

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

**TENDER FOR THE PROVISION OF SERVICES**

*Tender Ref.: AFCD/IQ/TS/01/17*

**TENDER FORM**

*Contract No. ....*

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**LODGING OF TENDER**

This tender must be duly completed and signed **IN QUINTUPLICATE** and enclosed in a sealed plain envelope marked “**Tender Ref.: AFCD/IQ/TS/01/17 – Tender for the Provision of Services for Conducting a Pet Food Testing Exercise in Hong Kong**”, addressed to the Chairman of the Tender Opening Committee, Government Logistics Department and must be deposited in the Government Logistics Department Tender Box situated at Ground Floor, North Point Government Offices, 333 Java Road, North Point, Hong Kong before 12:00 noon (Hong Kong Time) on **22 August 2017 (Tuesday)** (Hong Kong Time) (“Tender Closing Date”). **Late tenders will not be accepted.**

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This Tender Document consists of a complete set of:

- (a) Part 1 - Interpretation
- (b) Part 2 - Terms of Tender

Annex I : Marking Scheme for the Assessment of Tenders

Annex II : Reply Slip for Briefing Session

Annex III : Method of Providing the Contract Deposit

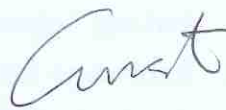
Annex IV : Form of Banker's Guarantee for the Performance of a Contract

- (c) Part 3 - Conditions of Contract
- (d) Part 4 - Service Specifications
- (e) Part 5 – Offer to be Bound
- (f) Contract Schedule A – Price Schedule

- (g) Contract Schedule B – List of Key Personnel of the proposed Project Team for the Pet Food Testing Exercise
- (h) Contract Schedule C – Statement of Compliance
- (i) Contract Schedule D – Tenderer's experience in conducting testing on Pet Food Products or Feed (*see definition in Part 1 – Interpretation*) for the Government or public organisations or private companies (including those in progress)
- (j) Contract Schedule E – Information on accreditation of laboratories and testing methods proposed for the Pet Food Testing Exercise

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

Dated this 28th day of July 2017



( Dr. Ernest WU )

for Director of Agriculture, Fisheries and Conservation  
Government Representative

### **Part 1 - Interpretation**

1. In the Tender Document and the Contract (as hereinafter defined), the following expressions shall have the meaning hereby assigned to them except when the context otherwise requires:-

“18 Districts” means the 18 Districts as declared in the District Councils Ordinance (Cap. 547);

“Accredited Laboratories” means the laboratories which have been registered as an accredited laboratory in the manner described in Clause 2.1(e) of the Terms of Tender and which shall be engaged by the Contractor for testing the Sampled Pet Food Products under the Contract;

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

“Associates” in relation to any person means:-  
 (a) a relative or partner of that person; or  
 (b) a company one or more of whose directors is in common with one or more of the directors of that person

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

“director” means any person occupying the position of director by whatever name called and without limitation a de facto or shadow director;

“Associated Persons” in relation to another person means:-  
 (a) any person who has control, directly or indirectly, over the other; or

- (b) any person who is controlled, directly or indirectly, by another; or  
any person who is controlled by, or has control over, a person at (a) or (b) above;

“control” in relation to another person means holding office as a director or the power of a person to secure

- (a) by means of the holding of shares or interests or the possession of voting power in or in relation to that or any other person; or

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

that the affairs of the first-mentioned person are conducted in accordance with the wishes of that other person;

“Contract Period” means, subject to early termination or extension provided for in the Contract, the period as specified in Clause 1.1 of the Conditions of Contract ;

“Contract Price” means the Estimated Contract Price proposed by the Contractor in Contract Schedule A – Price Schedule and as accepted by the Government for the performance of the Services and payable in the manner as provided in Clause 4.1 of the Conditions of Contract;

“Estimated Contract Price” means the amount quoted as such by the Contractor in Contract Schedule A – Price Schedule as the estimated total amount of payment for the provision of the Services, to be payable by the Government to the Contractor in accordance with the provisions of the Contract;

“Feed”	means feed, feeding stuff, animal feed, animal feeding stuff, and any substance or material that is intended to be used for oral feeding to animal.
“Government”	means the Government of Hong Kong;
“Government Representative”	means the Director of Agriculture, Fisheries and Conservation and any other officer authorised acting on his behalf for the purpose of the Contract;
“HKAS”	means the Hong Kong Accreditation Service which is an organisation responsible for accreditation of testing services;
“HOKLAS”	means the Hong Kong Laboratory Accreditation Scheme operated by the Hong Kong Accreditation Service under the Innovation and Technology Commission of the Government;
“Hong Kong”	means the Hong Kong Special Administrative Region of the People’s Republic of China;
“Key Personnel”	means the group of persons filling the roles of Project Manager and Laboratory Manager of the Project Team for the Pet Food Testing Exercise;
“Laboratory Manager”	means one of the Key Personnel of the Project Team who is responsible for the overall laboratory testing of Sampled Pet Food Products such as the quality assurance of the tests performed and delivery of reliable and accurate test results;
“Market Survey”	means a survey among the Pet Food Products with a view to facilitating the sampling of Pet Food Products for the Pet Food Testing Exercise;
“Materials”	means all the testing reports, works of authorship, summaries, briefings, presentations, diagrams, drawings, charts, tables, graphs, pictures,

photographs, plans, models, opinion, comments, specifications, formulae, data, information, documents and Materials collected, compiled, developed, produced or created by the Contractor, and their directors, officers, employees, agents or sub-contractors (whether individually or jointly with the Contractor) in relation to and/or in the course of the performance of the Services or for the purpose of this Contract including but without limitation to the deliverables, the pre-contractual and contractual documents and all the drafts, uncompleted versions and working papers thereof which are recorded or stored by whatever means in whatever form or media.

