

**THE GOVERNMENT OF
THE HONG KONG SPECIAL ADMINISTRATIVE REGION
AGRICULTURE, FISHERIES AND CONSERVATION DEPARTMENT**

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

Tender Ref.: AFCD/SET2022

LODGING OF TENDER

A Tender must be properly completed and signed *in triplicate* in accordance with Clause 3 of the Terms of Tender in Part II, 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/SET2022)**” and addressed to “**The Chairman, Tender Opening Committee, Government Logistics Department**” and deposited in the Government Logistics Department Tender Box located at the **Ground Floor, North Point Government Offices, 333 Java Road, North Point, Hong Kong** before **12:00 noon on 3 March 2022 (Thursday)**.

Any late Tender or Tender not submitted in accordance with the submission method stipulated above, e.g. Tender submitted by facsimile or e-mail, will not be considered.

PART I

INTERPRETATION

1. In the Tender Documents and the Contract, unless the context otherwise requires, the following expressions shall have the following meanings:-

“Charging Rates” means the rates per trip and hourly rates of the Launches as quoted in Schedule 1;

“Contract” means the contract for the provision of the Services between the Government and that Contractor on the terms and conditions set out in the following documents:

- (a) the Tender Documents;
- (b) the Tender submitted by the Contractor and accepted by the Government subject to such changes as the Government may stipulate in exercise of its powers under the Tender Documents, or as the parties may agree;
- (c) the Offer to be Bound signed by that Contractor;
- (d) the Memorandum of Acceptance issued by the Government to that Contractor pursuant to Clause 8(c) of the Terms of Tender.

References to “the Contract” or “this Contract” mean the same contract as defined herein.

“Contract Period” means the period specified in Clause 1 of the Conditions of Contract;

“Contractor” means the Tenderer whose Tender for the Contract is accepted by the Government;

“Government” means the Government of Hong Kong;

“Estimated Total Contract Value” means the estimate total contract value as quoted in Schedule 1 – Price Schedule;

“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;

“Invitation to Tender” means this Government’s invitation to tender for the Contract on the terms and conditions set out in these Tender Documents;

“Hong Kong”	means the Hong Kong Special Administrative Region of the People's Republic of China;
“Launches”	means the two patrol launches to be provided by the Contractor for the provision of the Services under the Contract;
“Monthly Charges”	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;
“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 Documents”	means the documents as specified in Clause 1 of the Terms of Tender and any addendum issued prior to the Tender Closing Date;
“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;
“Tenderer”	means a person who has submitted a Tender in response to the Invitation to Tender; 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:-
- (a) references to statutes or statutory provisions means references to those statutes or statutory provisions as replaced, amended, modified or re-enacted from time to time, and includes all subordinate legislation made under those statutes;
 - (b) words importing the singular includes the plural and vice versa; words importing a gender includes all other genders; references to any person includes any individual, firm, body corporate or unincorporate (wherever established or incorporated);

- (c) headings are inserted for ease of reference only and do not affect the construction of the Tender Documents or the Contract;
- (d) references to a document:
 - (i) include all schedules, appendices, annexures and other materials attached to such document; and
 - (ii) mean the same as from time to time amended or supplemented in accordance with the terms of the Tender Documents or the Contract.
- (e) references to “Tenderer” or “Contractor” include its permitted assigns, successors, or any persons deriving title under them;
- (f) references to “Government” include its assigns, successors-in-title and persons deriving title under them, regardless of whether or not any of these persons are mentioned separately in the relevant provisions;
- (g) references to “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;
- (h) 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;
- (i) references to time and dates in the Tender Documents shall be construed as Hong Kong time and dates;
- (j) 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);
- (k) references to a month or a monthly period mean a calendar month;
- (l) 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;
- (m) any act, default, neglect or omission of any employee, licensee, agent or sub-contractor of the Contractor is deemed to be the act, default, neglect or omission of the Contractor;
- (n) words importing the whole are treated as including a reference to any part of the whole;
- (o) 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
- (p) 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

- (a) These Tender Documents identified as AFCD/SET2022 consist of one complete set of the documents in a bound booklet comprising:
- (i) Part I – Interpretation;
 - (ii) Part II – Terms of Tender (including the Lodging of Tender at the cover of the Tender Documents);
 - (iii) Part III – Conditions of Contract
 - (iv) Part IV – Offer to be Bound;
 - (v) Part V – Memorandum of Acceptance;
 - (vi) Schedule 1 – Price Schedule;
 - (vii) Schedule 2 – Details of Tenderer (Section A), Launches (Section B) and Crew members (Section C);
 - (viii) Schedule 3 – Essential and Modification Requirements and Checklist;
 - (ix) Annex I – Marking Scheme for Quotation Evaluation
 - (x) Annex II – Form of Bank Guarantee
 - (xi) Annex III – Non-Collusive Tendering Certificate
 - (xii) Annex IV – Registration Form for the Tender Briefing
 - (xiii) Annex V – Statement of Compliance
- (b) Unless otherwise defined, each of the above documents constituting the Tender Documents or the Contract (as the case may be) shall be referred to in the Tender Documents or Contract using the terms of references appearing in quotation marks.

2. Invitation to Tender

- (a) 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.
- (b) 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.
- (c) The Government's actual requirements may vary depending on the actual need and the successful Tenderer must accept any increase or decrease of the stated estimates.
- (d) By submitting a Tender, a Tenderer will be regarded to have agreed to all terms and conditions set out in the Tender Documents.

3. Tender Preparation and Submission

- (a) The successful Tenderer will be required to perform all the Services during the Contract Period.
- (b) Tenders are to be submitted in TRIPLICATE (one (1) original and two (2) copies) and are to be completed in ink or typescript. Tenders not so submitted may not be considered.
- (c) Figures should not be altered or erased; any alteration should be effected by striking through the incorrect figures and inserting the correct figures in ink above the original figures. All such amendments should be initialled by the Tenderer in ink.
- (d) For a Tender submitted by a Tenderer to be considered complete, it must comprise the following documents in TRIPLICATE, each completed in English or Chinese and signed by the Tenderer, containing the following items:
 - (i) the **Offer to be Bound** in Part IV completed and signed by:
 - (1) if the Tenderer is a body corporate, a director of the Tenderer;
 - (2) if the Tenderer is a sole proprietorship, the Tenderer or his authorized person;
 - (3) if the Tenderer is a partnership, a partner of the Tenderer;
 - (ii) **Schedule 1** (Price Proposal) duly completed and signed;
 - (iii) **Schedule 2** containing information 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;
 - (iv) if the Tenderer is the owner of the proposed Launches, a copy of certificate of ownership issued pursuant to section 10 of Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation, Chapter 548D of the Laws of Hong Kong ("Cap. 548D") should be submitted for evidencing its ownership;
 - (v) if the Tenderer is not the owner of the proposed Launches, the tenderer should submit a copy of:
 - (1) 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) the certificate of ownership issued pursuant to section 10 of Cap. 548D evidencing the ownership.

- (vi) **Appendix to Schedule 3** containing an undertaking for renewing the licence throughout the Tender Validity Period;
 - (vii) A Technical Proposal with an Execution Plan in accordance with **Appendix to Annex I** provided;
 - (viii) Non-Collusive Tendering Certificate (**Annex III**) duly completed and signed, and
 - (ix) Statement of Compliance (**Annex V**) duly completed and signed.
- (e) A two-envelope system will be adopted for this invitation to tenders. Tenderers shall submit the following in two envelopes clearly labelled “Price Proposal” and “Technical Proposal” on the outside as follows:-
- (i) Documents relating to the price information (i.e. the original and two copies of “Schedule 1”, fully completed, signed, chopped and dated) must be enclosed in a sealed envelope clearly marked “Tender for the Provision of Launches Services for Operations of Agriculture, Fisheries and Conservation Department - Price Proposal (Tender Ref.: AFCD/SET2022)”; 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 tenders 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/SET2022)”.
 - (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/SET2022)” 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.

Offer submitted in a form or manner other than that described above may not be considered further.

- (f) In addition to the Tender, the Government may, but is not obliged to, require the Tenderer, at any time whilst its Tender remains open, to demonstrate at any position within the Hong Kong waters that the proposed Launches comply with the essential requirements and specifications set out in Part 1 of Schedule 3. All costs incurred for the demonstration shall be at the expense of the Tenderer concerned. A Tenderer’s failure to carry out the demonstration within 7 calendar days after the request by the Government or failure to demonstrate that the proposed Launches comply with the essential requirements and specifications set out in Part 1 of Schedule 3 will be disqualified.
- (g) Subject to Clause 3(f) above a Tender may not be considered if any document required in Clause 3(d) above is missing at the time of opening of tenders or any information or proposal required to be completed in or accompanied with any such

document is missing. Alternatively, a Tenderer who has failed to provide any such document or information or proposal at the time of opening of Tenders may be requested to submit the missing item pursuant to Clause 6 below. To avoid any potential disqualification or delay, Tenderers are urged to ensure that a complete set of documents, all duly completed and compiled as required in Clause 3(d), is submitted at the time of submission of their Tenders.

- (h) All proposals, information and responses from Tenderers must be submitted in writing.
- (i) Notwithstanding anything in these Terms of Tender to the contrary, **a Tenderer who fails to submit a signed Offer to be Bound based on the form set out in Part IV of the Tender Documents, Schedule 1** containing the price quotation for the Services, **Schedule 2** containing the details of the proposed launches for the Services, and a technical proposal with “**Launches Hiring Service Plan**” in accordance with **Appendix to Annex I** together with the tender on or before the Tender Closing Date and time **will be disqualified** and no request for late submission will be made during the evaluation stage.
- (j) The Tenderer shall confirm in Annex V (Statement of Compliance) that the Services offered are in compliance with all requirements specified in Schedule 3. If a Tenderer does not complete Annex V (Statement of Compliance), subject to any clarification which may be made by the Government, it shall be deemed that the Tenderer confirms its compliance with all essential requirements specified in the Schedule 3. A Tenderer’s Tender may not be considered further if the Tenderer expressly indicates non-compliance with any of the essential requirements in Schedule 3. Any other indication which casts doubt on the true intention of the Tenderer may be further clarified.

