the marks that would be given to one (1) Innovative Suggestion in accordance with the Marking Scheme (regardless of whether marks are actually given to the

relevant Accepted Innovative Suggestion that the Contractor fails to deliver)

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

P = length of time expressed in number of days during which the Contractor fails to comply with the relevant Accepted Innovative Suggestion

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.

- 14.2 For any given point of time within the Contract Period, the number of Accepted Innovative Suggestions which the Contractor fail to deliver and upon which liquidated damages are payable under Clause 14.1 shall not exceed the maximum number of Innovative Suggestions to which marks could be awarded to a Tenderer in the Tender evaluation process.
- 14.3 The aggregate amount of liquidated damages payable pursuant to Clause 14.1 may not exceed 5% of the Estimated Total Contract Value.

15. **Liability and Indemnities**

- 15.1 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).
- 15.2 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 15.1 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.

15.3 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.

15.4 For the purposes of this Clause 15, “Negligence” (appearing in upper case) shall have the same meaning as that assigned to it in section 2(1) of the Control of Exemption Clauses Ordinance (Cap. 71).

15.5 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.

16. **Policy of Insurance and Compensation**

16.1 The Contractor shall, or shall ensure that the owner of the Launch shall, effect and keep in force, and renew immediately upon expiry, throughout the continuance of the Contract Period at its sole costs policies of insurance in relation to the use of the Launch by the Contractor for performing the Services in accordance with the requirements of the Merchant Shipping (Local Vessels) Ordinance (Cap. 548) and its subsidiary legislation (in particular section 23D of the said Ordinance and the Merchant Shipping (Local Vessels) (Amount of Insurance Cover) Notice (Cap. 548K)) and on such other terms and conditions as shall be required and approved by the Government Representative from time to time.

16.2 Upon expiry of any of the policies of insurance required under Clause 16 during the Contract Period, the Contractor shall renew the same on and subject to the original terms and conditions or otherwise such revised terms and conditions as the Government Representative may stipulate. Upon issuance of the renewed insurance policy, the Contractor shall forthwith furnish a copy to the Government Representative for keeping.

16.3 Under no circumstances whatsoever shall the Government be responsible for the premium payable under any of the policies of insurance required under Clause 16 or the premium payable for the renewal thereof. The Contractor shall bear the cost of all excesses (deductibles), exclusions or limitations applying under the said policies.

16.4 The Contractor shall conform to the terms and conditions of any of the policies of insurance required under Clause 16 and all reasonable requirements of the insurers in connection with the settlement of claims, the recovery of losses and the prevention of accidents. The Contractor shall not do or permit or suffer to be done any act or omission whereby any of the policies of insurance required under Clause 16 shall be rendered void or voidable, or which would otherwise amount to a breach of such policy(ies). The Contractor shall bear the economic consequences of, and indemnify the Government in full from and against any loss and liability which may arise from any failure of the Contractor to observe and comply with this Clause.

16.5 If any of the policies of insurance required under Clause 16 provides that the payment of certain amount of compensation shall be borne by the insured parties, the Contractor shall be solely responsible for such payment.

16.6 The Contractor shall lodge all claims with the insurance company and shall deal with the said company upon receipt from the Government or otherwise of a report on any injury, death, loss or damage.

16.7 If the Contractor fails to effect and keep in force any of the insurance policies required under Clause 16, or any other insurance which it may be required to effect under the terms of this Contract then and in any such cases without prejudice to the liability of the Contractor under the Merchant Shipping (Local Vessels) Ordinance

(Cap. 548), its subsidiary legislation and other applicable laws, the Government may effect and keep in force any such insurance and pay such premium or premiums as may be necessary for that purpose and from time to time deduct the amount so paid by the Government as aforesaid from any monies due or which may become due to the Contractor or recover the same as a debt due from the Contractor.

16.8 The Contractor shall maintain the employees' compensation insurance policy in compliance with the Employees' Compensation Ordinance (Cap. 282).

17. Termination

17.1 In the event that:

- (a) the Contractor fails to perform any Services in accordance with Clause 2 of the Conditions of 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) 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;
- (f) the Contractor abandons the Contract in whole or in part;
- (g) 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
- (h) 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 23.3 (Probit);
 - (ii) Clause 27.3 (Force Majeure);
 - (iii) Clause 22 (Illegal Workers);
 - (iv) Clause 11.6 (Contract Deposit);
 - (v) Clause 38.4 (Admission of Contractor Personnel to Government Premises); or
 - (vi) Clause 32.3(c) of the Terms of Tender (Anti-Collusion),

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

17.2 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;
- (i) the Government reasonably believes that any of the events mentioned in Sub-clauses (a) to (h) above is about to occur;
- (j) the Government reasonably believes that any Warranty is incorrect, inaccurate, incomplete or misleading;
- (k) the Government reasonably believes that the Contractor has made a material misrepresentation (including submission of false statement or inaccurate information) during the tendering process of the Contract; or
- (l) the Government considers that it is in the public interest to terminate the Contract.

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

17.4 Separate from the event mentioned in Clause 17.1(h)(ii) 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 27.6 of the Conditions of Contract. In case of partial termination of any part but not the whole of the Contract under this Clause 17.4 (including the partial termination of the Contract in relation to one or more Items of the Services), the partial termination shall be referred to as “Partial Termination Due to Force Majeure”.

17.5 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”). In case of partial termination of any part but not the whole of the Contract under this Clause (including the partial termination of one or more Item(s) of the Services), the partial termination shall be referred to as “Partial Termination by Notice”.

17.6 Instead of terminating the Contract in relation to all Items of the Services pursuant to Clause 17.1 or 17.2 above, the Government may elect, but is not obliged, to terminate the Contract in relation to any one or more Item(s) of the Services only (“Partial Termination Due to Default”). The term “Partial Termination” may mean a Partial Termination Due to Force Majeure or a Partial Termination by Notice or a Partial Termination Due to Default and in each case a “Partial Termination”. The Item(s) of the Services to which a Partial Termination relates are referred to as “Terminated Services”. The Terminated Services may cover all or any Item(s) of the Services which have not been accepted up to the time of the Partial Termination.

17.7 Each of the grounds entitling the Government to terminate the Contract as specified in Clauses 17.1 to 17.6 above and in each Sub-clause of Clauses 17.1 and 17.2 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.

18. Termination Consequences

18.1 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 15.2 of the Conditions of Contract, in the event of the Termination under Clause 17.1 or 17.2 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 Service 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 17.1 or 17.2 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.

18.2 Upon a Partial Termination pursuant to Clause 17.4 or 17.5 or 17.6 of the Conditions of Contract:

- (a) the provisions in the Contract to the extent they apply or concern or relate to the Terminated Services 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;
 - (ii) the rights and claims which have accrued to a Party prior to the Partial Termination; and
 - (iii) the continued existence and validity of all remaining provisions of the Contract; and
- (b) all of the consequences specified in Clause 18.1 above (apart from Clause 18.1(a) above) shall apply save that (i) references to "Termination" shall mean "Partial Termination"; references to "Services" shall mean the "Terminated Services"; and (ii) for Clause 18.1(c), it shall apply to a Partial Termination Due to Default.

18.3 Upon the issue of a suspension notice pursuant to Clause 17.4 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 18.1(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 18.1(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 18.3(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 18.3(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.

19. Intellectual Property Rights

- 19.1 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 19.3 below, the Contractor warrants that such Materials shall be original works created, developed or made by or on behalf of the Contractor.
- 19.2 The Contractor shall not use or allow to be used directly or indirectly the Materials except for the performance of its obligations under the Contract or except with the prior written approval of the Government. "Use" includes any acts restricted by copyright (including reproduction) set out in sections 22 to 29 of the Copyright Ordinance (Chapter 528 of the Laws of Hong Kong).
- 19.3 If any materials of which the Intellectual Property Rights are owned by third parties and incorporated into the Materials or supplied or used by the Contractor in the performance of the Contract ("Third Party Materials"), the Contractor shall identify the Third Party Materials to the Government and keep the Government informed in writing of such Third Party Materials. The Contractor hereby grants or in case it is not empowered to do so, shall at its own costs and expenses procure that there will be granted, in favour of the Government, its authorised users, assigns and successors-in-title a royalty-free, non-exclusive, irrevocable, perpetual, worldwide and sub-licensable licence, for all purposes contemplated by the Contract, to use (including doing any of the acts restricted by copyright set out in sections 22 to 29 of the Copyright Ordinance (Chapter 528 of the Laws of Hong Kong)) the Third Party Materials.
- 19.4 The Contractor warrants that:
 - (a) prior to the use and incorporation of 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.