“Pet Food Products”

means the commercially produced/processed and packaged pet food products and homemade food products for pet animals (such as dogs, cats, birds and rodents) that are being sold through the retail channels to pet owners in Hong Kong;

“Pet Food Testing Exercise”

means the exercise of testing Sampled Pet Food Products for Substances to be carried out by the Contractor under the Contract;

“Project Manager”

means one of the Key Personnel of the Project Team who assumes the overall responsibility of providing the Services including but not limited to the planning and implementation of the design, methodology and work plan for the Market Survey and sampling of Pet Food Products for Pet Food Testing Exercise in consultation with the Government;

“Quality Control Plan”

means the plan submitted by a Tenderer setting out the various measures it will take to ensure that the quality of all Services under this Contract is properly controlled and maintained to the satisfaction of the Government;

“Project Team”	means the team including the Key Personnel and headed by the Project Manager to provide the Services to the Government under this Contract;
“Sampled Pet Food Products”	means the Pet Food Products obtained or purchased by the Contractor, as agreed by the Government, as samples for Pet Food Testing Exercise by way of a pre-decided method under this Contract;
“Services”	means all duties, obligations and Services to be performed and provided by the Contractor as specified in this Contract, details of which are set out in the Service Specifications;
“Substances”	means the Substances prescribed in Clause 6.1 of the Service Specifications that may be found in the Sampled Pet Food Products to be tested by the Contractor;
“Technical Proposal”	means the technical details to be provided by Tenderers on how they plan to conduct the Pet Food Testing Exercise, including their proposed methodology, approach and work plan on sampling and testing of Pet Food Products as set out in Clause 3.3(a) of the Terms of Tender;
“Tender”	means a Tender submitted by a Tenderer in response to the Tender Notice;
“Tender Closing Date and Time”	means the time and the date specified in the “Lodging of Tender” section of the Tender Form as the latest date and time before which Tenders must be deposited with the Government, and as such date and time as may be extended in accordance with Clause 3.6 of the Terms of Tender;
“Tender Document”	means the documents issued by the Government for the purpose of this Tender as listed out in the Tender Form;

“Tenderer” means the person or persons and/or the firm or the company referred to in the Offer to be Bound; and

“Work Plan” means a plan submitted by a Tenderer setting out the details of how the various work items required under the Contract will be implemented.

2. Unless the context requires otherwise, the following rules of interpretation shall apply:

- (a) Words importing the singular include the plural and vice versa;
- (b) Words importing a gender include all other genders;
- (c) Words importing a person shall include an individual, a firm, partnership, trust, corporation, Government, governmental body, authority, agency unincorporated body of persons or associations, corporations and any organisations having legal capacity;
- (d) Reference to a “day” shall be construed as a calendar day;
- (e) Where in this Tender Document there is a reference to a clause, sub-clause, schedule, annex, appendix or attachment by number or by letter, such reference shall be construed as a reference to the clause, sub-clause, schedule, annex, appendix or attachment of that number or letter contained in the relevant part of this Tender Document;
- (f) Section or clause headings to any provision, schedule, annex or other attachment of this Tender Document are inserted for convenience of reference only and shall not in any way vary, limit or extend the interpretation of this Tender Document; and
- (g) Reference to any enactment, order, regulation or other similar instrument shall be considered as a reference to the enactment, order, regulation or instrument as amended by any subsequent enactment, order, regulation or instrument.



## **Part 2 - Terms of Tender**

### **1. General Notes**

- 1.1 Tenders are invited for the provision of all of the Services subject to and in accordance with the Tender Document.
- 1.2 Tenderer should read the Tender Document carefully prior to submitting a Tender. A Tenderer should ensure that it understands all requirements of the Tender Document.
- 1.3 Tenderer should obtain such independent advice from its own advisers as it considers appropriate.
- 1.4 Information, statistics, forecasts and estimated requirement of the Services set out in the Tender Document are provided for reference only. The Government does not warrant or represent that the information, statistics and forecasts are complete, true or accurate.
- 1.5 By submitting a Tender, a Tenderer will be regarded to have agreed to all terms and conditions set out in the Tender Document.

### **2. Essential Requirements**

- 2.1 Tenderers must meet all of the **essential requirements** set out in this Clause. **Failure to comply with any of the essential requirements will render a Tender invalid and not be considered further:-**
  - (a) A Tenderer **must** have at least **eight (8)** years of experience in conducting testing on Pet Food Products or Feed for the Government or public organisations or private companies (including those in progress). At least **360** samples either in one testing exercise or cumulatively in more than one testing exercise **must** have been conducted by the Tenderer within such period. Testing carried out by the Tenderer in overseas laboratories or as a sub-contractor shall be counted;
  - (b) A Tenderer **must** nominate in its Tender the Key Personnel in its Project Team comprising one (1) **Project Manager** (who should

be the Team Leader) and one (1) or more **Laboratory Manager(s)**. The resumes of the nominated Key Personnel should be attached to Contract Schedule B – List of Key Personnel of the Proposed Project Team for the Pet Food Testing Exercise;

- (c) The **Project Manager** nominated in a Tender **must** have at least **six (6)** years' experience in overseeing and managing testing on Pet Food Products or Feed prior to the Tender Closing Date and Time. Experience gained outside Hong Kong will be counted. (NOTE: Preference will be given to a nominee who possesses relevant academic qualifications relating to science subjects (e.g. a Bachelor or Higher Degree in Biochemistry, Chemistry or subjects relating to food testing technology) or equivalent];
- (d) The **Laboratory Manager(s)** nominated in a Tender **must** possess relevant academic qualifications relating to science subjects (e.g. a Bachelor or Higher Degree in Biochemistry, Chemistry or subjects relating to food testing technology) or equivalent and shall have at least **ten (10)** years' experience in conducting and supervising testing on Pet Food Products or Feed prior to the Tender Closing Date and Time. Experience gained outside Hong Kong will be counted. The Tenderer must nominate at least one (1) Laboratory Manager for each Accredited Laboratory;
- (e) The laboratory/laboratories proposed in a Tender for testing the Sampled Pet Food Products, whether physically located in Hong Kong or overseas, **must** be registered as "Accredited Laboratories" with the Hong Kong Accreditation Scheme (HOKLAS) or under mutual recognition arrangement (MRA) with the Hong Kong Accreditation Service (HKAS), and the testing methods to be employed for the testing of the Substances specified in Clause 6.1 of the Service Specifications **must** be accredited, in accordance to ISO/IEC 17025:2005, by HKAS or by the association/organisation under MRA with HKAS under the scope and field of Pet Food or Feed. Such accreditation must be valid throughout the Contract Period; and
- (f) Tenderers must provide documentary proof (such as certificate of accreditation, scope of accreditation, and list of accredited testing