4. Tenders to Remain Open

- (a) Tenders shall remain open for acceptance by the Government on the terms and conditions set out in the Tender Documents for not less than **one hundred and fifty (150) days** after the Tender Closing Date (“Tender Validity Period”).
- (b) All Tenders must be deposited in the manner as prescribed in the Lodging of Tender on the cover page of the Tender Documents before 12:00 noon on the Tender Closing Date (Hong Kong time). **A Tender submitted by e-mail or facsimile will not be considered.** Without prejudice to the rights and powers of the Government under Clause 6 below, **late Tenders will not be considered.**
- (c) In case Tropical Cyclone Warning Signal No. 8 or above is hoisted, or Black Rainstorm Warning Signal or “extreme conditions after super typhoons” announced by the Government is/are in force for any duration between 9:00 a.m. (Hong Kong time) and 12:00 noon (Hong Kong time) on the Tender Closing Date as originally scheduled, the Tender Closing Date will be extended to 12:00 noon (Hong Kong time) on the first working day after that date (Hong Kong time) when the above-mentioned adverse weather event is lowered before 9:00 a.m. (Hong Kong time) on that day.
- (d) In case of blockage of the public access to the location of the tender box specified in the Lodging of Tender at any time between 9:00 a.m. and 12:00 noon 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>).

5. Charges

- (a) The Charging Rates to be quoted by Tenderers in Schedule 1 are to be denominated in Hong Kong dollars. Such Charging Rates shall be inclusive of all amounts chargeable by the Tenderer for the Services. Any discount which may be offered by the Tenderer shall also be specified and indicated clearly as to whether the Charging Rates include or exclude such discount. In the absence of any such indication, the Government shall deem that the quoted Charging Rates exclude such discount.
- (b) If, at the request of the Contractor which is acceded to by the Government Representative, assistance of any Government staff is provided after normal working hours (i.e. on Mondays to Fridays, outside the hours of 9:00 a.m. to 5:00 p.m. (Hong Kong time) or any time Saturday or Sunday), the Contractor will be responsible for the overtime remuneration, subsistence allowances and travelling expenses of such Government staff directly engaged in such assistance.
- (c) The Charging Rates quoted in the Tender must remain valid as the maximum chargeable rates per trip/hour throughout the duration of the Contract. No request for price variation will be considered during the Contract Period.
- (d) Tenderers should make certain the Charging Rates quoted are accurate before submitting their Tenders. Under no circumstances will the Government be obliged to accept any request for price adjustment. If the Government rejects such request, the Tenderer shall be bound by its original price proposal set out in its Tender.

6. Seeking of Clarification

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

- (a) clarification of any part of the Tender is necessary; or
- (b) certain document or information or proposal is missing in the Tender (including without limitation any of the documents requested in Clause 3(d) above but excluding those mentioned in Clause 3(i) above),

it may, but not obliged to, request the Tenderer concerned to make the necessary clarification, or submit the missing item. Each Tenderer shall thereafter within seven (7) calendar days or such other period as specified in the Government's request submit such clarification or item. Tenders may not be considered if the requested clarification or item is not provided as required by the deadline, or in the case of request for clarification, the clarification provided is not satisfactory to the Government. As an alternative to seeking clarification or submission, the Government may, as its discretion, proceed to evaluate the Tender on an "as is" basis or disqualify the Tenderer, depending on the importance of the missing item to the Government.

7. Tenderer's Counter-Proposal

- (a) By submitting their Tenders, all Tenderers in their capacity as Tenderer agree to comply with and observe all parts of the Tender Documents which relate to all matters concerning or relating to this Invitation to Tender, including without limitation all provisions in the Terms of Tender, the Interpretation, and the Offer to be Bound. Unless acceptable to the Government, none of such terms and conditions may be varied, and any counter-proposal from a Tenderer to vary any such term or condition will be ignored, or otherwise will entitle the Government to disqualify the Tenderer concerned.
- (b) The successful Tenderer is required to accept all terms and conditions in the Tender Documents which form part of the Contract on an “as is” basis. Unless otherwise acceptable to the Government, a counter-proposal by a Tenderer to any such term and condition will either be ignored, or entitles the Government to disqualify the Tenderer concerned.

8. Tender Assessment

- (a) 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.
- (b) The Tenders will be assessed based on the tender requirement in **Annex I**. The Tenders will first be checked for completeness (Stage I). **A Tenderer who fails to submit the essential tender documents mentioned in Clause 3(i) of this part will be disqualified and will not be further assessed.** In all other cases, further request for clarification or submission of missing item may be made, but strictly in accordance with Clause 6 above.
- (c) Each Tender will then be checked for compliance (Stage II) with the essential requirement as follows:
 - (i) the proposed Launches comply with the specifications and requirements set out in Part 1 of Schedule 3; and
 - (ii) the Tenderer is the owner of the proposed Launches, or the Tenderer has, under a legally binding agreement agreed with the owner to enter into a purchase agreement or a 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 throughout the Contract Period.

The Tender Assessment Panel will check the documents to determine whether the Tender comply with all the essential requirements. A physical examination of proposed Launches would be carried out for compliance checking and speed test after the recommendation by the Tender Assessment Panel. A Tenderer's failure to carry out the demonstration within 7 calendar days after the request of the Government or failure to demonstrate that the proposed Launches comply with the essential requirements and specifications set out in Part 1 of Schedule 3 will be disqualified.

- (d) Offers fail to meet the essential requirements in Stage II will not be considered further. Those meeting the essential requirements will be assessed accordingly to the assessment criteria in Stage III. The assessment criteria at Annex I will be used to assess the technical proposal. The Technical Score (non-revenue criteria) would carry a weight of 50% of total score against a weight of 50% of total score for Price Score (revenue criteria) (Stage III and IV).
- (e) The Technical Score and Price Score will be added up and the Tender with the highest overall Combined Score will normally be recommended for acceptance. Quotation with the highest overall Combined Score will normally be recommended for acceptance (Stage V).

9. Acceptance

- (a) 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 be obliged to deliver to the Government the following items within twenty one (21) days of the notification (or such later date as the Government may allow):
 - (i) the Contract Deposit as required under Clause 16 of this part;
 - (ii) copies of the insurance policies required in Clause 15 of the Conditions of Contract and receipts evidencing payment of premium thereunder; and
 - (iii) modify the proposed Launches to ensure that they comply with all those requirements and specifications specified in Part 2 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 modification or 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;
 - (iv) other conditions as the Government may specify therein.
- (b) **Only upon completion of or receipt by the Government of the item(s) specified in Clause 9(a) from the successful Tenderer in accordance with that Clause, and the Government being satisfied with these item(s), the Government will enter into the Contract with the successful Tenderer by issuing the Memorandum of Acceptance pursuant to Clause 9(c) below.** The Contract will incorporate the Tender submitted by the successful Tenderer (subject to such other changes as the Government may stipulate in exercise of its powers under the Tender Documents or as the parties may agree). In the event that the successful Tenderer fails to provide the item(s) mentioned in Clause 9(a) (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.

- (c) The successful Tenderer who has complied with Clause 9(a) 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 V from the Government. This Memorandum of Acceptance shall constitute a binding Contract. Tenderers who do not receive any notification within the Tender Validity Period shall assume that their Tenders have not been accepted. A copy of each of the documents constituting the Contract will be attached to the Memorandum of Acceptance for record.
- (d) Without prejudice to the rights and powers under these Terms of Tender, unless and until the Government has issued the Memorandum of Acceptance indicating its unconditional acceptance pursuant to Clause 9(c) above to the successful Tenderer, there is to be no binding Contract with that Tenderer.

10. Offer to be Binding

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

11. Negotiation

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

12. Government Discretion

- (a) Notwithstanding anything herein to the contrary, the Government is not bound to accept any conforming Tender or the lowest Tender. Ultimately, an award, if any, will be made to the Tenderer, who in the view of the Government, will be fully capable of undertaking the Contract and whose Tender is determined by the Government to be the most advantageous.
- (b) The Government reserves the right to cancel this Invitation to Tender with or without cause.

- (c) Upon cancellation of this Invitation to Tender, the Government reserves the right to re-issue the Invitation to Tender (on such terms and conditions as it considers fit), or directly appoint another contractor to take up the Services (through whatsoever means whatsoever and howsoever), or to itself undertake the Services internally within the Government.
- (d) The Government reserves the right to accept all or any part of any Tender at any time within the Tender Validity Period.
- (e) The Government reserves the right to disqualify a Tenderer on grounds include:
 - (i) a petition is presented or a proceeding is commenced or an order is made or a resolution is passed for the winding up or bankruptcy of the Tenderer; or
 - (ii) in the sole judgment of the Government Representative, the Tenderer is not considered fit and proper to provide the Services; or
 - (iii) the Tenderer has knowingly or recklessly made a false inaccurate or incomplete statement or representation in the Tender, or has submitted a forged document, or has made a promise or a proposal knowing that it will not be able to fulfil or deliver such promise or proposal; or
 - (iv) the Tenderer was in material breach of its obligations under any contract awarded by the Director of Agriculture, Fisheries and Conservation on behalf of the Government.
- (f) All information, statistics, forecasts and projections provided by the Government in connection with this Invitation to Tender (including those set out in the Tender Documents) (collectively “Information”) are for reference only. The Government gives no warranty, representation or undertaking as to their accuracy, reliability or completeness. The Government accepts no liability whatsoever for (i) the accuracy, completeness or reliability or otherwise of any such Information; and (ii) any claim, legal proceeding, liability, loss (including any direct or indirect loss, and any loss of revenue, profit, business, contract or anticipated savings) or damage (including any direct, special, indirect or consequential damage of any nature whatsoever); and (iii) any increased costs and expenses, which any Tenderer or any other person may sustain or incur, arising from its reliance on any Information.