19.5 The Contractor hereby irrevocably waives and undertakes to procure, at its own costs and expenses, its officers, employees, agents, sub-contractors and all authors concerned to irrevocably waive all moral rights (whether past, present or future) in respect of the Materials and Third Party Materials. Such waiver shall operate 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).

19.6 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 15.2, 19 and 26 of 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.

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

20. Government Property

When Government Property is issued to the Contractor under the Contract, the Contractor shall be responsible for the due return of all such property. Should any such property be lost or damaged from any cause whatsoever while in the possession or control of the Contractor or his servants, workmen, agents or sub-contractors, the Contractor shall pay for the same at total original cost. 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.

21. Government Premises / Contractor Premises

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

- 20.2 Where the Services are carried out on the Contractor's premises such premises shall be open to inspection by the Government Representative at all reasonable times.
- 20.3 The safety of any craft, vessel and vehicle used by the Contractor (including the Launches) and brought alongside or onto Government premises, piers or wharves, as the case may be, shall be the responsibility of the Contractor, who shall indemnify the Government in respect of any loss or damage to such Government premises, piers or wharves in accordance with Clause 15.2.

22. **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 17.1 of the Conditions of Contract or partially terminate this Contract pursuant to Clause 17.6 of the Conditions of Contract.

23. **Probity**

- 23.1 The Contractor acknowledges it has been reminded that:

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

- 23.2 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, Cap. 201) is not permitted. The Contractor shall also caution its officers, employees and agents and sub-contractors against soliciting or accepting any excessive hospitality, entertainment or inducement which may impair their impartiality in relation to the selection of its sub-contractors, if any, or the supervision of the work of the sub-contractors.

- 23.3 The Government may terminate the Contract immediately if the Contractor or any of its employees, agents and sub-contractors is convicted of an offence under the Prevention of Bribery Ordinance (Cap. 201), the Theft Ordinance (Cap. 210) or the Crimes Ordinance (Cap. 200).

24. **Heat Stroke Prevention**

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

- (b) Wide-brimmed hats or equivalent for serving similar functions to protect for protecting them against sunshine and, upon request, a pair of arm sleeves which are made of thin and vapour permeable fabric, if long-sleeved working clothes for protecting them against sunshine are not provided; or
- (c) Upon request, a portable fan to increase air flow to the worker.

24.2 If 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.

25. Publicity

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

26. Confidentiality

26.1 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 26.1 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.

26.2 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 15.2(a) and 15.2(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).

26.3 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 26.1 above shall not use, disclose, publish or reproduce, the Confidential Information for any other purposes without the Government's prior written consent.

26.4 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 26.1 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 26 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.

26.5 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.

26.6 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).

26.7 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 26 and the Official Secrets Ordinance (Chapter 521 of the Laws of Hong Kong).

26.8 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 26.

26.9 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 26 and/or specific performance ensuring the compliance of this Clause 26 in light of any threatened or actual breach of this Clause 26, without prejudice to its other rights and claims including those available under the Contract or at law arising from such breach.

26.10 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.

26.11 The Government may request the Contractor in writing at any time that any Confidential Information disclosed pursuant to the terms of this Clause 26 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.

27. **Force Majeure**

27.1 Within 3 days after the occurrence of a Force Majeure Event, the Contractor must notify the Government in writing of the full particulars of the Force Majeure Event including its nature, extent and likely duration of its effect on the Contractor's ability to perform its obligation under the Contract. In the occurrence of a Force Majeure Event, the Government may on its own issue a notice to the Contractor noting the occurrence of the Force Majeure Event and requiring the Contractor to suspend all or any of the obligations under the Contract. A notice issued by the Contractor or

the Government pursuant to this Clause is hereinafter referred to as the “Suspension Notice”.

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

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

27.3 To the extent that the performance of obligations by the Contractor under the Contract is prevented by a Force Majeure Event, the Contractor’s performance of such obligations will, subject to Clause 27.4, be suspended to that extent from the date the Contractor or the Government gives a Suspension Notice in respect of that Force Majeure Event until the Contractor ceases to be so prevented (“Cessation Date”). Notwithstanding anything in the Contract to the contrary, as soon as the Government issues a Suspension Notice to the Contractor, the Contractor must forthwith suspend the performance of the obligations to the extent specified in the Suspension Notice.

27.4 During the suspension of any obligations under Clause 27.3:

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

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

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

28. Disclaimer

- 28.1 The Contractor acknowledges to the Government that it has not relied on or been induced to enter into the Contract by any warranty, representation, forecast, estimate, or projection given by the Government or any of its officers, employees, agents or advisers.
- 28.2 The Contractor shall not in any way be relieved from any obligation under the Contract nor shall it be entitled to claim against the Government on grounds that any information, whether obtained from the Government or otherwise (including information made available by the Government), is incorrect or insufficient and shall make its own enquiries as to the accuracy and adequacy of all such information.

29. Set-off

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

30. Relationship of the Parties

- 30.1 Nothing herein shall be construed as in any way constituting a partnership, agency or joint venture between Government and the Contractor. The Contractor shall not (without the consent in writing of the Government) commit the Government to any obligation whatsoever.
- 30.2 The Contractor enters into this Contract with Government as an independent contractor only and shall at all times remain as an independent contractor throughout the Contract Period.
- 30.3 For the avoidance of doubt, the Contractor shall not represent itself as an employee agent or servant of Government.

31. Assignment

The Contractor shall not, without the written consent of the Government Representative, assign, transfer, sub-contract or otherwise deal with any of its rights or obligations under the Contract, or any part share or interest therein, and the performance of the Contract by the Contractor shall be deemed to be personal to it. Notwithstanding any written consent, the Contractor shall be responsible for all acts, omission, and defaults of its sub-contractors (of whatever tier) and agents (of whatever tier), and the employees and agents of each such sub-contractor and agent as if they were its own acts, omissions or defaults.

32. Entire Agreement and Amendment

- 32.1 The Contract supersedes all prior agreements, arrangement and undertakings between the parties and constitutes the entire Contract between the parties relating to the subject matter hereof. No addition to or modification of any provision of the Contract shall be binding upon the parties unless made by a written instrument

signed by a duly authorised representative of each of the parties hereto for and on its behalf.

32.2 Save and to the extent expressly provided for in the Contract which enables the Government to on its own make such supplement or amendment to the Contract pursuant to such provision, no variation of the Contract shall be valid unless it is in writing and signed by each of the Government and the Contractor.

33. **Order of Precedence**

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

- (a) the Conditions of Contract;
- (b) Schedule 3;
- (c) the Memorandum of Acceptance;
- (d) Schedule 1;
- (e) Schedule 2;
- (f) the Terms of Tender;
- (g) the Offer to be Bound;
- (h) Non-collusive Tendering Certificate;
- (i) Undertaking for renewing the Operating Licence of Launches; and
- (j) the Interpretation.

34. **Severability**

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

35. **Rights and Remedies Cumulative**

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

36. **Waiver**

36.1 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.

36.2 Without prejudice to the generality of Clause 36.1 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.

37. Admission of Contractor Personnel to Government Premises

37.1 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.

37.2 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.

37.3 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.

37.4 In the event that the Contractor fails to comply with this Clause 37 and it is determined that such failure is prejudicial to the interests of the Government, the Government Representative may thereupon terminate the Contract forthwith.

38. Dispute Resolution and Jurisdiction

38.1 The Parties shall first refer any dispute or difference arising out of or in connection with the Contract to mediation in accordance with The Government of the Hong Kong Special Administrative Region Mediation Rules prevailing at the time.

38.2 If the said dispute or difference is not settled by mediation according to Clause 38.1, a Party may institute litigation in respect of the said dispute or difference. The Parties agree that the courts of Hong Kong shall have exclusive jurisdiction in respect of the said dispute or difference.