methods, or equivalent) and provide in Contract Schedule E the detailed information of the proposed Accredited Laboratories and accredited testing methods for the Substances. Sending Sampled Pet Food Products to unaccredited laboratories, or laboratories accredited by accreditation bodies other than HOKLAS or under MRA with HKAS, or laboratories other than those specified in the proposal of the Tenderer, for testing in any form of employment or collaboration, will **not** be accepted. Preference will be given to Accredited Laboratories which are under the same company as the Tenderer and which are under the Tenderer's direct control on management, communication and quality control throughout the Contract Period.

### **3. Tender Preparation and Submission**

3.1 All Tenders are to be completed in ink or typescript in English and submitted in the manner as stipulated in this Clause.

3.2 Save in accordance with the terms of the Tender Document, a Tenderer must not alter any provision of the Tender Document.

3.3 A Tenderer shall prepare and provide complete documents and information required, including but not limited to the following:-

(a) A Technical Proposal, including but not limited to the following for the purpose of tender evaluation under the marking scheme in Annex I to the Terms of Tender:-

(i) Tenderer's relevant experience in conducting testing on Pet Food Products or Feed for the Government or public organisations or private companies as specified in Clause 2.1(a) above (with details of such testing);

(ii) detailed information on the academic qualifications and experience of the Key Personnel of the Tenderer's proposed Project Team to be given in Contract Schedule B – List of Key Personnel of the Proposed Project Team for the Pet Food Testing Exercise as specified in Clauses 2.1(c) and 2.1(d) above;

- (iii) the Tenderer's understanding of the Pet Food Testing Exercise, including appreciation of possible operational problems/difficulties involved in the Pet Food Testing Exercise and proposed solutions to resolve such operational problems/difficulties;
- (iv) the Tenderer's proposed methodology, work plan and timeframe for conducting the Pet Food Testing Exercise, including a Market Survey, sampling design, collection and delivery of Sampled Pet Food Products to Accredited Laboratories for testing, the method (including the name, brand, type and rationale of the testing kits, reagents, equipment and facilities, etc.) and rationale of testing for the specified Substances, ways of handling and storage of Sampled Pet Food Products, as well as processing, collation and tabulation of testing results and data for submission to the Government;
- (v) the Tenderer's quality control plan and measures to address the quality control issues arising from the testing procedures, data processing and compilation activities to ensure accuracy at various stages from collection of samples of Pet Food Products to the generation of the "cleaned" data file and production of reports on testing results. These measures include, but not limited to, consistency checks on testing results, and mechanism for monitoring and auditing the whole testing procedures employed (see Clause 7 of Service Specifications on Quality Control Mechanism) to ensure that a satisfactory standard of performance is maintained throughout the duration of the Pet Food Testing Exercise. The quality control plan shall be subject to regular review by the Government and shall include, inter alia, the following :
  - (1) relevant audit reports of satisfaction from an accreditation body and the approach to remedy any identified performance default and to prevent the re-occurrence of any sub-standard services; and

- (2) the approach to work with the Government Representative to resolve issues arising from the Contract. (Note: As and when necessary, the Government Representative may visit the successful Tenderer's local Accredited Laboratories to inspect the testing environment, equipment and procedures); and
- (vi) measures to protect confidentiality of testing results and data related to individual brands of Sampled Pet Food Products throughout the testing process;
- (b) Contract Schedule A – Price Schedule; and
- (c) The Offer to be Bound duly signed **without** any indication of the Total Service Fee or pricing information.

3.4 For the purpose of this Tender Exercise, a two-envelope system is adopted. A Tenderer must make submissions in Envelope A and Envelope B as stipulated in Clause 3.5 below. The Tender, comprising both Envelope A and Envelope B, must be enclosed in a sealed envelope or package clearly marked with “**Tender Ref.: AFCD/IQ/TS/01/17 – Tender for the Provision of Services for Conducting a Pet Food Testing Exercise in Hong Kong**” on the outside of the envelope (but should not bear any indication which may relate the Tender to the Tenderer). Tenders shall be submitted in accordance with this Clause.

3.5 The Tenderer must submit in **Envelope A and Envelope B** the documents **in quintuplicate** (i.e. one (1) set of original and four (4) sets of copies) as specified below:-

- (a) **Envelope A**, clearly marked on the outside with the words “Envelope A” and “Tender Ref.: AFCD/IQ/TS/01/17 – Tender for the Provision of Services for Conducting a Pet Food Testing Exercise in Hong Kong”, must contain the following documents:

- (i) The duly completed Contract Schedule A – Price Schedule;  
and
  - (ii) Any information relating to price information;
- (b) **Envelope B**, clearly marked on the outside with the words “**Envelope B**” and “**Tender Ref.: AFCD/IQ/TS/01/17 – Tender for the Provision of Services for Conducting a Pet Food Testing Exercise in Hong Kong**” must, without any indication on the price, contain the following documents:
- (i) The duly signed Offer to be Bound;
  - (ii) The duly completed Contract Schedule B – List of Key Personnel of the proposed Project Team for the Pet Food Testing Exercise;
  - (iii) The duly completed Contract Schedule C – Statement of Compliance;
  - (iv) The duly completed Contract Schedule D – Tenderer’s experience in conducting testing on pet food products or Feed for the Government or public organisations or private companies (including those in progress);
  - (v) The duly completed Contract Schedule E - Information on Accreditation of Laboratories and Testing Methods for the Pet Food Testing Exercise;
  - (vi) All documents and information of the Tenderer’s Technical Proposal including but not limited to those required in Clause 3.5(b) above;
  - (vii) A certified true copy of the valid Business Registration Certificate of the Tenderer;
  - (viii) A certified true copy of the Certificate of Incorporation or the latest Certificate of Change of Name (if any) or its equivalent (if the Tenderer is incorporated outside Hong Kong) of the Tenderer; and
  - (ix) A document (e.g. Tenderer’s authorisation letter and/or a board resolution of the Tenderer) showing that the person

who signs the Tender has the authority to sign it for and on behalf of the Tenderer.