13. **Provision of Services**

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

14. **Tender Addenda**

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

shall form a part of the Contract and shall take priority over the documents previously issued.

15. 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.

16. Contract Deposit and Financial Vetting

- (a) If the Estimated Total Contract Value exceeds HK\$1.4 million but does not exceed HK\$15 million, the successful Tenderer shall deposit with the Government a Contract Deposit of an amount equivalent to two percent (2%) of the Estimated Total Contract Value specified in Schedule 1 for the entire Contract Period pursuant to Clause 28(a) of the Conditions of Contract as security for the due and faithful performance of the Contract by the successful Tenderer.
- (b) If the Estimated Contract Value exceeds HK\$15 million, the successful Tenderer shall submit the following documents for financial vetting to demonstrate their financial capability:
 - (i) Originals (or copies certified by its auditors) of the audited accounts for the three years prior to the Tender Closing Date. The audited accounts must comply with the following requirements:
 - (1) 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);
 - (2) The latest audited accounts must be for the period ending no more than eighteen (18) months before the Tender Closing Date;
 - (3) The audited accounts must contain the Director's Report, Auditor's Report, Balance Sheet, Income Statement (or commonly referred to as Profit & Loss Account), Statement of Changes in Equity, Cash Flow Statement and Notes to the Accounts;
 - (4) All such accounts must have been audited by a certified public accountant (practising) or a corporate practice as registered in the Professional Accountants Ordinance (Cap. 50) or for a non-Hong Kong company, by auditors recognized by its local law;
 - (5) 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;
 - (6) 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; and

- (7) If the Tenderer is a subsidiary of another company, apart from the for each of the member reflecting the financial position and results of the Tenderer itself, the audited consolidated accounts reflecting the financial position of the group as a whole should also be provided.
- (ii) Management accounts up to a period of not more than three (3) months before the Tender Closing Date should be provided if this has not been covered by the latest audited accounts;
- (iii) Unaudited accounts are acceptable only if the Tenderer is an unincorporated business where audited accounts are not mandatorily required or the Tenderer is a newly established company where the first accounts are not yet available;
- (iv) The management accounts or unaudited accounts mentioned in sub-clauses (ii) and (iii) hereof must be certified by the sole proprietor, partners, directors of the Tenderer or by certified public accountants or other accountants acceptable to the Government;
- (v) Projected profit and loss accounts and cash flow statements of the contract and for each contract year and the pre-operating period (if applicable) complying with the following requirements:
- (1) They should be certified by the company's director. For a joint venture or partnership, separate certification from each of the director of the members/participants of the joint venture or a partner of the partnership is required.
 - (2) 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.
 - (3) 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.
 - (4) The assumptions by the Government included in the Tender Document must be reflected in the Tenderer's projections.
- (vi) Copy of the latest annual return filed with the Companies Registry if the Tenderer is a corporate entity or similar statutory filings showing the authorized and issued share capital, name of shareholders and directors if the Tenderer is an overseas company; and
- (vii) Tenderers shall upon the request in writing by the Government provide any other financial and corporate information as required by the Government for assessment of the financial capability of the Tenderer to undertake the Contract on or before such date as stated in the written notification by the Government.

- (c) If the Estimated Contract Value exceeds HK\$15 million, the successful Tenderer shall deposit with the Government a Contract Deposit of an amount equivalent to not more than two percent (2%) of the Estimated Contract Value (if it passes the financial vetting as stipulated in sub-Clauses (b) above) or not more than five percent (5%) of the Estimated Contract Value (if it is unable to submit adequate financial information for a meaningful assessment or fails in the financial vetting as stipulated in sub-Clauses (b) above) as security for the due and faithful performance of the Contract by the successful Tenderer.
- (d) The Contract Deposit shall be payable within twenty one (21) days from the date of the Conditional Acceptance of Tender and either in cash or in the form of a banker's guarantee in the form attached at Annex II issued by a bank holding a valid banking licence under the Banking Ordinance (Cap.155). A Bank Guarantee for the purpose of this Clause must comply with the requirements as provided in Clause 25 of the Conditions of Contract.
- (e) If a Tenderer elects to provide a banker's guarantee,
 - (i) the Tenderer shall submit an original letter from a licensed bank within the meaning of the Banking Ordinance (Cap.155) confirming that it will provide to the Government within the time specified in sub-Clause (d) above a banker's guarantee in the format set out at Annex;
 - (ii) the banker's guarantee duly executed shall be submitted to the Government in accordance with sub-Clause (d) above;
 - (iii) the banker's guarantee must remain in force from the commencement date until seven months after the expiry of the Contract Period or the date upon which all of the Contractor's obligations shall have been performed and discharged to the satisfaction of the Government, whichever is the later.
- (f) A Tenderer is required to elect the method of providing a Contract Deposit it prefers by completing the Offer to be Bound at Part IV. In the event that a Contractor fails to elect which method of providing a Contract Deposit it prefers, it will be assumed that the Contractor will pay the Government the Contract Deposit by way of cash.
- (g) If the successful Tenderer fails to deliver to the Government the Contract Deposit within such time as specified in sub-Clause (d) above, the Government shall be at liberty to terminate the Contract, to conduct a fresh tender exercise or to take such appropriate action as the Government deems fit.

17. 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.

18. Complaints About Tender Process or Contract Award

The Tender 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.

19. Personal Data Provided

- (a) A Tenderer's personal data (if he is an individual) and the personal data of any individual contained in the Tender submitted by that Tenderer (collectively, "personal data") will be used for the purposes of this Invitation to Tender, and all other purposes arising from or incidental to this Invitation to Tender including without limitation for the purposes of Tender evaluation, Contract award, and resolution of any dispute arising from this Invitation to Tender. If insufficient and inaccurate information is provided, the Tender may not be considered.
- (b) A Tenderer acknowledges and consents and has ensured that the relevant individual to whom the personal data has acknowledged and consented that the personal data provided in the Tender may be disclosed to other government departments or public bodies or such other person as the Government considers appropriate having due regard of the purposes mentioned in Clause 19(a) above.
- (c) Tenderers (or the individual to whom the personal data belongs) have the right of access and correction with respect to personal data as provided for in Sections 18 and 22, and Principle 6 of Schedule 1 of the Personal Data (Privacy) Ordinance (Cap. 486). The right of access includes the right to obtain a copy of the Tenderer's personal data provided in the Tender.
- (d) Enquiries concerning the personal data collected by means of this Invitation to Tender, including the making of access and corrections should be addressed to Personal Data Privacy Officer of the department issuing the Invitation to Tender.

20. Consent to Disclosure

- (a) The Government shall have the right to disclose, without further reference to the successful Tenderer, whenever it considers appropriate or upon request (written or otherwise) by any third party information on the awarded Contract, the name and address of the successful Tenderer, particulars of the Services awarded to the successful Tenderer, the Monthly Charges quoted in its Tender, the total Monthly Charges payable and the date of award of the Contract. In submitting a Tender, each Tenderer irrevocably and unconditionally authorizes the Government to make and consents to the Government making any of the disclosure aforesaid.
- (b) Nothing in Clause 20(a) shall prejudice the Government's power to disclose whenever it considers appropriate information of any nature whatsoever (whether or not specified in Clause 20(a)) if the disclosure is made under any one of the following circumstances:
 - (i) the disclosure of any information to any public officer or public body, as defined in the Interpretation and General Clauses Ordinance (Cap. 1) or any other person employed, used or engaged by the Government (including agents, advisers, contractors and consultants);
 - (ii) the disclosure of any information already known to the recipient;

- (iii) the disclosure of any information which is public knowledge;
- (iv) the disclosure of any information in circumstances where such disclosure is required pursuant to any laws of Hong Kong, or an order of a court of Hong Kong or a court or tribunal with competent jurisdiction; or
- (v) without prejudice to the power of the Government under Clause 20(a), to the extent the information relates to a Tenderer, with the prior written consent of that Tenderer.

21. 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.

22. 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(f) above, whether before or after the Tender Closing Date.

23. 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.

24. Anti-collusion

- (a) The Tenderer must ensure that the Tender is prepared without any agreement, arrangement, communication, understanding, promise or undertaking with any other person (except as provided in Clause 3 of the Non-collusive Tendering Certificate referred to in Clause 24(b) 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.
- (b) The Tenderer shall complete and submit to the Government a Non-collusive Tendering Certificate (in the form set out in Annex III) as part of its Tender.
- (c) In the event that a Tenderer is in breach of any of the representations and/or warranties in Clause 24(a) above or in the Non-collusive Tendering Certificate submitted by it under Clause 24(b) above, the Government shall be entitled to, without compensation to any person or liability on the part of the Government:

- (i) reject the Tenderer's Tender;
 - (ii) if the Government has accepted the Tender, withdraw its acceptance of the Tender; and
 - (iii) if the Government has entered into the Contract with the Tenderer, forthwith terminate the Contract.
- (d) By submitting a Tender, a Tenderer is regarded to have undertaken to indemnify and keep indemnified the Government against all losses, damages, costs or expenses arising out of or in relation to any breach of any of the representations and/or warranties and/or undertakings in Clause 24(a) or in the Non-collusive Tendering Certificate submitted by it under Clause 24(b).
- (e) A breach by a Tenderer of any of the representations and/or warranties and/or undertakings in Clause 24(a) may prejudice its future standing as a Government contractor or tenderer.
- (f) Clause 24(a) shall have no application to the Tenderer's communications in strict confidence with its own insurers or brokers to obtain an insurance quotation for computation of the prices quoted in its Tender, or with its professional advisers, consultants or sub-contractors to solicit their assistance in preparation of its Tender.
- (g) The rights of the Government under Clauses 24(c) to 24(e) are in addition to and without prejudice to any other rights or remedies available to it against the Tenderer.