39. Notices

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

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

To the Government: Director of Agriculture, Fisheries and Conservation
8/F, Cheung Sha Wan Government Office,
303 Cheung Sha Wan Road, Kowloon
Licensing and Enforcement Division
Sea Enforcement Section
(Attn: Dr. CHUN Ka-him)
Facsimile: (852) 2314 2866
Email: ben_kh_chun@afcd.gov.hk

39.2 Such notices, demands, invoice, correspondence or other communications shall be addressed as provided in Clause 39.1 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.

39.3 Notice, demand, invoice, correspondence or other communication to the Contractor from the Government in the prescribed manner specified in Clause 39.2 above shall be deemed to have been served provided that the notice, demand, invoice, correspondence or other communication has been sent to the correct applicable contact of the Contractor as specified in Clause 39.1 above.

39.4 Nothing in this Clause 39 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 39.2 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.

40. **Governing Law**

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

41. **Retention of Records**

The Contractor must keep and maintain until 1 year after the expiry of the Contract, or such longer period as may be agreed by the parties, full and accurate records of the Contract including the Services provided under it, all expenditure reimbursed by the Government, and all payments made by the Government. If requested by the Government, the Contractor must afford the Government or its representative access to the records as may be requested by the Government.

42. **Assistance in Legal Proceedings**

42.1 If and whenever requested to do so by the Government Representative, the Contractor must 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 must arrange for relevant staff to give evidence at such inquiries, investigations, arbitrations, hearings or proceedings.

42.2 Where the Contractor or any employees, agents or sub-contractors of the Contractor become aware of an incident, accident or other matter which may give rise to a claim or legal proceedings by a third party against the Government or the Contractor or in respect of the Contract, it must notify the Government Representative immediately in writing giving full details of such incident, accident or matter as the Government Representative may require.

43. **Contracts (Right of Third Parties) Ordinance**

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

44. **Conflict of Interest**

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

- (a) ensure that it (including each and every officer, employee and agent of the Contractor) and each of its sub-contractors and each of their respective employees, officers and agents engaged in the discharge of the obligations hereunder, and each of their respective associates and associated persons (collectively “Restricted Group”) shall not undertake any business, activity, service, task, or job or do anything whatsoever for its own account (whether on its own or in conjunction with another person(s) in a joint venture or partnership or other business entity) or for or on behalf of another person (other than in the proper performance of the Contract) which conflicts or which may be seen to conflict with the Contractor’s duties or obligations under the Contract without the prior written approval of the Government; and
- (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.

44.2 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.

44.3 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 44.1 above.

Tender for the Provision of Launches Services for Operations of Agriculture, Fisheries and Conservation Department

Schedule 1
Price Schedule

Item	Rate
(a) Basic Monthly Rate covering forty (40) Trips under Normal Working Time by Launch 1 and Launch 2 (Note 1)	HK\$ _____ (i) (per month)
(b) Hourly Rate for Services rendered outside the Normal Working Time (Note 2)	HK\$ _____ (ii) (per hour)
Estimated Total Contract Value	(i) x 36 months + (ii) x 2,900 hours (Note 3) = HK\$ _____

Note 1: See Clauses 4 and 10.2 of Conditions of Contract

Note 2: See Clauses 5 and 10.3 of Conditions of Contract

Note 3: See Clause 5.3 of Conditions of Contract

Signature of Person Authorized to sign Tender : _____

Name of Authorized Person : _____

Name of Tenderer : _____

Phone / Fax : _____ / _____

Date : _____

**Tender for the Provision of Launches Services for Operations of
Agriculture, Fisheries and Conservation Department**

Schedule 2
Section A - Details of Tenderer

Name of the Tenderer in English:	
Name of the Tenderer in Chinese:	
Business Status of the Tenderer:	a sole proprietorship / a partnership / a company*
Business Address in Hong Kong:	
Correspondence Address in Hong Kong (if different from above):	
Business Registration Number:	
Employees Compensation Insurance Policy No.:	
Name of insurance company:	
Insurance Period:	
Name of the Contact Person:	
Telephone No.:	
Facsimile No.:	
Email Address:	

*delete where inapplicable

Signature of Person Authorized to sign Tender : _____

Name of Authorized Person : _____

Name of Tenderer : _____

Phone / Fax : _____ / _____

Date : _____

Tender for the Provision of Launches Services for Operations of Agriculture, Fisheries and Conservation Department

Schedule 2
Section B - Details of Launch

The Tenderer proposes that the Launches particularized below be provided by it shall it be awarded the Contract and that each of the Launches complies with all respects with the requirements and specifications set out in Section A of Schedule 3 as at the date of submission of its Tender and will comply with such requirements and specifications throughout the Tender Validity Period and the Contract Period:

	<u>Launch 1</u>	<u>Launch 2</u>
Name of Launch		
Certificate of Ownership Number		
Validity Period of Operating Licence		
Length (m) & Breadth (m)		
Service speed (knots)		
Carrying Capacity (excluding crew)		
Number of Engines		
Total engine horse power		
Third Party Insurance Policy Certificate No. & Expiry date		

Remarks for Tenderers:

Please attach to this Schedule 2 two colour photographs in 3R size showing full view of the proposed Launches, copies of approved layout drawings or plan for modification (if any), photocopies of the proposed Launches' licences, crew certificates and other documents relevant to the proposed Launches.

**Tender for the Provision of Launches Services for Operations of
Agriculture, Fisheries and Conservation Department**

Schedule 2
Section C - Details of Crew Members

	Crew Member 1	Crew Member 2
Name:		
Position:		
HK Identity Card No.:		
Monthly salary:		
Working hours and conditions:		
Certificate of Competency No.:		
Year of issuance:		
Grade of certificate:		
Radar Observer Certificate No.:		
Year of issuance:		
Issuance institute:		
Workman compensation insurance policy certificate no.*:		
Expiry date*:		
Relevant working experience & Salary per month:		

Remarks

1. In respect of each of the proposed crew member, please submit photocopies of his Hong Kong Identity Card, Certificate of Competency, and Radar Observer Certificate (if applicable). The Government may require the Tenderer to produce the original documents for inspection.
2. Under normal circumstance, each shift of the crew shall not be more than 12 hours per day.

*** to be filled-in as applicable**

	Crew Member 3	Crew Member 4
Name:		
Position:		
HK Identity Card No.:		
Monthly salary:		
Working hours and conditions:		
Certificate of Competency No.:		
Year of issuance:		
Grade of certificate:		
Radar observer certificate No.:		
Year of issuance:		
Issuance institute:		
Workman compensation insurance policy certificate no.*:		
Expiry date*:		
Relevant working experience & Salary per month:		

Remarks

1. In respect of each of the proposed crew member, please submit photocopies of his Hong Kong Identity Card, Certificate of Competency, and Radar Observer Certificate (if applicable). The Government may require the Tenderer to produce the original documents for inspection.
2. Under normal circumstance, each shift of the crew shall not be more than 12 hours per day.

*** to be filled-in as applicable**

	Crew Member 5	Crew Member 6
Name:		
Position:		
HK Identity Card No.:		
Monthly salary:		
Working hours and conditions:		
Certificate of Competency No.:		
Year of issuance:		
Grade of certificate:		
Radar observer certificate No.:		
Year of issuance:		
Issuance institute:		
Workman compensation insurance policy certificate no.*:		
Expiry date*:		
Relevant working experience & Salary per month:		

Remarks

1. In respect of each of the proposed crew member, please submit photocopies of his Hong Kong Identity Card, Certificate of Competency, and Radar Observer Certificate (if applicable). The Government may require the Tenderer to produce the original documents for inspection.
2. Under normal circumstance, each shift of the crew shall not be more than 12 hours per day.