- 3.6 A Tender comprising both Envelope A and Envelope B must be deposited at the place specified in the “Lodging of Tender” section of the Tender Form before the Tender Closing Date and Time. In case a black rainstorm warning signal or tropical cyclone warning signal No. 8 or above is hoisted or 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, the Tender Closing Date will be extended to 12:00 noon (Hong Kong time) on the next working day. **Late Tenders will not be considered.**
- 3.7 Any failure to complete or submit the documents and/or information required under Clause 3.5 above may, at the absolute discretion of Government, render a Tender non-conforming and not to be further considered. However, a Tenderer should note that **its Tender will not be considered further if, by the Tender Closing Date and Time, the Tenderer fails to submit:**
- (a) a duly signed “Offer to be Bound”; and/or
  - (b) duly completed Contract Schedules A to E.
- 3.8 Tenderers must complete Contract Schedule C - Statement of Compliance. Tenderers are requested to confirm in Contract Schedule C that offers submitted comply fully with the Service Specifications in every respect. Any modification of the Service Specifications considered necessary by the Tenderer should be in the form set out in Contract Schedule C - Statement of Compliance. In the event any proposed modification is not accepted by the Government, the Tenderer shall be deemed to have submitted a Tender for the Services which complies with all aspects of the Service Specifications without any such proposed modification.
- 3.9 Tenders may not be considered if false, incorrect or incomplete information is given or if any information specifically required in these Terms of Tender is not furnished in full or in the manner specified.

3.10 If a Tenderer is incorporated outside Hong Kong, it must, if required and at its own cost, provide a legal opinion in form and substance satisfactory to the Government and issued by a lawyer duly qualified to practise the laws of the place of incorporation of the Tenderer and acceptable to the Government on the following issues and any other issues as may be required by the Government:

(a) the Tenderer is duly incorporated and validly existing under the laws of the place of the Tenderer's incorporation, and that the Tenderer has full power, capacity and authority to carry on the business as it is now conducting and to provide the Services to the Government on the terms and conditions of the proposed Contract;

(b) the Tenderer has the full power, authority and legal capacity to:

- (i) execute and submit its Tender and to incur the liabilities and perform the obligations under the Tender Document; and
- (ii) enter into and execute the Contract and to incur the liabilities and perform the obligations thereunder;

(c) the proposed Contract with the Government will, upon its formation pursuant to Clause 10 constitute the legal, valid and binding obligations of the Tenderer in the place of its incorporation and is enforceable against the Tenderer in accordance with its terms;

(d) the execution, delivery and performance of its Tender and the proposed mode of execution, delivery and performance of the Contract (if awarded to the Tenderer) have been duly authorised by all necessary corporate action of the Tenderer, and does not violate any provision of any applicable law, regulation or decree of the Tenderer's place of incorporation, or the Memorandum and Articles of Association or similar constitutional documents of the Tenderer;

(e) no authorisations, consents, approvals are required from any Governmental authorities or agencies or other official bodies in the place of incorporation in connection with the execution and



delivery of the Tenderer's Tender, or the performance by the Tenderer of its obligations under the Tender Document and the Contract;

- (f) the Tenderer's Tender and the Contract (if awarded to the Tenderer) need not be registered or filed in the place of incorporation in order to secure their validity and/or priority;
- (g) there is no restriction under the laws of the place of the Tenderer's incorporation affecting the Tenderer's obligations under the Tender Document and the Contract;
- (h) the choice of the laws of Hong Kong to govern the Tender Documents and the Contract is a valid choice of laws and would be recognised and given effect to by the courts of the place of incorporation of the Tenderer; and
- (i) it is not necessary under the laws of the place of incorporation of the Tenderer that the Government be licensed, qualified or otherwise registered in such place of incorporation in order to enable it to enforce its rights under the Tender Document and the Contract.

- 3.11 Tenders shall remain valid for not less than **ninety (90) days** after the Tender Closing Date and Time. If a Tender is withdrawn before the expiry of this Tender validity period, without prejudice to other rights and claims of the Government, due notice will be taken of such withdrawal and this may prejudice the Tenderer's future standing as a Government contractor.
- 3.12 A Tender once submitted by a Tenderer will be binding on the Tenderer.
- 3.13 The Government does not bind itself to accept the Tender with the highest overall score or any Tender, and reserves the right to negotiate with any Tenderer the terms of the offer.
- 3.14 Exclusions, restrictions or limitations proposed by a Tenderer which seek to limit or avoid the responsibility of the Tenderer in

contract, tort or otherwise for failing to exercise the skill and care required by the Tenderer or reasonably expected of the Tenderer and in these circumstances may render its offer non-compliance in the absolute discretion of the Government.

- 3.15 Any counterproposal on any aspect of the Terms of Tender or Conditions of Contract may, at the Government's absolute discretion, render a Tender not to be considered.