25. Enquiry

- (a) Any enquiries from the Tenderer concerning these Tender Documents up to the date of lodging their Tenders with the Government shall be in writing and shall be submitted to:
- Director of Agriculture, Fisheries and Conservation
8/F, Cheung Sha Wan Government Office,
303 Cheung Sha Wan Road, Kowloon
Fisheries Enforcement and Special Projects Division
Sea Enforcement Section
(Attn: Mr. TANG Wing-kai)
Facsimile: (852) 2314 2866
- (b) Tenderers shall note that after the Tender Closing Date and before the award of the Contract, they shall not attempt to initiate any contact, whether direct or indirect, with the Government on matters relating to the Tender Documents or their submitted Tenders. Any Tenderer who fails to observe this requirement may render its Tender being disqualified. The Government reserves the sole right to initiate any contact with Tenderers and all such contacts and subsequent responses from Tenderers shall be made in writing.
- (c) Unless otherwise expressly stated by the Government, any statement, whether oral or written, made and any action taken by any Government officer in response to

any enquiry made by a prospective Tenderer shall be for guidance and reference purposes only. The statement shall not be deemed to form part of these Terms of Tender and such statement or action shall not be deemed to negate, waive or otherwise restrict any of the terms or conditions as set out in the Tender Documents.

26. Briefing Session

- (a) A tender briefing session will be held on this tender invitation. 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: 16 February 2022 (Wednesday)
Venue: Room 615
6/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 IV on or before 15 February 2022.

- (b) 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

- (a) The Contract shall be for a term of 12 months commencing from 1 July 2022 to 30 June 2023, 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(b).
- (b) The Government shall have the option to extend the Contract Period for additional period(s) of not more than six (6) months in aggregate. The Government shall be entitled to exercise such option, not less than one (1) 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.
- (c) There is no limit on the number of time the Government exercises its option to extend or the period of each extension pursuant to Clause 1(b) provided that the maximum extended period(s) (excluding the original period of 12 months) do not exceed 6 months.
- (d) Upon the Contract Period is extended pursuant to Clause 1(b), the Contract shall continue to be in full force and effect (including this Clause 1) on and subject to the same terms and conditions.

2. Contractor's Obligations

- (a) The Contractor shall throughout the Contract Period lease to the Government two Launches complying with all specifications and requirements set out in Schedule 3 and all applicable laws and regulations including the Merchant Shipping (Local Vessels) Ordinance (Cap. 548).
- (b) 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.
- (c) 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.
- (d) 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, in accordance with Clauses 11 and 12 below.
- (e) 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.

- (f) 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.

3. Services to be provided by the Contractor

- (a) The Contractor shall provide and operate two patrol launches 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.
- (b) For the purpose of this Contract, the “launch” or the “launches” shall mean the launch or launches as specified in the Schedule 2 or the replacement launch or launches provided pursuant to Clauses 2, 11 and 12 hereof.

4. Normal Working Time

- (a) During the Contract Period, the Contractor shall keep the Launches ready for use by the Government. “Normal Working Time” in this tender document 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.
- (b) The number of services provided within Normal Working Time for each calendar month is scheduled as fifty (50) trips. It should be a mix-drawn number by using Launch 1 and Launch 2. The trips other than the said scheduled fifty (50) trips would be considered as services rendered outside Normal Working Time mentioned in Clause 5 in this part.

5. Services Rendered Outside Normal Working Time

- (a) 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.
- (b) The Government shall hire Launch for a minimum of four (4) hours each time when it requires the services of the Launch outside the Normal Working Time except that the services are consecutively provided before or after the Normal Working Time.

- (c) For general information only, the estimated hours for the Services rendered outside the Normal Working Time is 400 hours. 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

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, 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), Mandatory Provident Fund Schemes Ordinance (Cap. 485), Employee's Compensation Ordinance (Cap. 282), 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 Cap. 548D, or the lessee under valid and subsisting lease agreement granted by the lawful owners of the Launches.

7. Service Area and Reporting and Releasing Place

- (a) 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 Launch).
- (b) 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

- (a) 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.
- (b) 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

- (a) In consideration of and subject to the provision by the Contractor of the Services strictly in accordance with the terms and conditions of the Contract to the

satisfaction of the Government Representative, 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:

Monthly Charges payable to Contractor	=	(Rate per trip) x [fifty (50) trips (estimated total no. of trips by Launch 1 and Launch 2) per month] + (Hourly rate) x [number of hours for Services rendered outside Normal Working Time] (if applicable) – Such sums the Government is entitled to deduct pursuant to other provisions of the Contract
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- (b) For the purpose of calculating the Monthly Charges in Clause 10(a), payment for the use of, and the number of Services provided within normal working time of less than fifty (50) trips per a calendar month shall also be paid for fifty (50) trips.
- (c) Payment for the use of, and 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:
- (i) use of Launch and 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
 - (ii) use of Launch and Services rendered for a period of more than thirty (30) minutes shall be paid the full hourly rate.
- (d) 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(a), whichever is later. All invoices shall be addressed and despatched in the manner specified in Clause 35. Payment will be made in Hong Kong Dollars.
- (e) For the avoidance of doubt, the Contractor shall not be entitled to any payment other than those set out in Clauses 10(a) and 10(b).

11. Inspection and Replacement

- (a) 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.

- (b) 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.
- (c) 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.
- (d) If the Contractor shall fail to rectify such rejected Services in accordance with Clause 11(c), 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.

12. 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.

13. Failure to deliver Accepted Innovative Suggestions

- (a) 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 Sub-clauses (b) and (c), 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.

- (b) 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 Sub-clause (a) shall not exceed the maximum number of Innovative Suggestions to which marks could be awarded to a tenderer in the tender evaluation process.
- (c) The aggregate amount of liquidated damages payable pursuant to Sub-clause (a) may not exceed 10% of the Estimated Total Contract Value.”

14. Liability and Indemnities

- (a) Neither the Government nor any of its employees or agents shall be under any liability whatsoever for or in respect of:
 - (i) any loss of or damage to any of the Contractor's property or that of its employees or agents however caused (whether by any Negligence of the Government or any of its employees or agents or otherwise); or
 - (ii) any injury to or death of any of the Contractor's employees or agents save and except any such injury or death caused by the Negligence of the Government or any of its employees or agents.
- (b) Without prejudice to any other provision of the Contract, the Contractor shall indemnify each of the Government and its employees and agents (each an “Indemnified Person”) against:
 - (i) any and all claims (whether or not successful, compromised, settled, withdrawn or discontinued, in whole or in part), actions, investigations, demands, proceedings or judgments, joint or several, threatened, brought or established against an Indemnified Person (“Claims”); and
 - (ii) any and all liabilities, losses, damages, costs, charges or expenses (including (i) all legal fees and other awards, costs, payments, charges and expenses and (ii) any loss or damage sustained by or any injury to or death of any person in consequence of any Negligence of the Contractor or any of its

employees, sub-contractors or agents) which an Indemnified Person may pay or incur as a result of or in relation to any Claims, which in any case arise directly or indirectly in connection with, out of or in relation to:

- (1) the performance or breach of any provisions of the Contract by the Contractor, its employees, agents or sub-contractors;
 - (2) the negligence, recklessness, tortious acts or wilful omission of the Contractor, its employees, agents or sub-contractors;
 - (3) any default, unauthorised act or wilful misconduct of the Contractor, its employees, agents or sub-contractor;
 - (4) any claim that the use or possession by the Government of any materials created or furnished by the Contractor infringes the Intellectual Property Rights of any person; or
 - (5) the non-compliance by the Contractor, its employees, agents or sub-contractor with any applicable law, or regulation, order or requirement of any government agency or authority.
- (c) The indemnity under Clause 14(b) shall not apply to any injury or death caused by the Negligence of an Indemnified Person.
- (d) 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.
- (e) For the purposes of this Clause, “Negligence” shall have the same meaning as that assigned to it in section 2(1) of the Control of Exemption Clauses Ordinance (Cap. 71).
- (f) 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. Each of sub-Clauses (1) to (5) in Clause 14(b)(ii) shall be construed independently and shall not be limited or restricted by reference to or inference from the terms of any other sub-Clauses.

15. Policy of Insurance and Compensation

- (a) 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 Merchant Shipping (Local Vessels) Ordinance (Cap. 548) and its subsidiary legislation (in particular section 23D of the said Ordinance and 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.

- (b) Upon expiry of any of the policies of insurance required under Clause 15 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.
- (c) Under no circumstances whatsoever shall the Government be responsible for the premium payable under any of the policies of insurance required under Clause 15 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.
- (d) The Contractor shall conform to the terms and conditions of any of the policies of insurance required under Clause 15 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 14 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.
- (e) If any of the policies of insurance required under Clause 15 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.
- (f) The Contractor shall submit to the Government Representative within twenty-one (21) days upon notification by the Government of award of this Contract one (1) copy each of the said policies of insurance required under Clause 15 together with the receipt for payment of the current premium under each such policy.
- (g) The Contractor is responsible for lodging 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.
- (h) If the Contractor fails to effect and keep in force any of the insurance policies required under Clause 15, 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 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.
- (i) The Contractor shall maintain the employees' compensation insurance policy in compliance with the Employees' Compensation Ordinance (Cap. 282).