*** to be filled-in as applicable**

	Crew Member 7	Crew Member 8
Name:		
Position:		
HK Identity Card No.:		
Monthly salary:		
Working hours and conditions:		
Certificate of Competency No.:		
Year of issuance:		
Grade of certificate:		
Radar observer certificate No.:		
Year of issuance:		
Issuance institute:		
Workman compensation insurance policy certificate no.*:		
Expiry date*:		
Relevant working experience & Salary per month:		

Remarks

1. In respect of each of the proposed crew member, please submit photocopies of his Hong Kong Identity Card, Certificate of Competency, and Radar Observer Certificate (if applicable). The Government may require the Tenderer to produce the original documents for inspection.
2. Under normal circumstance, each shift of the crew shall not be more than 12 hours per day.

*** to be filled-in as applicable**

Appendix to Schedule 2**Contact details of the Tenderer / Contractor / sub-contractor / Process Agent (for site visit)**

All correspondence with the Tenderer/Contractor shall be addressed at Section A of Schedule 2. For the purpose of conducting site visit(s), the contact details of the Tenderer/Contractor shall be specified at (A) below if such contact details are different from those at Section A of Schedule 2.

For the purpose of conducting site visit(s) at the premises of the sub-contractor, the contact details of the sub-contractor shall be specified at (B) below.

For a Tenderer/Contractor incorporated, formed or established outside Hong Kong without a place of business in Hong Kong, the contact details of the process agent shall be specified at (C) below.

(A) the Tenderer/Contractor (for site visit):

Address:

Attn:

Telephone Number:

Facsimile Number:

Email Address:

(B) the sub-contractor (for site visit):

Address:

Attn:

Telephone Number:

Facsimile Number:

Email Address:

(C) Process Agent (for a Tenderer/Contractor incorporated, formed or established outside Hong Kong without a place of business in Hong Kong):

Address:

Attn:

Telephone Number:

Facsimile Number:

Email Address:

Schedule 3
Section A – Essential Requirements and Checklist

Item	Essential Requirements for the proposed Launches	Checklist result
1.	<ul style="list-style-type: none"> - have a valid operating licence issued under the Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation (Cap. 548D); and an appropriate and valid certificate of survey issued under the Merchant Shipping (Local Vessels) (Safety and Survey) Regulation (Cap. 548G); <p>*Tenderers shall submit an undertaking for renewing the licence throughout the Tender Validity Period (See Appendix to Schedule 3)</p>	
2.	<ul style="list-style-type: none"> - have an approved passenger carrying capacity of not less than 20 persons and shall provide seats with backrests for all passengers; 	
3.	<ul style="list-style-type: none"> - have a normal service speed of not less than 18 knots (Note 1); 	
4.	<ul style="list-style-type: none"> - carry on board sufficient approved type of fire fighting and life saving equipment and appliances in good working condition as required for or by the licence of the Launch; 	
5.	<ul style="list-style-type: none"> - have a ship's length of not less than 15 metres, the maximum loaded draft of not more than 2 metres and the wheel house deck should not less than 2.5 metres above sea level at the maximum loaded draft; 	
6.	<ul style="list-style-type: none"> - be equipped with air-conditioning system inside the cabin; 	
7.	<ul style="list-style-type: none"> - be equipped with a functional marine very high frequency (VHF) radio with channels 6, 10, 11, 12, 13, 14, 16, 60, 62, 64, 67, 68, 71, 73 and 74; and 	
8.	<ul style="list-style-type: none"> - be equipped with a fully operational radar of a type approved by the Director of Marine and installed a radar reflector over the deck house or at an appropriate position to enhance the radar detection by the other vessels. 	

The Tenderer's proposed Launches must comply with the essential requirements listed in the table above at the time of submission of Tender and throughout the Tender Validity Period, failing which its Tender will not be considered further.

The Contractor shall ensure the Launches shall comply with the requirements listed in the table above during the Contract Period.

Note 1:

Speed tests might be carried out at the Government's discretion to determine if a proposed Launch (or a replacement Launch) complies with item 3 in the table above from time to time during the Contract Period. The criteria for the speed test are as follows:-

a) Loading condition:

- (i) Four (4) Government officers plus at least two (2) crew members on board.
- (ii) Fresh water capacity – The fresh water tank(s) shall be at least 25% filled.
- (iii) Fuel oil capacity – The fuel oil tank shall be at least 25% filled.

b) Duration of test:

The Launch shall continuously maintain the specified "normal service speed" or above, as stated in item 3, for at least one minute.

c) Testing equipment:

A GPS speed-testing device provided by the Agriculture, Fisheries and Conservation Department.

Schedule 3

Section B – Modification Requirements and Checklist

Item	Modification Requirements for the proposed Launches	Checklist result
1.	<ul style="list-style-type: none"> - be manned by a coxswain and a sufficient number (to the satisfaction of the Government Representative) of competent, duly qualified and trained crew at all levels who shall be: <ul style="list-style-type: none"> - duly qualified and certificated where applicable; and - with a minimum of 5 years' experience in the safe and efficient operation of the Launch. <p>The said crew shall include:</p> <ul style="list-style-type: none"> - a person who is the holder of a valid local certificate of competency as coxswain; - a person who has satisfactorily completed a radar training course approved by the Director of Marine; and - a person who is the holder of a valid local certificate of competency as engine operator; or - a person who is the holder of both certificates if the Launch is permitted to be operated by a combined coxswain and engine operator. <p>In addition, the said crew should wear tidy clothing as follows:</p> <p style="margin-left: 40px;">Summer: Long deep blue trousers and short sleeved white/light blue shirt;</p> <p style="margin-left: 40px;">Winter: Long deep blue trousers, long sleeved white/light blue shirt and deep blue overcoat;</p> <p style="margin-left: 40px;">Working clothing: White or dark blue boiler suit; and</p> <p style="margin-left: 40px;">Shoes: Black shoes;</p>	
2.	<ul style="list-style-type: none"> - be equipped with a properly lashed chair for the Agriculture, Fisheries and Conservation Department Officer for keeping proper look-out, and a retractable board/desk for paper work of size about 46cm (L) × 30cm (W); 	
3.	<ul style="list-style-type: none"> - be equipped with a set of Differential Global Positioning System (DGPS) where the data of the DGPS shall be incorporated into the Electronic Navigational Charts (ENC); 	
4.	<ul style="list-style-type: none"> - be equipped with a set of echo sounder; 	
5.	<ul style="list-style-type: none"> - be equipped with a portable loud hailer; 	
6.	<ul style="list-style-type: none"> - be equipped with an Automatic Identification System (AIS); 	
7.	<ul style="list-style-type: none"> - be equipped with 3 spare sockets for electricity supply of 220 Volt AC and 24 Volt DC for miscellaneous equipment; 	
8.	<ul style="list-style-type: none"> - be equipped with a torch provided with batteries; 	
9.	<ul style="list-style-type: none"> - be equipped with emergency backup power for lighting, communication devices and main engines; 	
10.	<ul style="list-style-type: none"> - be equipped with a fixed office desk not smaller than 1.5m (L) × 1m (W), with a properly lashed chair and desk light, and a fixed cupboard for not less than 12 standard size file holders; 	
11.	<ul style="list-style-type: none"> - be equipped with a microwave oven, refrigerator and water dispenser with sufficient distilled water for daily consumption; 	

Item	Modification Requirements for the proposed launches	Checklist result
12.	- be equipped with a set of updated charts and harbour plan covering the waters of Hong Kong and a set of parallel ruler and dividers;	
13.	- be equipped with a set of flags as required by local regulations;	
14.	- be equipped with a fixed search light, manually adjustable from the wheelhouse, with a power of 500W or above;	
15.	- be equipped with a portable & rechargeable cordless search light of not less than 500,000 candle power (cp);	
16.	- be equipped with a toilet with flushing system and washing basin with freshwater supply;	
17.	- maintain the Launch hull in the colour of grey, black and white and the similar physical appearance of an Agriculture, Fisheries and Conservation Department patrol launch;	
18.	- display the words “On Hire to Government of HKSAR” and “香港特別行政區政府租用” in a prominent position on both sides of the Launch whilst on hire and should be fully covered whilst not on hire;	
19.	- print the words “漁農自然護理署”, “AFCD”, “FISHERIES + number (to be assigned by the Government Representative)” and the logo of Agriculture, Fisheries and Conservation Department outside of the Launches and should also be fully covered whilst not on hire;	
20.	- be equipped with a cleared space should be available at the stern of at least one of the Launches for fitting a removable device (or rack) for the deployment of a piece of equipment into the sea by the Government Representative when necessary. The size of the device (or rack) is about 3.6m (L) × 0.7m (W) × 0.6m (H);	
21.	- carry on board a standard first aid box placed inside the cabin;	
22.	- be equipped with a magnetic compass; and	
23.	- be equipped with a red warning signal light.	