#### **4. Estimated Contract Price**

- 4.1 Tenderers are required to state the Estimated Contract Price, inclusive of **all expenses** arising from performing the Services, in Hong Kong dollars in Contract Schedule A – Price Schedule. Bidding in other currencies is not allowed and will render the Tender not to be considered further. Any payment schedule proposed by Tenderers which are different from the payment schedule sets out in Clause 4.1 of the Conditions of Contract will also render the Tender not to be considered further.
- 4.2 A Tenderer must quote fixed prices which must remain valid for the whole Contract Period and no request for price variation will be considered. Conditional offer which contains a price variation clause will be rejected.
- 4.3 Without prejudice to the generality of the Terms of Tender, the Government may require a Tenderer who in the opinion of the Government, has submitted an unreasonably low price, to justify and demonstrate to the reasonable satisfaction of the Government that such Tenderer is financially and technically capable of carrying out and completing the Contract. Failing to justify and demonstrate to the Government's satisfaction would entitle the Government to reject the Tender without having to give any reason(s) for the rejection.

#### **5. Accuracy of Prices Quoted**

- 5.1 Tenderers shall check and ascertain that prices quoted in Contract Schedule A – Price Schedule are accurate before submitting their

Tenders. Under no circumstances will the Government accept any request for price adjustment on the grounds that a mistake has been made in the prices quoted.

## **6. Tenderer's Commitment**

- 6.1 All proposals, information and responses from the Tenderers must be submitted in writing. The Tender Document and all proposals, information and responses submitted by the successful Tenderer may be incorporated into and made a part of any final agreement between the Government and such Tenderer. Tenderers shall not submit any information or Materials which they do not wish to be incorporated into the said final agreement. The Government reserves the right to disqualify any Tenderer who submits a proposal that directly or indirectly attempts to exclude or restrict the effect of this requirement.

## **7. Request for Information**

- 7.1 If the Government considers that clarification in relation to any Tender is necessary, or a document or a piece of information, other than the document or information set out in Clause 7.2 below, is missing from any Tender, it may request the Tenderer to make the necessary clarification, or submit the required document or information. Each Tenderer must thereafter within 5 working days or such other period as specified in the request submit such clarification, information or document in the form required by the Government. A Tender will not be considered further if complete information or document is not provided by the deadline specified in the request, or in the case of clarification, such clarification is not provided by such deadline or is not acceptable to the Government. As an alternative to seeking clarification or further information or document, the Government may not consider the Tender further or may proceed to evaluate the Tender on an "as is" basis.

- 7.2 The document and information not covered by Clause 7.1 are:-

(a) a duly signed Offer to be Bound; and

(b) Contract Schedule A with the price information therein duly completed.

- 7.3 The Government will not consider any clarification or information submitted by a Tenderer (whether or not submitted at the request of the Government) if the Government considers that such clarification or information would alter the Tenderer's Tender in substance or give the Tenderer an advantage over other Tenderers.

## **8. Tender Evaluation**

- 8.1 Tenders which do not comply with **all the essential requirements** listed in Clause 2.1 above will not be considered further. Tenders complying with the essential requirements and procedural requirements shall be evaluated based on the marking scheme in **Annex I** to the Terms of Tender.

## **9. Basis of Acceptance**

- 9.1 Tenderers shall note that their offers will be considered on an **overall basis**.

## **10. Award of Contract**

- 10.1 The Government will issue to the successful Tenderer by either post or facsimile transmission a letter notifying conditional acceptance of offer ("the Letter"), subject to the following conditions precedent:

(a) delivery of Contract Deposit to the Government pursuant to Clause 11 hereof; and

(b) other conditions as the Government may specify therein.

- 10.2 Upon issuance of the Letter, unless the expiry date of the tender validity period of the Tender of the successful Tenderer is a date which is 30 days or more after the date of the Letter, such expiry date must be automatically extended to the date which is 30 days

from the date of the Letter.

- 10.3 Upon and subject to the successful Tenderer having duly complied with Clause 10.1 hereof, the Government will issue the Letter of Acceptance notifying fulfilment of the conditions precedent and the Contract is deemed to have been formed on the date of the issuance of the Letter.
- 10.4 If the conditions precedent set out in Clause 10.1 above are not satisfied, the Government will be at liberty to award the Contract to another Tenderer, cancel this Tender Exercise with or without conducting a fresh tender exercise or take such appropriate action as the Government deems fit. Without prejudice to the foregoing, if the successful Tenderer fails to deliver the Contract Deposit to the Government pursuant to Clause 11 hereof, such failure may prejudice its future standing as a Government contractor or service provider.
- 10.5 Tenderers who do not receive any notification within the tender validity period should assume that their Tenders have not been accepted.

## **11. Contract Deposit**

- 11.1 As security for the due and faithful performance of the Contract by the successful Tenderer, the successful Tenderer shall deposit with the Government within twenty-one (21) days from the date of the Letter mentioned in Clause 10.1 above, an amount equivalent to **two percent (2%)** of the Estimated Contract Price (“Contract Deposit”).
- 11.2 The successful Tenderer shall pay the Contract Deposit either in cash, cheque, cashier’s order or in the form of a banker’s guarantee. Each Tenderer should state clearly in **Annex III** to the Terms of Tender the method of providing the Contract Deposit. If the successful Tenderer fails to do so, it will be regarded to have undertaken to pay the Contract Deposit to the Government in cash.

11.3 If the successful Tenderer elects to pay the Contract Deposit by way of a banker's guarantee, the banker's guarantee must comply with the following:

- (a) it must be issued by a bank that holds a valid banking licence granted under the Banking Ordinance (Cap. 155) and acceptable to the Government;
- (b) unless otherwise agreed by the Government, it must be on the terms set out in **Annex IV** to the Terms of Tender ; and
- (c) the banker's guarantee shall come into effect on the date of commencement of the Contract Period unless another date is specified in the Letter as the date on which the banker's guarantee is to take effect. In the event that another date is so specified, the banker's guarantee shall take effect no later than such date.