16. Termination and Effects of Termination

- (a) Without prejudice to any rights and claims of the Government under the Contract or otherwise at law, the Government shall be entitled to terminate the Contract by giving a seven (7) calendar days' written notice on the Contractor on the basis that the last day of the Contract Period will be the last day of the seven (7) days' notice period if any one event mentioned in any of the sub-Clauses (i) to (vi) below occur:
- (i) the Contractor (1) fails to carry out the whole or any part of the Services; or (2) fails to carry out the whole or any part of the Services in accordance with the time limits specified in the Contract; or (3) fails to observe or perform any of the terms and conditions of the Contract; or (4) fails to pay any of the sums payable by the Contractor under the Contract, and (in the case of a breach capable of being remedied but not otherwise) has failed to remedy the breach to the satisfaction of the Government Representative within 7 calendar days (or such longer period as the Government Representative may, in its sole discretion, allow) after the issuance by the Government Representative to the Contractor of a request in writing requiring it to do so; or
 - (ii) the Contractor persistently fails to perform the Services in accordance with any of the requirements set out in the Contract (regardless of whether the failures relate to the same requirement or different requirements); or
 - (iii) any warranties or undertakings, representations made or deemed to have been made by the Contractor to the Government in the Contract or in its Tender for the Contract or otherwise from time to time during the term of the Contract is untrue, inaccurate or incomplete; or
 - (iv) the Contractor becomes bankrupt or goes into liquidation or a petition has been filed for the bankruptcy or the winding up of the Contractor otherwise than for the purpose of a solvent reconstruction or amalgamation previously approved by the Government Representative in writing or the Contractor has become insolvent or make any composition or arrangement with creditors; or
 - (v) the Contractor abandons the Contract in part or in whole; or
 - (vi) the Contractor assigns or transfers or purports to assign or transfer all or any part of the Contract without the prior written consent of Government; or
 - (vii) the Government is entitled to terminate the Contract pursuant to Clause 19 or 20 below.
- (b) Upon the Contract is terminated pursuant to Clause 16(a) ("Termination") or upon expiry of the Contract Period ("Expiry"):
- (i) the Contract shall be of no further force and effect, but without prejudice to:
 - (1) the rights and claims which have accrued to a party prior to the Termination or Expiry;
 - (2) 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);
- (3) the continued existence and validity of those provisions which are expressed to or which in their context appropriately survive Termination or Expiry and any provisions of the Contract necessary for the interpretation or enforcement of the Contract.
- (ii) the Government shall not be responsible for any direct or indirect loss, damage and expense suffered or incurred by the Contractor due to any Termination or Expiry (including any pecuniary, consequential loss or loss of profit);
- (iii) in the case of Termination pursuant to Clause 16(a), the Contractor shall be liable for all losses, liabilities, damage, costs and expenses incurred by the Government arising from or in the Termination including the losses specified in sub-Clause (iv) below;
- (iv) the Government may, without prejudice to any accrued rights and claims of Government for breach of the whole or any part of Contract, assign the uncompleted Services to another contractor or contractors or undertake the Services itself whereupon in the case of Termination pursuant to Clause 16(a), the Contractor shall be liable for the contract price payable to such other contractor(s) or the costs incurred by the Government for undertaking such services (as the case may be) in excess of the contract price which would have been payable to the Contractor had the Contract not been terminated;
- (v) if not already done so, the Contractor shall compile and submit to the Government a report of the Services performed up to the date of the Termination;
- (vi) in the case of Termination any time prior to the expiry of the Contract Period, the Government shall, subject to sub-Clause (vii) below and the right of deductions, set-off and counter-claim which the Government may have under the Contract or at law, pay to the Contractor such portion of the Monthly Charges (proportionately on the basis of 30 days a month) as is fairly and equitably payable to the Contractor for such part of the Services performed by the Contractor in the period up to the effective date of Termination (and which remains unpaid pursuant to the payment schedule under the Contract), having regard to the Services actually performed by the Contractor fully and punctually in due accordance with the terms and conditions of the Contract (if any) and accepted by the Government; and
- (vii) in the case of Termination, notwithstanding anything herein to the contrary, and regardless of the cause (the absence thereof) or basis for the Termination, the Government shall have no obligation to pay to the Contractor any money whatsoever including any unpaid portion of the Monthly Charges (save for such portion of the Monthly Charges payable by the Government under sub-Clause (vi) above (if any)).

17. 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.

18. Government Premises / Contractor Premises

- (a) 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.
- (b) 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.
- (c) 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 14(b).

19. Illegal Workers

The Contractor undertakes not to employ illegal workers in the execution of any Government contracts including this Contract. Should the Contractor be found to have employed illegal workers in breach of this undertaking, the Government may terminate the Contract pursuant to Clause 16(a)(vii).

20. Probity

- (a) The Contractor acknowledges it has been reminded that:
 - (i) dishonesty, theft and corruption on its part or that of its employees, agents or sub-contractors are criminal offences and may lead to prosecution under section 9 of the Prevention of Bribery Ordinance (Cap. 201), sections 17, 18D and 19 of the Theft Ordinance (Cap. 210) and section 161 of the Crimes Ordinance (Cap. 200); and
 - (ii) the soliciting or accepting of advantages, as defined in the Prevention of Bribery Ordinance is not permitted.
- (b) The Contractor shall inform its officers, employees (whether permanent or temporary), agents and sub-contractors that the soliciting or accepting of advantages (as defined in the Prevention of Bribery Ordinance, Cap. 201) is not permitted. The Contractor shall also caution its officers, employees and agents and sub-contractors against soliciting or accepting any 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.

- (c) 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).

21. Heat Stroke Prevention

- (a) The Contractor shall provide other outdoor workers at the site, as appropriate, with either:
- (i) Umbrellas for protecting them against sunshine; or
 - (ii) 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
 - (iii) Upon request, a portable fan to increase air flow to the worker.
- (b) If the Contractor has a duty under this contract to provide portable fans 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.

22. Corrupt Gifts

If the Contractor or any employee or agent of the Contractor shall be found to have committed an offence under the Prevention of Bribery Ordinance (Cap. 201) or any subsidiary legislation made thereunder or under any law of a similar nature in relation to the Contract or any other Government contracts, the Government Representative may, on behalf of the Government, summarily terminate the Contract, without entitling the Contractor to any compensation therefor.

23. 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.

24. Confidentiality

- (a) The Contractor shall not disclose any information (i) furnished by or on behalf of the Government or by any other person to the Contractor or any of its employees, agents or sub-contractors (collectively "Contractor Personnel"); or (ii) otherwise is accessible by or available to the Contractor or any of the Contractor Personnel in

the course of performing the Services (collectively “confidential information”), provided that the restrictions on disclosure contained in this Clause 24(a) shall not apply to the disclosure of any confidential information:

- (i) to any person employed, used or engaged by the Contractor in the conduct of the Services in circumstances where such disclosure is necessary for the performance of the Contractor’s duties and obligations under the Contract, provided that the Contractor has imposed on the said person employed, used or engaged an absolute and legally binding obligation to the Contractor to refrain from disclosing the said information to a third party;
 - (ii) already known to the recipient other than as a result of disclosure by the Contractor or anyone of the Contractor Personnel or their respective associates or associated persons;
 - (iii) which is or becomes public knowledge other than as a result of disclosure by the Contractor or anyone of the Contractor Personnel or their respective associates or associated persons;
 - (iv) in circumstances where such disclosure is required pursuant to any laws of Hong Kong or an order of a court of Hong Kong; or
 - (v) with the prior consent in writing of the Government.
- (b) Any disclosure permitted under Clause 24(a) (excluding Clause 24(a)(iv) above) shall be in strict confidence and shall extend only so far as may be necessary for the purposes specified in Clause 24(a) and the Contractor shall ensure the confidentiality of any such disclosure by taking appropriate action to restrain or restrict any further disclosure.
- (c) The Contractor shall not, and shall procure and ensure each one of the Contractor Personnel, and their respective associates and associated persons, shall not disclose, make use of or reproduce any confidential information other than to the extent necessary for the performance of the Contractor’s obligations under the Contract or with the prior written consent of the Government.
- (d) The Contractor shall ensure that all of the Contractor Personnel and any other persons engaged in any work in connection with the Contract are aware of and comply with the provisions of this Clause 24 and the Official Secrets Ordinance (Cap. 521) and the Contractor shall indemnify and keep the Government, its authorised users, assigns and successors-in-title fully and effectively indemnified on the terms set out in Clause 14 as a result of any breach of confidence (whether actionable based on this Contract or at law) by any such persons.
- (e) The Contractor shall promptly notify the Government of, and give the Government all reasonable assistance in connection with, any proceedings which the Government may institute against any person pursuant to any of the provisions in this Clause 24.

25. Disclaimer

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

26. 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.

27. Relationship of the Parties

- (a) 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.
- (b) 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.
- (c) For the avoidance of doubt, the Contractor shall not represent itself as an employee agent or servant of Government.