Modification: The successful Tenderer shall, within 21 days as specified in Clause 16.1(c) of the Terms of Tender, modify the proposed Launches to ensure that they comply with all those modification requirements as specified in the table above. Failure of the Contractor to modify the proposed Launches to the satisfaction of the Government Representative within the aforesaid 21-day period or such longer period as the Government may allow shall mean that the Tenderer has failed to fulfil this condition precedent under Clause 16.1(c) of the Terms of Tender. The successful Tenderer may then be disqualified under Clause 16.2 of the Terms of Tender.

Appendix to Schedule 3**UNDERTAKING**

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

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

Re. Tender for the Provision of Launches Service for Operations of Agriculture, Fisheries and Conservation Department (Tender Ref.: AFCD/SET2026)

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

- (i) the Tenderer shall renew the Certificate of Survey and Operating Licence of the Launches throughout the Tender Validity Period; and
- (ii) the Government shall be entitled to terminate the Contract by giving a 7 calendar days' written notice under Clause 17 of “Part III - Conditions of Contract” if the Contractor failed to provide the valid Certificate of Survey and Operating License at any time during the Contract Period.

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

Name of the authorised signatory (where applicable) :

Title of the authorised signatory (where applicable) :

Date :

ANNEX 1**SUB-CONTRACTOR'S UNDERTAKING**

THIS UNDERTAKING is made on the..... dayof 20

BY

whose registered office is at.....

.....[address]
("Sub-contractor")

IN FAVOUR OF

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

WHEREAS

- (A) By an invitation to tender (Tender Reference: AFCD/SET2026), the Government invited Tenders for a contract to the Provision of Launches Services for Operations for Agriculture, Fisheries and Conservation Department ("Contract") upon the terms and conditions of the Contract ("Invitation to Tender").
- (B) [Name of the Tenderer] ("Tenderer") has submitted a tender in response to this Invitation to Tender.
- (C) The Tenderer proposes to appoint the Sub-contractor to perform the work as specified by the Tenderer as part of its tender.
- (D) The Government has requested that the Tenderer shall procure the Sub-contractor to execute this Undertaking as part of the Tender.

NOW THIS UNDERTAKING witnesses as follows:

1. All words and expressions, and rules of interpretation defined or used in the Contract to be entered into between the Government and the Contractor following from the Invitation to Tender shall, unless specifically defined or redefined herein or the context otherwise requires, have the same meaning or otherwise shall have equal force when used in or interpreting this Undertaking.
2. The Sub-contractor warrants and undertakes to the Government that it will perform all obligations of the Contractor under the Contract to the extent that they have been subcontracted to the Sub-contractor and discharge all liabilities of the Contractor in relation to or in connection with or arising from such obligations (collectively, "Sub-contracted Obligations") as if references to the Contractor in all provisions in the Contract in relation to such Sub-contracted Obligations shall mean the Sub-Contractor with effect from the date of this Undertaking until all such Sub-contracted Obligations have been duly fulfilled and duly discharged. The Sub-contracted Obligations are recapitulated as follows:

3. (a) The ownership of all Intellectual Property Rights which exist in the Materials which are produced or provided by Sub-contractor shall as from creation become, and at all times thereafter, remain vested in the Government.
(b) Without prejudice to the generality of Clause 2 above, the Sub-contractor hereby grants or in case it is not empowered to do so, shall at its own cost and expense procure that there will be granted, for the benefits of each of the Government, its authorised users, assigns and successors-in-title the licence on the terms set out in Clause 19.3 of the Conditions of Contract to the extent that any subject matter covered by the licence or any part thereof is to be supplied by the Sub-contractor in the performance of the Sub-contracted Obligations.
4. The Sub-contractor shall not be discharged or released from this Undertaking by any arrangement made between the Government and the Contractor or by any change in obligations of the Contractor under the Contract or by any forbearance granted by the Government to the Contractor as to payment, time, performance or otherwise whether or not such arrangement, change or forbearance may have been or is made or granted with or without knowledge or assent of the Sub-contractor.
5. Without prejudice to Clause 4 above, the obligations of the Sub-contractor under this Undertaking shall remain in full force and effect and shall not be affected or discharged in any way by, and the Sub-contractor hereby waives notice of:
 - (a) any suspension of, variation or amendment or supplement to the Contract (including without limitation extension of time for performance) or any concession or waiver by the Government, in whole or in part, in respect of the Contractor's obligations under the Contract;
 - (b) any provision of the Contract being or becoming illegal, invalid, void, voidable or unenforceable;
 - (c) the termination of the Contract for any reason;
 - (d) any forbearance or waiver of any right of action or remedy that the Government may have against the Contractor and/or the negligence, failure, omission, indulgence or delay by the Government in enforcing any right, power, privilege to or remedy available to the Government in relation to the obligations of the Contractor set out in the Contract;
 - (e) the voluntary or involuntary liquidation, bankruptcy, dissolution, sale of assets, receivership, general assignment for benefit of creditors, insolvency, reorganisation arrangement, composition, or other proceedings of or affecting the Contractor or its assets, or any change in the constitution or membership or shareholding or director or management of the Contractor (as the case may be) or that the Sub-contractor is no longer a subsidiary of the Contractor;
 - (f) any assignment or sub-contracting by the Contractor of any or all of its obligations set out in the Contract, whether or not such assignment or sub-contracting has been consented to; and

(g) without prejudice to the generality of the foregoing, any fact or event (whether similar to any of the foregoing or not) which in the absence of this provision would or might constitute or afford a legal or equitable discharge or release of or defence to the Sub-contractor, other than an express release of its obligations by the Government.

6. This Undertaking shall extend to all Sub-contracted Obligations under the Contract as the same may from time to time be amended or supplemented and the Sub-contractor hereby prospectively consents to whatever amendment, variation or supplement which may be made to the Contract.

7. This Undertaking shall have immediate effect upon execution. This Undertaking shall cover all of the Sub-contracted Obligations and shall remain in full force and effect and irrevocable until all such Sub-contracted Obligations mentioned in Clause 2 above have been performed and discharged but all provisions stated in Clause 18.1(a)(iii) of the Conditions of Contract which are deemed incorporated herein by virtue of Clause 13 below as well as Clauses 1, 3, and 7 to 15 of this Undertaking shall continue to survive.

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

10. The obligations expressed to be undertaken by the Sub-contractor under this Undertaking are those of primary obligor and not as a surety.

11. This Undertaking 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 Sub-contractor agrees to submit to the exclusive jurisdiction of the courts of Hong Kong.

12. All documents arising out of or in connection with this Undertaking shall be served:-

- (a) upon the Government, at _____, marked for the attention of _____, telephone number _____, facsimile number _____ and email address: _____;
- (b) upon the Sub-contractor, at _____, marked for the attention of _____, telephone number _____, facsimile number _____ and email address: _____.

13. Without prejudice to other provisions of this Undertaking including Clause 2, all provisions of the Contract (other than the Terms of Tender) shall be deemed incorporated herein, mutatis mutandis, and save in the case of those provisions concerning (a) any approval, consent, notices and any other form of communication to be given by the Government including any Order (as the Government will communicate directly with the Contractor (unless and to the extent the Government also chooses to do the same to the Sub-contractor)); (b) any obligation of the Government to the Contractor (including payment obligation); (c) the Contract Deposit (as no Contract Deposit is required from the Sub-contractor); and (d) any provision concerning any Item not covered by the Sub-contracted Obligations. References therein to "Contract" shall mean this Undertaking, and references therein to "Contractor" shall mean the Sub-contractor.

14. For the avoidance of doubt, the Sub-contractor acknowledges and agrees that the Government has no obligation to the Sub-contractor, including any obligation of the Government to the Contractor under the Contract (including any payment obligation).