11.4 If a Tenderer fails to deliver to the Government the Contract Deposit within such time as specified in Clause 11.1, the Government shall be at liberty to award the relevant Contract to another Tenderer who is fully capable of undertaking the Contract and whose Tender is determined by the Government to be the most advantageous to the Government, to conduct a fresh Tender exercise or to take such appropriate action as the Government deems fit.

## **12. Disclosure of Information**

12.1 The Government may disclose, whenever it considers appropriate, to the public or upon request by any member of the public (which may have been a Tenderer) without any further reference to or consent from the successful Tenderer, particulars of the Services to be provided by the successful Tenderer, the date of the award, the name and address of the successful Tenderer and the Estimated Contract Price.

12.2 Nothing in Clause 12 will prejudice the Government's power to disclose whenever it considers appropriate information of any

nature whatsoever (whether or not specified in Clause 13) if the disclosure is made under any one of the following circumstances:

- (a) the disclosure of any information to any public officer or public body, as defined in the Interpretation and General Clauses Ordinance (Cap. 1) or any other person employed, used or engaged by the Government (including agents, advisers, contractors and consultants);
- (b) the disclosure of any information already known to the recipient;
- (c) the disclosure of any information which is public knowledge;
- (d) the disclosure of any information in circumstances where such disclosure is required pursuant to any law of Hong Kong, or an order of a court of Hong Kong or a court or tribunal with competent jurisdiction; or
- (e) without prejudice to the power of the Government under Clause 13.1, to the extent the information relates to a Tenderer, with the prior written consent of that Tenderer.

### **13. Tenderer's Enquiries**

- 13.1 Any enquiries from the Tenderers concerning this Tender Document up to the date of lodging their Tenders with the Government shall be in writing and shall be submitted to :

Technical Services Division  
Inspection and Quarantine Branch  
Agriculture, Fisheries and Conservation Department  
7/F, Cheung Sha Wan Government Offices  
303 Cheung Sha Wan Road, Kowloon  
(Attention. : Dr Michelle YEUNG)  
Fax : 2156 0215

- 13.2 After lodging a Tender with the Government, the Tenderer shall not attempt to initiate any further contact, whether direct or indirect, with the Government on its Tender or this Tender Document. The Government shall have the sole right to initiate any such further contact and all such contacts and any replies of the Tenderers thereto shall be in writing or formally documented in writing.

- 13.3 Unless otherwise expressly stated by the Government in writing, any statement whether oral or written made in response to any enquiry made by a Tenderer shall be for information only. No such statement constitutes a representation or warranty of whatsoever nature, express or implied, and no invitation is made by the Government to any Tenderer to rely on the accuracy or completeness of such statement. Unless in the context of an issued addendum to the Tender Document, the statement will not be deemed to form part of this Tender Document and it shall not alter, negate or waive any of the provisions set out in this Tender Document.

#### **14. Supplementary Information/Tender Addenda**

- 14.1 All supplementary information or Tender addenda to this Tender Document will be provided in writing by the Government and forwarded to all prospective Tenderers who have registered with the Government when obtaining a copy of the Tender Document.
- 14.2 Should the Government require any amendments, clarifications or adjustments to be made to the Tender Document for the purpose of the Tender, the Government will issue to every prospective Tenderer numbered addenda giving full details of such amendments, clarifications or adjustments and the Tender Document shall be taken as having been amended, clarified or adjusted accordingly upon the issue of these addenda. The Tenderer shall acknowledge receipt of these addenda.

#### **15. New Information**

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

#### **16. Cancellation of this Invitation to Tender**

- 16.1 Without prejudice to the Government's right to cancel this Tender



Exercise at its absolute discretion or for public interest reasons, where there are changes of requirement after the Tender Closing Date and Time for operational or whatever reasons, the Government is not bound to accept any conforming Tender and reserves the right to cancel the Tender.

## **17. Documents of Unsuccessful Tenderers**

17.1 The Government may destroy all documents submitted by unsuccessful Tenderers three (3) months after the Contract has been constituted under Clause 10 above.

## **18. Anti-collusion**

18.1 By submitting a Tender, the Tenderer represents and warrants that in relation to its Tender: -

- (a) it has not communicated and will not communicate to any person other than the Government the amount of any Tender price;
- (b) it has not fixed and will not fix the amount of any Tender price by arrangement with any person;
- (c) it has not made and will not make any arrangement with any person as to whether it or that other person will or will not submit a Tender; and
- (d) it has not otherwise colluded and will not otherwise collude with any person in any manner whatsoever in the Tender process.

18.2 In the event that the Tenderer is in breach of any of the representations and/or warranties in Clause 18.1 above, the Government shall be entitled to, without compensation to any person or liability on the part of the Government: -

- (a) reject the Tender;
- (b) if the Government has accepted the Tender, withdraw its acceptance of the Tender; and

- (c) if the Government has entered into the Contract with the Tenderer, terminate the Contract.

18.3 The Tenderer shall 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 in Clause 18.1 above.

18.4 Any breach of any of the representations and/or warranties in Clause 18.1 above by the Tenderer may prejudice the Tenderer's future standing as a Government contractor.

18.5 Clause 18.1 shall have no application to the Tenderer's communications in strict confidence with its own insurers or brokers to obtain an insurance quotation for computation of the Tender price, or with its professional advisers, consultants or sub-contractors to solicit their assistance in the preparation of Tender submission.

18.6 The rights of the Government under Clauses 18.2 to 18.4 above are in addition to and without prejudice to any other rights or remedies available to it against the Tenderer.

## **19. Cost of Tender**

19.1 A Tenderer submits its Tender at its own cost and expense. The Government will not be liable for any costs and expenses whatsoever incurred by the Tenderer in connection with the preparation or submission of its Tender or in any related communication with the Government, whether before, on or after the Tender Closing Date and Time.

## **20. Offering Gratuities**

20.1 A Tenderer shall not and shall ensure that its employees shall not offer or give any advantage as defined in the Prevention of Bribery Ordinance (Cap. 201) to any employee of the Government Representative. 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 if the Contract has been awarded to the Tenderer without knowing the breach, the Government shall be entitled to immediately terminate the Contract and claim for all losses and costs incurred.