28. Guarantee

- (a) Within twenty one (21) days of the notification to the Contractor of the Conditional Acceptance of the Tender in accordance with Clause 9(a) of the Terms of Tender, the Contractor shall deposit with the Government an amount equivalent to 2% of the Estimated Total Contract Value over the entire Contract Period (as required under Clause 16 of the Terms of Tender) as a security for the due and faithful performance and observance of its obligations under the Contract (“Contract Deposit”), to be payable by whichever method as selected by the Contractor in the Offer to be Bound, namely either in cash or in the form of a banker’s guarantee issued by a licensed bank in Hong Kong (acceptable to the Government) in the form set out in Annex II hereto (“Bank Guarantee”). Such Contract Deposit shall be non-interest bearing.
- (b) In the event that the Contractor fails to elect which method of providing a Contract Deposit it prefers, it will be assumed that the Contractor will deposit cash with the

Government. The Contract Deposit, if in the form of cash, will be retained by the Government, or if in the form of a Bank Guarantee, must remain in force, in either case, from the date of the commencement of the Contract (a) until seven months after the expiry or early termination of the Contract Period (unless (b) is applicable), or (b) in the case if at the time of expiry or early termination of the Contract Period, all or any of the Contractor's obligations and liabilities under or in relation to the Contract shall not have been performed, completed and discharged to the satisfaction of the Government Representative, or there is any right or claim which has accrued to the Government arising from antecedent breach(es) by the Contractor of the Contract or otherwise accrued to the Government prior to the expiry or termination of the Contract, the date falling twenty-four months after the early termination or expiry of the Contract.

- (c) Notwithstanding the early termination or expiry of the Contract, only upon the expiry of the aforementioned 7 or 24 months' period (whichever is applicable), the Contract Deposit (if in the form of cash and if any is remaining) will be refunded to the Contractor without interest; or, if in the form of a Bank Guarantee shall be discharged or released but in the case of Bank Guarantee, strictly in accordance with the terms thereof.
- (d) The Government Representative shall have the right to deduct from time to time from the Contract Deposit or call on the Bank Guarantee (irrespective of whether or not a demand for payment has been made against the Contractor) any amount due or payable by the Contractor to the Government under the Contract but which remains outstanding, in such order as the Government in its absolute discretion deems fit. The Contract Deposit (whether in cash or in the form of the Bank Guarantee) may be deducted or called on, without the Government first having recourse to any other security or rights or taking any other steps or proceedings against the Contractor or any other person, or may be enforced for any balance due after resorting to any one or more other means of obtaining payment or discharge of the monies, obligations and liabilities owing by the Contractor to the Government.
- (e) If any deduction shall be made by the Government from the Contract Deposit or a call shall be made on the Bank Guarantee during the continuance of the Contract, the Contractor shall, within 14 days on demand in writing by the Government, deposit a further sum or provide a further Bank Guarantee, in a sum equal to the amount so deducted or so called which further sum shall be added to the residue of and form part of the Contract Deposit and, where applicable, the additional security amount required under Clause 28(a).

29. 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.

30. Entire Agreement and Amendment

- (a) 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.
- (b) 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.

31. Order of Precedence

In the event that there is any conflict, contradiction or ambiguity between any documents which form part of this Contract, the following order of precedence shall be applied in order to resolve any such conflict, contradiction or ambiguity:

- the Conditions of Contract
- Schedule 3
- the Memorandum of Acceptance
- Schedules 1 and 2
- the Terms of Tender
- the Offer to be Bound
- Non-collusive Tendering Certificate
- Undertaking for renewing the Operating Licence of Launches
- the Interpretation

32. 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.

33. 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.

34. Non-waiver

Time is of the essence of the Contract but no failure or delay by the Government in exercising any right, power or remedy hereunder shall impair such right, power or remedy or operate as a waiver thereof, nor shall any single or partial exercise of the same preclude any further exercise thereof or the exercise of any right, power or remedy.

35. Notices

Each notice, demand or other communication given or made under the Contract shall be in writing and delivered or sent to the relevant party at its address or fax number set out below (or such other address or fax number as the addressee has by five (5) days' prior written notice specified to the other party):

To the Contractor: at the correspondence address and fax number as specified in Schedule 2.

To the Government: Director of Agriculture, Fisheries and Conservation
8/F, Cheung Sha Wan Government Office,
303 Cheung Sha Wan Road, Kowloon
Fisheries Enforcement and Special Projects Division
Sea Enforcement Section
(Attn: Mr. TANG Wing-kai)
Facsimile: (852) 2314 2866

Any notice, demand or other communication so addressed to the relevant party shall be deemed to have been delivered (a) if delivered by hand, when actually delivered to the relevant address; or (b) if delivered by registered post, on the date it is officially recorded as delivered to the intended recipient by return receipt or equivalent; or (c) if delivered by fax, when dispatched (with confirmed transmission report).

36. 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.

37. 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.

38. Assistance in Legal Proceedings

- (a) 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.

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

39. 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).

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

PART IV

OFFER TO BE BOUND

This Offer to be Bound is submitted by the undersigned in response to the Government’s Invitation to Tender (Ref: AFCD/SET2022) for provision of the Services. Unless the context otherwise requires, terms and expressions appearing herein have the meanings given to them in the Tender Documents issued by the Government in connection with the Invitation to Tender.

To: The Government

1. I/We (the “Tenderer”) hereby warrant that all information given in or attached to my/our Tender are true, complete and correct.
2. In consideration of the Government agreeing to assess my/our Tender on and subject to the terms and conditions set out in the Tender Documents, I/we, as a Tenderer, agree to be bound by all the terms and conditions in the Tender Documents.
3. Having read and understood all terms and conditions of the Tender Documents, I/we HEREBY OFFER (a) to provide the Services on and subject to the terms and conditions set out in the Contract, and our Tender and (b) to be bound by all terms and conditions set out in the Contract.
4. In relation the Contract Deposit required under Clause 16 of the Terms of Tender (as the case may be), I/we will pay the Contract Deposit in cash / by way of the procurement of a Bank Guarantee in the form set out in the Annex II.*

* delete the inapplicable part

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:

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

PART V

MEMORANDUM OF ACCEPTANCE

The Invitation to Tender (Ref: AFCD/SET2022) and your Tender submitted in response thereto refer.

On behalf of the Government of the Hong Kong Special Administrative Region of the People’s Republic of China,

I _____
(name and position of officer)

accept your Tender for the Contract. The commencement date of the Contract Period shall be _____. A copy of each document constituting the Contract is hereby attached for identification purposes.

Date this _____ day of _____ 2022.

Signed by _____)
_____)
for and on behalf of the Government of _____)
the Hong Kong Special Administrative _____)
Region of the People’s Republic of China

in the presence of: _____)
_____)
_____)

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

Schedule 1 Price Schedule

Item	Rate
(a) Rate per trip for Services during Normal Working Time (A continuous 9 hours duration) (Note 1)	HK\$ _____ (i) (per trip)
(b) Monthly Charge payable for service during Normal Working Time throughout the duration of the Contract (Note 2)	(i) x 50 trips = HK\$ _____ (ii)
(c) Hourly rate for Services rendered outside the Normal Working Time (Note 3)	HK\$ _____ (iii) (per hour)
Estimated Total Contract Value	(ii) x 12 months + (iii) x 400 hours = HK\$ _____

Note 1: The Contractor is entitled to receive the Rate per trip of the Launches only when it has performed the Services as required by the Government Representatives. Deduction of 1/9 of the Rate per trip for each hour of unavailability of Services will be made, except when the Services are not required as directed by the Government Representative.

Note 2: See Clause 4 and 10(b) of Conditions of Contract

Note 3: See Clause 5 and 10(c) of Conditions of Contract

Signature of Person Authorized
to sign Tender and Company
chop

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:	Policy No:
Name of insurance company:	Insurance Period:
Contact Person:	Tel No.:
Fax No.:	Date:

*delete where inapplicable

Signature of Person Authorized
to sign Tender and Company
chop

:

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 certifies and warrants that the Launches particularized below be provided for the Services under the Contract and that each of the Launches complies in all respects with the requirements and specifications set out in Part 1 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:

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 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 Competence 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.

*** 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 Competence 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.

*** 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 Competence 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.

*** 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 Competence 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.

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

Schedule 3

Part 1 – “Essential” Requirements and Checklist

Item	“Essential” Requirements for the proposed launches	Checklist result
1.	<p>- have a valid operating licence issued under the Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation (Chapter 548D of the Laws of Hong Kong); and an appropriate and valid certificate of survey issued under the Merchant Shipping (Local Vessels) (Safety and Surveys) Regulation (sub. leg. G of Chapter 548 of the Laws of Hong Kong)</p> <p>*Tenders shall submit an undertaking for renewing the licence throughout the Tender Validity Period (See Appendix to Schedule 3)</p>	
2.	- have an approved passenger carrying capacity of not less than 20 persons and shall provide seats with backrests for all passengers;	
3.	- have a normal service speed of not less than 18 knots (Note 1);	
4.	- 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.	- 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.	- be equipped with air-conditioning system inside the cabin;	
7.	- be equipped with a functional marine VHF radio with channels 6, 10, 11, 12, 13, 14, 16, 60, 62, 64, 67, 68, 71, 73 and 74	
8.	- 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	

Essential: The Tenderer’s proposed Launches must comply with these requirements and specifications at the time of submission of Tender and throughout the Tender Validity Period, failing which its Tender will not be considered further.