15. Nothing in this Undertaking shall be taken as an assignment or transfer of any rights or obligations or liabilities from the Contractor to the Sub-contractor. The Sub-contractor acknowledges and agrees that all the Sub-contracted Obligations shall be borne by the Contractor and Sub-contractor jointly and severally. Notwithstanding this Undertaking, the Contractor shall remain liable and responsible for all acts, omissions and defaults of the Sub-contractor and its employees, agents and sub-sub-contractors of whatever tier as if they were the acts, omissions and defaults of the Contractor.

16. If this Undertaking is required to be submitted as part of the Tender but the Tenderer is not eventually awarded with the Contract, this Undertaking shall be void ab initio but not otherwise.

IN WITNESS whereof this Undertaking was executed as a deed on the date first above written.

THE COMMON SEAL OF THE SUB-CONTRACTOR)
IS HEREUNTO AFFIXED)
in the presence of:)
Name:)
Title: Director)
Name:)
Title: Director/Company Secretary)

as witnessed by:

Name:
Title:

Notes:

- (1) Please adopt and modify the execution clause in accordance with the execution requirements of the applicable laws of the place of incorporation of the Sub-contractor. For example, if the Sub-contractor does not and is not required to keep a common seal or seal, it is not required that the Sub-contractor affixes a common seal or seal in the execution of this document but the execution of this document as a deed must be in accordance with the laws of the place of its incorporation. As mentioned in Clause 8.4 of the Terms of Tender, a legal opinion will be required for this Undertaking.
- (2) Where the Sub-contractor is a Hong Kong company, this Undertaking shall be signed by at least two directors or one director and one company secretary unless supported by board resolution attached hereto authorising the affixation of the common seal and the execution of this Undertaking by the signator(ies).

ANNEX 2

Marking Scheme and Assessment Criteria for Provision of Launches Service for Operations of Agriculture, Fisheries and Conservation Department

1. A two-envelope approach with a technical to price weighting of 50:50 will be adopted for this Tender evaluation whereby the price assessment will be conducted separately and subsequent to the technical assessment.
2. For Tender evaluation, a Tender assessment panel (“Tender Assessment Panel”) will be formed. The Tender Assessment Panel will evaluate the Tenders in five stages as set out below.

Stage I – Completeness Check

3. All Tenders received will be checked on whether all the documents and information required in **Clause 3.3 of Part II - Terms of Tender** have been submitted. **A Tender will not be considered further if, by the Tender Closing Date, the Tenderer fails to submit any of the following documents:**
 - (a) The Offer to be Bound as required in Clause 3.2 of the Terms of Tender;
 - (b) Schedule 1 containing the price quotations for the Services;
 - (c) Schedule 2 containing the details of the proposed Launches for the Services; and
 - (d) “Launches Hiring Service Plan” under Execution Plan of technical proposal in accordance with Appendix to Annex 2
4. Tenders which have passed Stage I evaluation will proceed to Stage II evaluation.

Stage II – Checking for Compliance with Essential Requirements

5. Tenders which have passed Stage I evaluation will be checked to ensure their compliance with the essential requirements including those set out in Section A of Schedule 3. Information and documents submitted in a Tender to substantiate the Tenderer’s compliance of the essential requirements will be evaluated by the Tender Assessment Panel. A physical examination of the proposed Launches and speed test mentioned in Note 1 of Schedule 3 might be carried out at the Government’s discretion. Tenders which have passed this Stage II assessment will proceed to Stage III assessment.

Stage III – Technical Assessment

6. Technical proposals of Tenders which have passed Stages I and II evaluation will be further evaluated according to the Assessment Criteria and Marking Guidelines in **Appendix to Annex 2**.
7. **Any Tender which fails to score the passing mark (10 out of 40) under the assessment**

criterion (1) (Launches Hiring Service Plan) of the Assessment Criteria in Appendix to Annex 2 will not be considered further.

8. The weighted technical score will be worked out for Tenders which have passed Stages I to III evaluation. The highest scoring Tender that has passed Stage III will be given the maximum weighted technical score of 50 and the remaining Tenders will be given a weighted technical score in accordance with the following formula:

$$50 \times \frac{\text{Total technical mark attained by the Tender being assessed}}{\substack{\text{Highest total technical mark among Tenders that have passed} \\ \text{Stages I to III evaluation}}}$$

Stage IV – Price Assessment

9. (a) The price proposals of those Tenders which have passed Stages I to III evaluation will be assessed.

(b) The price assessment will be based on the Estimated Total Contract Value in Schedule 1 (Price Proposal).

10. The lowest Tender price submitted by a Tenderer amongst all the Tenderers whose Tenders have passed Stages I to III evaluation will be given the maximum weighted price score of 50 and the remaining Tenders will be given a weighted price score in accordance with the following formula:

$$50 \times \frac{\text{Lowest Estimated Total Contract Value among the Tenders that have} \\ \text{passed Stages I to II evaluation and completed Stage III assessment}}{\text{Estimated Total Contract Value of the Tender being assessed}}$$

[Note: The weighted technical score and weighted price score of each Tender will be rounded to the nearest 2 decimal places. Figures with the value at the third decimal place larger than or equal to 0.005 will be rounded up by adding 0.01 to the figures and curtailing the third decimal place onward whereas figures with the value at the third decimal place below 0.005 will be rounded down by curtailing the third decimal place onward without changing the value at the second decimal place.]

Stage V – Calculation of Combined Score

11. (a) The weighted technical score and weighted price score of a Tender will be added up to calculate the Tender's combined score.

(b) The Tenderer whose Tender attains the highest combined score will normally be recommended for the award of the Contract.

Appendix to Annex 2

Provision of Launches Service for Operations **Assessment Criteria and Marking Guidelines for Stage III - Technical Proposal**

Assessment Criteria	Maximum Mark	Passing Mark*
(A) Execution Plan		
(1) Launches Hiring Service Plan (see Notes 1 and 3)	40	10
(2) Coxswain and Crew Management Plan (see Notes 2 and 3)	30	--
(3) Innovative Suggestions		
(a) Type I – Pro-innovation proposals - directly relevant to the Service (see Note 4)	15	--
(b) Type II –ESG proposals – measures to improve environmental protection, sustainability or governance or social responsibility which may but need not be directly relevant to the Services (see Note 5)	6	--
Sub-total for (A)	91	--
(B) Other Specific Criteria		
(4) Additional Launches (see Note 6)	9	--
Sub-total for (B)	9	--
Total Technical Mark	100	--

Explanatory Notes for Stage III – Technical Assessment

(A) Execution Plan

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

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

- (1) Launches hiring service plan (“Launches Hiring Service Plan”); and
- (2) Coxswain and crew management plan (“Coxswain and Crew Management Plan”).

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

Note 1: for Assessment Criterion (1) – Launches Hiring Service Plan (max. mark: 40)

The Launches Hiring Service Plan shall cover the following items:

1.1 Operational arrangement

- (a) programmes for optimal launches deployment and other supporting and logistical functions;
- (b) measures to deal with unforeseen changes and situation, such as engine failure and marine traffic accident, other than those stated in the Conditions of Contract;
- (c) a reviewing mechanism on the effectiveness of service;
- (d) communication channel during bad weather conditions; and
- (e) measures to enhance security control for equipment/tools/users' personal belongings, etc. stored in the Launches during the performance of the Services.

1.2 Contingency measures

- (f) arrangements to meet ad hoc urgent requests (e.g. mobilising Launches to cater for non-scheduled service needs);
- (g) procedures and support for emergency situations (e.g. unforeseen problems such as operations during typhoons and other natural disasters); and
- (h) duty team to oversee and execute contingency operations.

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

Note 2: for Assessment Criterion (2) – Coxswain and Crew Management Plan (max. mark: 30)

The Coxswain and Crew Management Plan shall cover the following items:

2.1 Relating to Maritime Navigation Safety

- (a) a programme for regular maritime navigation safety briefing for coxswains and crews to enhance maritime navigation safety awareness;
- (b) an “Accident and Incident Reporting and Investigation” mechanism to report and investigate accidents and incidents occurred with corrective actions proposal within a certain period (say, 3 days for accident involving casualty);
- (c) a mechanism to suspend crew staff's service according to the crew staff offence incurred; and
- (d) a mechanism to ensure the provision of sufficient rest time for coxswains and crews between each duty period.