## **21. Tender Briefing**

- 21.1 In order to have a clear understanding of the Government's required Services before submitting Tenders, Tenderers are recommended to deploy staff at supervisory level to attend a Tender briefing to be held on **11 August 2017 (Friday)** at 2:30 p.m. at Room 701A, AFCD HQs, 7/F, Cheung Sha Wan Government Offices, 303 Cheung Sha Wan Road, Kowloon. Interested Tenderers should complete the reply slip at **Annex II** to the Terms of Tender and fax same to Dr Michelle YEUNG (Fax No. 2156 0215) if they wish to attend the briefing.

## **Annex I to the Terms of Tender**

Tender Ref. : AFCD/IQ/TS/01/17

File Ref. : AF TSD 8-3/10 Pt. 1

### **Marking Scheme for the Assessment of Tenders**

The Government will use a marking scheme in assessing the Tenders which meet all essential requirements and tender submission procedures as stipulated in the Terms of Tender. A Score Sheet attached at **Appendix** to this Annex will be used for this purpose.

#### **Stage I:** Compliance with essential requirements

The tenders will be checked against the essential requirements specified in Clause 2 of Terms of Tender. **Tenders that fail to meet any one of the essential requirements will not be considered further** and only those conforming to all the essential requirements will enter into the Stage II Evaluation.

#### **Stage II :** Evaluation of the Technical Proposals submitted in conforming Tenders

1. The Technical Proposals submitted in conforming Tenders will be evaluated based on the following assessment criteria. The full mark in this Stage II is **150**, while the overall passing mark is **75**. **In addition, any Tender which does not attain the passing mark, as specified in the Note of the attached Score Sheet for the Marking Scheme, for any of the three (3) assessment items under Item (C) below in this Stage II will not be considered further.**

**Item A** : “Tenderer’s experience in conducting testing on Pet Food Products or Feed for the Government or public organisations or private companies (Clause 2.1(a) of the Terms of Tender refers)”

A Tenderer will attain marks as follows for its experience in this respect:-

Has <b>12 years’ or more</b> experience	= 10 marks
Has <b>8 years’ or more but less than 12 years’</b> experience	= 5 marks

**Full mark for Item A : 10**

**Item B** : “Relevant academic qualifications and experience of Key Personnel proposed for the Project Team”

A Tenderer will attain marks as follows in relation to the relevant academic qualification and experience of the Project Manager and Laboratory Manager (Clauses 2.1(c) and Clause 2.1(d) of the Terms of Tender refer).

(Note: If there is more than one Laboratory Manager proposed, each Laboratory Manager will be individually assessed and the final marks will be taken as the average of all the scores obtained.)

- (1) Project Manager with relevant experience in overseeing and managing testing on pet food products or Feed:

Has <b>12 years’ or more</b> experience	= 10 marks
Has <b>6 years’ or more but less than 12 years’</b> experience	= 5 marks

- (2) Laboratory Manager with relevant academic qualification **and** experience in conducting or supervising testing of pet food products or Feed:

Has <b>15 years’ or more</b> experience	= 10 marks
Has <b>10 years’ or more but less than 15 years’</b> experience	= 5 marks

**Full mark for Item B : 20**

**Item C** : “Proposed methodology and implementation plan”

A Tenderer will attain marks as follows in relation to the following tasks as proposed in its Tender.

- (1) A Tenderer shall submit its proposed sampling design and approach for (i) planning and conducting a Market Survey and then drawing up a list of Pet Food Products commonly accessible by pet owners in Hong Kong, (ii) conducting random sampling of Pet Food Products in Hong Kong and delivering such samples to the Accredited Laboratories for testing, and (iii) providing suitable

storage facilities for Sampled Pet Food Products during the testing process. Marks will be given according to the following scale –

	Marks
Highly effective sampling design/approach on (i) - (iii)	40
Effective sampling design/approach on (i) - (iii)	30
Fairly effective sampling design/approach on (i) - (iii)	20
Thinly-detailed sampling designs/approach on (i) - (iii)	10
No detailed sampling design/approach on (i) - (iii)	0

(2) Marks for a Tenderer's proposed methods and technology, including details such as the name, brand and type of the testing kits, reagents, equipment and facilities as well as the rationale thereof, to conduct testing on Sampled Pet Food Products for the specified Substances will be given according to the following scale -

	Marks
Highly effective method/technology proposed with comprehensive details	40
Effective method/technology proposed with sufficient details	30
Fairly effective method/technology proposed with some details	20
Thinly-detailed method/technology proposed with insufficient details	10
No detailed method/technology proposed	0

(3) Marks for a Tenderer's proposed Work Plan (including a quality control plan) (for all 6 rounds of testing on Sampled Pet Food Products within the two-year Contract Period) will be given according to the following scale -

	Marks
Highly detailed and practicable Work Plan proposed	40
Moderately detailed and practicable Work Plan proposed	30
Fairly detailed and practicable Work Plan proposed	20
Partially detailed and practicable Work Plan proposed	10
Work Plan proposed unclear or impracticable	0

**Total marks for Item C : 120**

**(4) Calculation of Weighted Quality Score**

The maximum weighted quality score for the Technical Proposal submitted in each conforming Tender which attains at least the overall passing mark and the individual passing marks for Items A to Item C as stipulated in Clause 2 above will be **40** and will be calculated as follows:

$$40 \quad \times \quad \frac{\text{Mark attained for the Technical Proposal submitted in a conforming Tender}}{\text{The highest mark amongst all Technical Proposals submitted in all conforming Tenders}}$$