Note 1:

Speed tests shall be carried out by the Government to determine if a proposed Launch complies with item 3 as part of the assessment during tender evaluation process and also from time to time during the Contract Period to determine the continued compliance by the Launch (or a replacement Launch) throughout 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

Part 2 – “Modification” Requirements and Checklist

Item	“Modification” Requirements for the proposed launches	Checklist result
1.	<p>- 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:</p> <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 satisfactory 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>Summer: Long deep blue trousers and short sleeved white/light blue shirt;</p> <p>Winter: Long deep blue trousers, long sleeved white/light blue shirt and deep blue overcoat;</p> <p>Working clothing: White or dark blue boiler suit;</p> <p>Shoes: Black shoes.</p>	
2.	- 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 46(L) cm x 30(W) cm;	
3.	- be equipped with a set of Differential Global Positioning System; the data of the DGPS shall be incorporated into the ENC;	
4.	- be equipped with a set of echo sounder;	
5.	- be equipped with a portable loud hailer;	
6.	- be equipped with an Automatic Identification System (AIS)	
7.	- be equipped with 3 spare socket for electricity supply of 220 Volts AC and 24 Volt DC for miscellaneous equipment;	
8.	- be equipped with a torch provided with batteries;	
9.	- be equipped with emergency backup power for lighting, communication devices and main engines;	

Item	“Modification” Requirements for the proposed launches	Checklist result
10.	- be equipped with a fixed office desk not less than 1 m in width x 1.5 m in length, with a properly lashed chair and desk light, and a fixed cupboard for not less than 12 standard size file holders;	
13.	- be equipped with a microwave oven, refrigerator and water dispenser with sufficient distilled water for daily consumption;	
14.	- 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;	
15.	- be equipped with a set of flags as required by local regulations;	
16.	- be equipped with a fixed search light, manually adjustable by person within the wheel, with a power of 500W or above and a portable & rechargeable cordless search light of not less than 500,000 candle power(cp);	
17.	- be equipped with a toilet with flushing system and washing basin with freshwater supply;	
18.	- 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;	
19.	- 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. On the contrary, it should be fully covered whilst not on hire;	
21.	- 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 should be printed on the Launches and should also be fully covered whilst not on hire;	
22.	- On at least one of the Launches provided, a cleared space should be available at the stern of the Launch for fitting a removable device (or rack) for the deployment of a piece of equipment into the sea by AFCD when necessary. The size of the device (or rack) is about 3.6m (L) x 0.7m (W) x 0.6m (H);	
23.	- carry on board a standard first aid box placed inside the cabin;	
24.	- be equipped with a magnetic compass;	
25.	- be equipped with a red warning signal light.	

Modification: The successful Tenderer shall, within 21 calendar days as specified in Clause 9(a) of the Terms of Tender, modify the proposed Launches to ensure that they comply with all those requirements and specifications with “Modification” status. 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.

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/SET2022) (“the Tender”)

The tenderer hereby undertakes in favour of the Government the following duties:-

- i. that the tenderer shall renew the Certificate of Survey and Operating Licence of launches throughout the tender validity period; and
- ii. that the Government shall be entitled to terminate the Contract by giving a 7 calendar days’ written notice under Clause 16 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 tender validity 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 I

**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, an assessment panel will be formed. The assessment panel will evaluate the tenders based on the tender requirement 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(d) in Part II - Terms of Tender** have been submitted. Failure to submit any of the following documents **on or before the Tender Closing Date** will **render a tender invalid and will not be considered further**:
 - (a) Part IV - Offer to be Bound is completed and signed by the Tenderer;
 - (b) Schedule 1 (Price Proposal) is completed and signed;
 - (c) Schedule 2 containing the details of the proposed launches for the Services is completed; and
 - (d) A Technical Proposal with Launches Hiring Service Plan in accordance with Appendix to Annex I is submitted.
4. Those tenders which have passed Stage I evaluation will proceed to Stage II evaluation.

Stage II – Checking for Compliance with Essential Requirements

5. Tenders which have passed Stage I evaluation will be checked to ensure their compliance with the Essential Requirements as set out in Part 1 of Schedule 3. Documents will be checked by Tender Assessment Panel for the compliance of essential requirements. A Tenderer's failure to provide documents which could prove the proposed launches that meet the Essential Requirements will not be considered further. A physical examination of proposed launches would be carried out for compliance checking and speed test after the recommendation by the Tender Assessment Panel. Tenders which have passed this Stage II assessment will proceed to Stage III assessment.

Stage III – Technical Assessment

6. Tenders which have passed Stages I and II evaluation will be further evaluated for their Technical Proposal as detailed according to the Assessment Criteria and Marking Guidelines in **Appendix to Annex I**.
7. Any tender which fails to score the passing mark of 10 out of 40 under assessment criterion

(1) (the Execution Plan of Provision of Launches Service) of the Assessment Criteria in Appendix to Annex I 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:

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

Stage IV – Price Assessment

9. (a) The price proposals of those tenders which have passed Stages I to III evaluation will be assessed.
 (b) The price assessment will be based on the Estimated Contract Price 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:

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

[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. The combined score of each of the tenders that completed Stages III and IV assessment will be determined by the following formula :

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

[Note: All figures of the combined scores in Stage V assessment will be rounded to the nearest 2 decimal places according to the rounding method as shown in the Note under para. 10 above.]

12. Normally, a Tenderer whose tender obtained the highest combined score and who is considered by the Government to be capable to undertaking the Contract (including technically, commercially and financially) will be awarded the Contract.

13. If a tender achieves the highest combined scores in two or more Items, the Government shall make recommendation for acceptance and award of Contract to one of its bids on the basis of a tender combination (i.e. the total contract amount for all Items) which is least costly to the Government and is entitled at the Government's absolute discretion to award the other Item to Tenderers who achieve the next highest combined score.
14. In case the total contract values of two or more combinations happen to be the same and it is the least costly to the Government, the combination with the highest total combined scores (i.e. the summation of the combined scores obtained by individual members of the combination) will be adopted for contract award purpose.

Appendix to Annex I

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 Note 1 and 3)	40	10
(2)	Coxswain and Crew Management Plan (see Note 2 and 3)	30	--
(3)	Innovative Suggestions		
	(a) Type I – directly relevant to the Service (see Note 4)	12	--
	(b) Type II – not directly relevant to the Service but can bring positive values or benefits to Government or the public (see Note 5)	9	--
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	--

* Any tender which fails to score the passing mark of 10 under Assessment Criterion (1) (Launches Hiring Service Plan) will not be considered further.

Explanatory Notes for Stage III – Technical Assessment

(A) Execution Plan

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

Tenderers shall submit an Execution Plan containing the following Plans:

- (1) Launches Hiring Service Plan; and
- (2) Coxswain and Crew Management Plan.

Tenderers should provide detailed information in their Plans. The Plans should demonstrate the Tenderer's ability to coordinate and deliver the Service promptly with quality assurance measures. Marks will be given according to the marking guidelines provided below. All practical information included in the proposed plans submitted by the successful Tenderer under Assessment Criterion (1) and Criterion (2) 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 launch hiring service.

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.

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 behavior.

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

Note 3: Marking Guidelines for Criterion (1) and Criterion (2) in (A) Execution PlanAssessment of the Proposed Plans

Marks (excluding those reserved for innovative suggestions) will be given for each plan under Assessment Criterion (1) and Criterion (2) 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) –Type I Innovative Suggestions (Max. mark: 12)

- (a) Tenderers are encouraged to provide innovative suggestions for Assessment Criteria (1) and (2) to enhance the performance of the launch hiring service.
- (b) The innovative suggestions may not necessarily be technology-related. They can be application of innovative technology, innovative application of existing technology, or any ideas or suggestions not envisaged in the Contract. Marks will be given if the proposed innovative suggestions are directly relevant to, effective and practicable in improving the delivery of the launches hiring service as compared with how the service is delivered under the existing contract or the conventional mode of service delivery adopted by the Government in general.
- (c) Innovative Suggestions shall be proposed for the following Plans respectively:
- (i) Innovative suggestions for the Launches Hiring Service Plan (max. mark: 6)

Propose innovative suggestions directly relevant to the Launches Hiring Service Plan, so as to enhance quality, effectiveness and efficiency for delivery of the launches hiring service (e.g. installation of solar panel for the provision of electricity inside the launches and collision avoidance system).

- (ii) Innovative suggestions for the Coxswain and Crew Management Plan (max. mark: 6)

Propose innovative suggestions directly relevant to

- Maritime Navigation Safety, so as to enhance the awareness of coxswains and crews on

maritime navigation safety during delivery of the launches hiring service (e.g. provision of devices for real-time alerts of speeding, deceleration, acceleration, lane departure or collision); and/or

- Staff Management, so as to enhance performance and morale of staff, including coxswains and supporting staff (e.g. family-friendly employment practices).
- (d) Distribution of marks for Type I Innovative Suggestions meeting the requirements for each Plan under (c) above is as follows:

<u>Marks</u>	<u>Marking Standard</u>
6	The proposed plan contains 3 or more effective and practicable innovative suggestions for the respective Plan.
4	The proposed plan contains 2 effective and practicable innovative suggestions for the respective Plan.
2	The proposed plan contains 1 effective and practicable innovative suggestion for the respective Plan.
0	The proposed plan does not contain any innovative suggestions for the respective Plan.

- (e) A Type I Innovative Suggestion will only earn marks for Assessment Criterion (3)(a) and will not earn marks again for Assessment Criterion (3)(b). Moreover, a Type I Innovative Suggestion will only earn marks for the respective Plan. Tenderer should indicate clearly the respective Plan for each Type I Innovative Suggestion proposed.
- (f) Tenderers should highlight the proposed innovative suggestions and explain clearly with all of the following details:-
- (i) the type (i.e. Type I or Type II) of innovative suggestion which each of them belongs to;
 - (ii) the plans to which the suggestions are relevant;
 - (iii) sufficient details on what improvements/benefits/positive values to which their proposed innovative suggestions can bring about; and
 - (iv) how they are to be implemented, in their submissions to facilitate tender evaluation. If a Tenderer fails to specify item (i) and item (ii) above, it will be deemed as proposed under Type I and Launch Hiring Service Plan.
- (g) Marks will not be given if the Tenderers only propose a concept without sufficient details. Tenderers shall submit the following information for demonstrating the effectiveness and practicability of the innovative suggestions:-
- (i) 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;
 - (ii) If the suggestion is concerned with a kind of measure, service, scheme and activity, etc.: the objective, scope of the services involved, details on how to implement, functions, quantity, monetary value, scale, coverage, locations, frequency, duration, outcome and number of target beneficiaries, etc. as appropriate; and
 - (iii) If the suggestion is related to manpower: the objective, scope of the duties involved, details on how to implement, work shifts (full time or part time), posts, recruitment

method, means to approach the target candidates, quantity, monetary value, scale, coverage, locations, frequency, duration, outcome and number of target beneficiaries, etc. as appropriate.