2.2 Relating to Staff Management

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

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

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

Assessment of the Proposed Plans

Marks (excluding those reserved for innovative suggestions) will be given for each Plan in accordance with the following five-grade approach:

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

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

- (a) Tenderers are encouraged to provide pro-innovation proposals for Assessment Criteria (1) and (2) to enhance the performance of the Services.
- (b) Pro-innovation proposals may not necessarily be technology-related. Pro-innovation proposals are technological means/arrangements/work process/solutions/equipment that can enhance efficiency, effectiveness and productivity of the service outcome. The emphasis is on output-based service delivery of which the contributions should be visible, and preferably be quantifiable and measurable. Tenderers may propose pro-innovation proposals involving application/adoption of new technology/inventions and/or innovative application of existing/matured technology that may enhance service delivery while contributing to the development of Smart City and innovation and technology development. Marks will be given if the proposed pro-innovation proposals are directly relevant to, effective and practicable in improving the delivery of the Services as compared with how the Services are delivered under the existing contract or the conventional mode of service delivery adopted by the Government in general.
- (c) Pro-innovation proposals shall be proposed for the following Plans respectively:
 - (i) Pro-innovation proposals for the Launches Hiring Service Plan (max. mark: 7.5)

The Tenderer should propose pro-innovation proposals that are directly relevant to the Launches Hiring Service Plan, so as to enhance quality, effectiveness and efficiency for performance of the Services.

(ii) Pro-innovation proposals for the Coxswain and Crew Management Plan (max. mark: 7.5)

The Tenderer should propose pro-innovation proposals that are directly relevant to:-

- (1) Maritime Navigation Safety, so as to enhance the awareness of coxswains and crews on maritime navigation safety during delivery of the launches hiring service; and/or
- (2) Staff Management, so as to enhance performance and morale of staff, including coxswains and supporting staff.

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

Marks	Marking Standard
7.5	The proposed plan contains 3 or more effective and practicable pro-innovation proposals for the respective Plan.
5	The proposed plan contains 2 effective and practicable pro-innovation proposals for the respective Plan.
2.5	The proposed plan contains 1 effective and practicable pro-innovation proposals for the respective Plan.
0	The proposed plan does not contain any pro-innovation proposals for the respective Plan.

(e) Marks will not be given to any pro-innovation proposal/ESG proposal which a Tenderer will neither be capable of nor responsible for implementation in the opinion of the Government.

(f) An suggestion that scores marks under pro-innovation proposals will not earn marks again under ESG proposals and vice versa. In case a Tenderer specifies the type of 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 both pro-innovation proposals and ESG proposals, it will be taken as scoring marks under pro-innovation proposals only. Furthermore, a suggestion scores marks under one Plan will not earn marks again under another plan. If the TAP considers that the same pro-innovation proposal could score marks under more than one plan, it will be taken as scoring marks under the first relevant plan. For example, if a Tenderer proposes the pro-innovation proposal which could earn marks under both Launches Hiring Service Plan and Coxswain and Crew Management Plan, it will be taken as scoring marks under Launches Hiring Service Plan only.

(g) Tenderers should propose pro-innovation proposals and ESG proposals by filling in the details in Schedule of Pro-innovation Proposals and ESG Proposals under this Appendix to Annex 2 to facilitate Tender evaluation.

(h) Apart from the Schedule of Pro-innovation Proposals and ESG Proposals mentioned in (g) above, Tenderers shall submit the following information for demonstrating the effectiveness and practicability of the pro-innovation proposals/ESG proposals. Marks will not be given if the Tenderers only propose a concept without sufficient details. The information that shall be provided by the Tenderers includes the following –

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

- (i) Tenderers may be requested to provide supporting documents or a demonstration to prove the practicability of their pro-innovation proposals/ESG proposals. All proposed pro-innovation proposals/ESG proposals will be assessed on the basis of the information provided in the Tender submissions and factual supporting documents (e.g. test reports/certificates) provided by the Tenderers upon request by the Government. The demonstration will not be taken into account in marking. It only serves as a means to enable members of the Tender Assessment Panel to have a better understanding of the pro-innovation proposals/ESG proposals proposed by the Tenderers. During the demonstration, Tenderers are also not allowed to provide additional information not contained in their original Tender submissions.
- (j) All effective and practicable pro-innovation proposals/ESG proposals accepted by the Government shall form part of the Contract. Any failure to perform such pro-innovation proposals/ESG proposals would be deemed a breach of the contractual obligation, and the Government would be entitled to take follow-up actions in accordance with the existing mechanism on the handling of breach of contractual obligations e.g. claiming damages and/or termination of the contract.

Note 5: for Assessment Criterion (3)(b) –ESG Proposals – measures to improve environmental protection, sustainability or governance or social responsibility which may but need not be directly relevant to the Services (Max. mark: 6)

- (a) Tenderers are also encouraged to provide ESG proposals which may but need not be directly relevant to the performance of the Services but can bring about positive values or benefits to the Government or the public at large in the execution of the contract throughout the contract period..
- (b) ESG proposals may not necessarily be technology-related.
- (c) Marks will be given if the proposed ESG proposals are effective and practicable for the following areas:
 - (1) environmental protection (e.g. reduction in energy consumption, use of renewable energy, such as solar energy, in the execution of the contract, etc.);

- (2) social responsibility (e.g. employment of people with disabilities and/or rehabilitated persons for the contract, etc.); and/or
- (3) governance.

Marks will be given as follows:-

<u>Marks</u>	<u>Marking Standard</u>
6	3 or more effective and practicable ESG proposals proposed.
4	2 effective and practicable ESG proposals proposed.
2	1 effective and practicable ESG proposals proposed.
0	No ESG proposals proposed.

(d) Clauses (e) to (j) of Note 4 above are also applicable to this Note.

(B) Other Specific Criteria

Note 6: for Assessment Criterion (4) – Additional Launches (max. mark: 9)

Marks will be given if any additional conforming launches can be offered which can enhance operation arrangement of the Government to deal with unforeseen situation or ad hoc urgent requests. Information of the additional conforming launches, with supporting documents, should be provided in the format of Section B of Schedule 2. Otherwise, no marks will be given.

Marks will be given as follows:-

<u>Marks</u>	<u>Marking Standard</u>
9	2 or more additional conforming launches could be available.
5	1 additional conforming launch could be available.
0	No additional launch proposed; or no information of the additional conforming launches provided.

Schedule of Pro-innovation Proposals and ESG Proposals

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

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

Pro-innovation proposals – Directly Relevant to the Services

- **For the Launches Hiring Service Plan**

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

- **For the Coxswain and Crew Management Plan**

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

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

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

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

Name of the authorised signatory (where applicable) :

Title of the authorised signatory (where applicable) :

Date :

ANNEX 3

Part I

Method of providing the Contract Deposit

Name of Tenderer: _____

Date: _____

If the Contract is awarded to us, we shall pay to 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.

ANNEX 3**Part II****Form of
Bank Guarantee**

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

IN FAVOUR OF

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

WHEREAS

(A) By a contract (hereinafter called the "Contract") dated the ___ of _____ 20___ made between _____ of _____ (hereinafter called the "Contractor") of the one part and the Government of the other part (designated as Agriculture, Fisheries and Conservation Department [Contract No.: AFCD/SET2026]), the Contractor agreed and undertook to provide the Services (as defined in the Contract) upon the terms and conditions of the Contract.

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

Now the Guarantor HEREBY AGREES with the Government as follows:-

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

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

(a) The Guarantor hereby irrevocably and unconditionally guarantees, as a continuing obligation, the due and punctual performance and discharge by the Contractor of all of his, her or their obligations and liabilities under the Contract and the Guarantor shall pay to the Government on demand and without cavil or argument all monies and discharge all liabilities which are now or at any time hereafter shall become due or owing by the Contractor to or in favour of the Government under or in connection with the Contract together with all costs, charges and expenses on a full indemnity basis which may be incurred by the Government by reason or in consequence of any default on the part of the Contractor in performing or observing any of the obligations terms conditions stipulations or provisions of the Contract, notwithstanding any dispute between the Contractor and the Government or any other person.

(b) The Guarantor, as a primary obligor and as a separate, continuing and independent obligation and liability from its obligations and liabilities under sub-clause (a) above, irrevocably and unconditionally agrees to indemnify and keep indemnified the Government against and shall pay to the Government on demand and without cavil or argument all losses, damages, costs, charges and expenses on a full indemnity basis suffered or incurred by the Government arising from or in connection with the failure of the Contractor to perform fully or promptly any of his, her or their obligations terms conditions stipulations or provisions of the Contract.

(c) The Government may place and keep any monies received by virtue of this Guarantee (whether before or after the insolvency or liquidation of the Guarantor or the Contractor) to the credit of a suspense account for so long as the Government may think fit in order to preserve the rights of the Government to sue or prove for the whole amount of its claims against the Guarantor, the Contractor or any other person.

(3) This Guarantee shall not be affected by any change of name or status in the company, firm or individual described as "the Contractor" or where "the Contractor" is a partnership, any change in the partners or in its constitution or where "the Contractor" is a company, any change of its member or shareholder or its officers or its constitution.

(4) The Guarantor shall not be discharged or released from this Guarantee by any arrangement made between the Government and the Contractor or by any alteration in the obligations imposed upon the Contractor by the Contract or by any waiver or forbearance granted by the Government to the Contractor as to payment, time, performance or otherwise whether or not such arrangement, alteration, waiver or forbearance may have been or is made or granted with or without knowledge or assent of the Guarantor.

(5) Without prejudice to Clause 4 above, the obligations of the Guarantor under this Guarantee shall remain in full force and effect and shall not be amended or affected or discharged in any way by, and the Guarantor hereby waives notice of or assents to:

- (a) any suspension, termination, amendment, variation, novation or supplement of or to the Contract from time to time (including without limitation extension of time for performance);
- (b) any provision of the Contract being or becoming illegal, invalid, void, voidable or unenforceable;
- (c) the termination of the Contract or of the engagement of the Contractor under the Contract for any reason;
- (d) any forbearance, variation, extension, discharge, compromise, dealing with exchange, waiver or renewal in respect of any right of action or remedy that the Government may have, now or after the day of this Guarantee, against the Contractor and/or the negligence, failure, omission, indulgence or delay by the Government in enforcing any right, power, privilege to or remedy available to the Government in relation to the obligations of the Contractor set out in the Contract;
- (e) the voluntary or involuntary liquidation, bankruptcy, dissolution, sale of assets, receivership, general assignment for benefit of creditors, insolvency, reorganisation arrangement, composition, or other proceedings of or affecting the Contractor or its assets, or any change in the constitution of the Contractor;
- (f) any assignment, novation or sub-contracting by the Contractor of any or all of its obligations set out in the Contract; and
- (g) without prejudice to the generality of the foregoing, any fact or event (whether similar to any of the foregoing or not) which in the absence of this provision would or might constitute or afford a legal or equitable discharge or release of or defence to the Guarantor, other than the express release of its obligations.

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

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

- (a) the date three (3) months after the early termination or expiry of the Contract; or
- (b) if at the time of expiry or early termination of the Contract Period, there is any outstanding right or claim of the Government, or any outstanding obligation or liability of the Contractor, whether under or arising from or in relation to the Contract, the date on which all such rights and obligations, and claims and liabilities

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

whichever is the applicable.

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

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

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

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

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

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

(b) upon the Guarantor, at _____, Hong Kong, marked for the attention of _____, facsimile number _____.

(13) Documents to be served under this Guarantee shall be deemed to have been duly served by one party if sent by letter or fax addressed to the other party at the address stated above or to the facsimile number set out above. The documents so served shall be effective (a) on the date of delivery if hand-delivered; (b) on the date of transmission if sent by facsimile; and (c) if despatched by mail (whether registered or not), on the day on which they are tendered for delivery by the postal authority in Hong Kong.

(14) Notwithstanding anything herein to the contrary, the aggregate amount of the Guarantor's liability under this Guarantee shall not exceed _____.

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

IN WITNESS whereof the Guarantorhas caused its Common Seal/Seal to be hereunto affixed the day and year first above written.

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

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

* Please delete as appropriate.

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

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

ANNEX 4

NON-COLLUSIVE TENDERING CERTIFICATE

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

To: the Government

Dear Sir/ Madam,

Non-collusive Tendering Certificate

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

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

Non-collusion

2. I/We represent and warrant that in relation to the Invitation to Tender:

- (a) My/Our Tender was prepared genuinely, independently and made with the intention to accept the Contract if awarded;
- (b) My/Our Tender was not prepared with any agreement, arrangement, communication, understanding, promise or undertaking with any person (including any other Tenderer or competitor) regarding:
 - i) prices;
 - ii) methods, factors or formulas used to calculate prices;
 - iii) an intention or decision to submit, or not submit, any Tender;
 - iv) an intention or decision to withdraw any Tender;
 - v) the submission of any Tender that does not conform with the requirements of the Invitation to Tender;
 - vi) the quality, quantity, specifications or delivery particulars of the products or services to which the Invitation to Tender relates; and
 - vii) the terms of my/our Tender,

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

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

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

Disclosure of subcontracting

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

Consequences of breach or non-compliance

5. I/We understand that in the event of any breach or non-compliance with any representations, warranties and/or undertakings in this certificate or in Clause 26.1 of the Terms of Tender, the Government may exercise any of the rights under Clauses 26.3 to 26.5 of the Terms of Tender in addition to and without prejudice to any other rights or remedies available to it against me/us.

6. Under the Competition Ordinance (Cap. 619), bid-rigging is serious anti-competitive conduct. I/We understand that the Government may, at its discretion, report all suspected instances of bid-rigging to the Competition Commission (the “Commission”) and provide the Commission with any relevant information, including but not limited to the information on my/our Tender and my/our personal information.

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

Name of the authorised signatory (where applicable) :

Title of the authorised signatory (where applicable) :

Date :

ANNEX 5

Registration Form for the Tender Briefing**Tender for the Provision of Launches Services for Operations of
Agriculture, Fisheries and Conservation Department****(Tender Reference AFCD/SET2026)**

To: Director of Agriculture, Fisheries and Conservation
8/F, Cheung Sha Wan Government Office,
303 Cheung Sha Wan Road, Kowloon
Licensing and Enforcement Division
Sea Enforcement Section
(Attn: Dr. CHUN Ka-him)
Facsimile: (852) 2314 2866

We will attend the Tender briefing for the above Tender
on 30 December 2025, 10:00 am
at Room 702
7/F., Cheung Sha Wan Government Office
303 Cheung Sha Wan Road,
Kowloon.

Company Name _____

Person to attend:

Name _____

Position _____

Tel No. _____

Fax No. _____

Date _____

Note: 1. The registration form should be completed and returned by facsimile by 29 December 2025. Late registration will not be accepted.

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

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

PART V — OFFER TO BE BOUND

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

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

Name of the Tenderer : _____

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

Date : _____

Notes:

(i) For Paper-based Tendering, the Offer to be Bound to be signed and submitted shall be Part V of this Tender Form or a printed copy from a softcopy of Part V of this Tender Form or a photocopy or a scanned copy of such hardcopy or printed copy. Any manner of reproduction of Part V of this Tender Form (including copy-typing) to be submitted as the Offer to be Bound shall not be acceptable and **the Tender with the non-conforming Offer to be Bound will not be considered further.**

(ii) *For Paper-based Tendering, this Part V – Offer to be Bound shall be signed and submitted in the Tender before the Tender Closing Time. This signed Part V – Offer to be Bound to be submitted must not be a photocopy of the original, otherwise, **the Tender will not be considered further.**

(iii) The Tenderer shall not make any alteration to the original text set out in this Part V – Offer to be Bound, otherwise **the Tender will not be considered further.** Deleting inapplicable word “I/we” or “me/us” or the alternative wording denoted by # above is however not to be treated as an alteration.

**PART VI
MEMORANDUM OF ACCEPTANCE**

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

I

(name and position of officer)

accept your Tender for the Contract 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 : _____