- (h) Tenderers may be requested to provide supporting documents or a demonstration to prove the practicability of their innovative suggestions. All proposed innovative suggestions will be assessed on the basis of the information provided in the 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 innovative suggestions proposed by the Tenderers. During the demonstration, Tenderers are also not allowed to provide additional information not contained in their original tender submissions.
- (i) All effective and practicable innovative suggestions accepted by the Government shall form part of the Contract.

Note 5: for Assessment Criterion (3)(b) –Type II Innovative Suggestions (Max. mark: 9)

- (a) Tenderers are also encouraged to provide innovative suggestions which may not be directly relevant to the launch hiring service but which can bring about positive values or benefits to the Government or the public at large.
- (b) The innovative suggestions may not necessarily be technology-related. They can be application of innovative technology, innovative application of existing technology, or any ideas or suggestions not envisaged in the Contract, which can bring positive values or benefits to the Government or the public.
- (c) Marks will be given if the proposed innovative suggestions are effective and practicable for the following areas:
- (i) Green Performance (max. mark: 6)

Propose innovative suggestions to enhance green performance in the delivery of the launch hiring service, which may include, without limitation, the following:

- measures for wider use of environmental-friendly products and spare parts; or
- a mechanism to monitor proper disposal and recycling of waste metal, waste lubricant oil, waste battery and waste refrigerant.

Marks will be given as follows:-

<u>Marks</u>	<u>Marking Standard</u>
6	The proposed plan contains 3 or more effective and practicable innovative suggestions.
4	The proposed plan contains 2 effective and practicable innovative suggestions.
2	The proposed plan contains 1 effective and practicable innovative suggestion.
0	No innovative suggestions proposed.

(ii) Other positive values or benefits (max. mark: 3)

Any innovative suggestions, excluding those related to Green Performance, which can bring about positive values or benefits to the Government or the public at large, such as development of new technology and employment of persons with disabilities or the underprivileged in the society.

Marks will be given as follows :

<u>Marks</u>	<u>Marking Standard</u>
3	The proposed plan contains 3 or more effective and practicable innovative suggestions.
2	The proposed plan contains 2 effective and practicable innovative suggestions.
1	The proposed plan contains 1 effective and practicable innovative suggestion.
0	No innovative suggestions proposed.

(d) A Type II Innovative Suggestion will only earn marks for Assessment Criterion (3)(b) and will not earn marks again for Assessment Criterion (3)(a).

(e) Tenderers should highlight the proposed innovative suggestions and explain clearly what benefits/positive values, including items in (c) above, their proposed innovative suggestions can bring about in their submissions to facilitate tender evaluation.

(f) Clauses (f) and (g) of Note 4 above are also applicable to this Note.

(B) Other Specific Criteria

Assessment Criterion (4) will be assessed and scored separately tendered by the Tenderer.

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.

ANNEX II

Form of Bank Guarantee

THIS GUARANTEE is made 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 an invitation to tender (Tender Reference: AFCD/SET2022), the
Government invited tender for the Provision of Launches Services for Operations of
Agriculture, Fisheries and Conservation Department on the terms and conditions therein
(“Contract”).

(B) It is a condition precedent to the Government agreeing to grant the Contract
to.....
of
.....
(hereinafter called the “Contractor”) that, inter alia, the Guarantor executes this Guarantee
in favour of the Government.

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 in the Contract.
- (2) In consideration of the Government agreeing to enter into the Contract with the Contractor:-

- (a) The Guarantor hereby irrevocably and unconditionally guarantees, as a primary obligor and not as a surety, and as a continuing security, the due and punctual performance and observance by the Contractor of all of its obligations under the Contract and the Guarantor shall pay to the Government on demand and without cavil or argument all monies and liabilities which are now or at any time hereafter shall become due or owing by the Contractor to or in favour of the Government under or in connection with the Contract together with all costs, charges and expenses on a full indemnity basis which may be sustained or incurred by the Government by reason or in consequence of any default on the part of the Contractor in performing or observing any of its obligations under the Contract.
- (b) The Guarantor, as a principal obligor and not as a surety, and as a separate and independent obligation and liability from its obligations and liabilities under sub-Clause (a) above, irrevocably and unconditionally agrees to indemnify and keep indemnified the Government from and against and shall pay to the Government on demand and without cavil or argument all losses, damages, costs, charges and expenses on a full indemnity basis suffered or incurred by the Government arising from or in connection with the failure of the Contractor to perform or observe fully or punctually any of its obligations under the Contract.
- (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.
- (4) The Guarantor shall not be discharged or released from this Guarantee by any arrangement made between the Government and the Contractor or by any change in obligations of the Contractor under the Contract or by any forbearance granted by the Government to the Contractor as to payment, time, performance or otherwise whether or not such arrangement, change or forbearance may have been or is made or granted with or without knowledge or assent of the Guarantor.
- (5) Without prejudice to Clause 4 above, the obligations of the Guarantor under this Guarantee shall remain in full force and effect and shall not be affected or discharged in any way by, and the Guarantor hereby waives notice of:-
- (a) any suspension of, variation or amendment or supplement to the Contract (including without limitation extension of time for performance) or any concession or waiver by the Government, in whole or in part, in respect of the Contractor's obligations under the Contract;
 - (b) any provision of the Contract being or becoming illegal, invalid, void, voidable or unenforceable;

- (c) the termination of the Contract for any reason;
- (d) any forbearance or waiver of any right of action or remedy that the Government may have against the Contractor and/or the negligence, failure, omission, indulgence or delay by the Government in enforcing any right, power, privilege to or remedy available to the Government in relation to the obligations of the Contractor set out in the Contract;
- (e) the voluntary or involuntary liquidation, bankruptcy, dissolution, sale of assets, receivership, general assignment for benefit of creditors, insolvency, reorganization 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 or sub-contracting by the Contractor of any or all of its obligations set out in the Contract, whether or not such assignment or sub-contracting has been consented to; and
- (g) without prejudice to the generality of the foregoing, any fact or event (whether similar to any of the foregoing or not) which in the absence of this provision would or might constitute or afford a legal or equitable discharge or release of or defence to the Guarantor, other than an express release of its obligations by the Government.

(6) This Guarantee shall extend to all obligations of the Contractor under the Contract as the same may from time to time be amended or supplemented and the Guarantor hereby prospectively consents to whatever amendment, variation or supplement which may be made to the Contract.

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

- (a) the date falling seven (7) months after the early termination or expiry of the Contract Period; or
- (b) in the case if at the time of expiry or early termination of the Contract Period, all or any of the Contractor's obligations and liabilities under or in relation to the Contract shall not have been performed, completed and discharged to the satisfaction of the Government Representative, or there is any right or claim which has accrued to the Government arising from antecedent breach(es) by the Contractor of the Contract or otherwise accrued to the Government prior to the expiry or termination of the Contract Period, the date falling twenty-four months after the early termination or expiry of the Contract Period.

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

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

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

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

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

(a) upon the Government, at the 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 (as evidenced by confirmed transmission report); and (c) if despatched by mail (whether registered or not), on the day on which they are tendered for delivery by the postal authority in Hong Kong.

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

IN WITNESS whereof the Guarantorhas caused its Common Seal 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 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 should be submitted.

ANNEX III

NON-COLLUSIVE TENDERING CERTIFICATE
(To be completed and returned together with the tender submission)

To: the Government

Dear Sir/ Madam,

Non-collusive Tendering Certificate

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

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

Non-collusion

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

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

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

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

Disclosure of subcontracting

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

Consequences of breach or non-compliance

5. I/We understand that in the event of any breach or non-compliance with any representations, warranties and/or undertakings in this certificate or in Clause 24(a) of the Terms of Tender, the Government may exercise any of the rights under Clauses 24(c) to 24(e) of the Terms of Tender in addition to and without prejudice to any other rights or remedies available to it against me/us.

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

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

Name of the authorised signatory (where applicable) :

Title of the authorised signatory (where applicable) :

Date :

ANNEX IV

Registration Form for the Tender Briefing**Tender for the Provision of Launches Services for Operations of
Agriculture, Fisheries and Conservation Department****(Tender Reference AFCD/SET2022)**

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

We will attend the tender briefing for the above tender
on 16 February 2022, 10:00 am
at Room 615
6/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 15 February 2022. 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.

Statement of Compliance**Note 1:**

[Please refer to Clause 3(d)(ix) of the Terms of Tender.]

- *(a) I / We confirm that the Tenderer is the owner of the proposed Launches / the Tenderer has, under a legally binding agreement agreed with the owner to enter into a purchase agreement or a 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 throughout the Contract Period.
- *(b) I / We confirm that the Tenderer is NOT the owner of the proposed Launches and the Tenderer has NOT, under a legally binding agreement agreed with the owner to enter into a purchase agreement or a 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 throughout the Contract Period.

Note 2:

[Please refer to the Schedule 3.]

- *(c) I / We confirm that the proposed Launches shall comply with Part 1 – Essential Requirements and Part 2 – Modification Requirements of Schedule 3.

* Delete whichever is not applicable.

Company Chop : _____

Name of Tenderer : _____

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

Name of the authorised signatory : _____

Title of the authorised signatory : _____

Date : _____

Telephone No. : _____