**Stage III : Price Evaluation**

2. The conforming Tenders passing Stage I above which submitted the lowest Estimated Contract Price amongst all conforming Tenders passing Stage I above will be given the maximum weighted price score of **60**. The weighted price score for other conforming Tenders passing Stage I above will be calculated as follows:-

$$60 \quad \times \quad \frac{\text{The lowest Estimated Contract Price amongst all conforming Tenders passing Stage I above}}{\text{Estimated Contract Price in respect of the conforming Tender passing Stage I above being assessed}}$$

**Stage IV : Calculation of the Combined Score**

$$\begin{array}{ccccc} \text{Combined} & = & \text{Weighted} & + & \text{Weighted} \\ \text{Score} & & \text{Score under} & & \text{Score under} \\ & & \text{Stage I above} & & \text{Stage II above} \end{array}$$

**The Tender achieving the highest combined score will normally be recommended for award of the Contract.**

Appendix to Annex I to the Terms of Tender

### Score Sheet for Marking Scheme for Assessment of Technical Proposals

**Nature of Services:** Provision of Services for Conducting a Pet Food Testing Exercise in Hong Kong  
**Tender Reference:** AFCD/IQ/TS/01/17

**Name of Tenderer:** \_\_\_\_\_

Assessment Criteria		Maximum Marks	Passing Marks	Marks Scored	Remarks
<b>A</b>	<b>Tenderer's experience in conducting testing on Pet Food Products or Feed for the Government or public organisations or private companies</b>	<b>10</b>	<b>NA</b>		
<b>B</b>	<b>Relevant academic qualifications and experience of Key Personnel proposed for the Project Team</b>				
(1)	Project Manager	10	NA		
(2)	Laboratory Manager(s)	10	NA		See Note for Item B on Sheet 29
<b>C</b>	<b>Proposed methodology and implementation plan</b>				
(1)	Proposed sampling design and approach for (i) planning and conducting a Market Survey and then drawing up a list of Pet Food Products commonly accessible by pet owners in Hong Kong, (ii) conducting random sampling of Pet Food Products in Hong Kong and delivering such samples to the Accredited Laboratories for testing, and (iii) providing suitable storage facilities for Sampled Pet Food Products during the testing process	40	20		
(2)	Proposed methods and technology to conduct testing on Sampled Pet Food Products for the specified Substances	40	20		
(3)	Proposed Work Plan	40	20		
<b>Total Marks Scored (A + B + C)</b>					
<b>Overall Passing Mark : 75</b>					
<b>Overall Full Mark : 150</b>					

**Note:** Apart from attaining at least the overall passing mark of 75, Tenderers must attain at least the passing mark of 20 for Item C(1), the passing mark of 20 for Item C(2) and the passing mark of 20 for Item C(3). Failure to attain any of these passing marks shall render the Tender invalid and it shall not be considered further.



Annex II to the Terms of TenderReply Slip for Tender Briefing Session

To: Director of Agriculture, Fisheries and Conservation  
(Attn: Dr Michelle YEUNG)  
Fax: 2156 0215

**Tender Ref.: AFCD/IQ/TS/01/17**

**Provision of Services for Conducting a Pet Food Testing Exercise in Hong Kong**

*(Please return the completed Reply Slip to AFCD via the above fax no.*

***by 7 August 2017** for reservation.)*

**Representative of \_\_\_\_\_ (Name of Company)**  
**will attend the briefing session to be held at 2:30 p.m. on 11 August 2017 in Room**  
**701A, AFCD HQs, 7/F, Cheung Sha Wan Government Offices, 303 Cheung Sha Wan**  
**Road, Kowloon,. Details of the representative(s) is/are**

<b>Name</b>	<b>Contact Phone No.</b>

**Name:** \_\_\_\_\_

**Company:** \_\_\_\_\_

**Email:** \_\_\_\_\_

**Tel:** \_\_\_\_\_

**Date:** \_\_\_\_\_

Annex III to the Terms of Tender

**Tender Ref.: AFCD/IQ/TS/01/17**

**Provision of Services for Conducting a Pet Food Testing Exercise in Hong Kong**

**Method of Providing the Contract Deposit**

If the Contract is awarded to us, we shall pay the Government the Contract Deposit **\*in cash, cheque, cashier's order or in the form of a banker's guarantee** in accordance with Clause 11 of the Terms of Tender.

N.B.: \* Please delete whichever is not applicable.

Authorised Signature : \_\_\_\_\_

Name of Authorised Person  
to Sign (in Block Letters) : \_\_\_\_\_

Name of Tenderer in English  
(in Block Letters) : \_\_\_\_\_

Tel. No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_

Date : \_\_\_\_\_

Annex IV to the Terms of Tender**Form of Banker's Guarantee for the Performance of a Contract**

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

BETWEEN .....

..

of ....., a bank within the meaning of the Banking Ordinance (Chapter 155 of the Laws of Hong Kong) (hereinafter called the "Guarantor") of the one part and the Government of the Hong Kong Special Administrative Region (hereinafter called the "Government") of the other part.

**WHEREAS**

(A) By a contract (hereinafter called the "Contract") dated the <day> of <month year> made between <Name of Contractor> of <Address of Contractor> (hereinafter called the "Contractor") of the one part and the Government of the other part (designated as the [x] <Contract Number>) **AFCD/IQ/TS/01/17**, the Contractor agreed and undertook to provide the Services upon the terms and conditions of the Contract.

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

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

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

(2) In consideration of the Government entering into the Contract with the Contractor:

- (a) The Guarantor hereby irrevocably and unconditionally guarantees the due and punctual performance and discharge by the Contractor of all of his, her and their obligations and liabilities under the Contract and the Guarantor shall pay to the Government on demand and without cavil or argument all monies and discharge all liabilities which are now or at any time hereafter shall become due or owing by the Contractor to or in favour of the Government under or in connection with the Contract together with all costs, charges and expenses on a full indemnity basis which may be incurred by the Government by reason or in consequence of any default on the part of the Contractor in performing or observing any of the obligations terms conditions stipulations or provisions of the Contract.
- (b) The Guarantor, as a primary obligor 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 against and shall pay to the Government on demand and without cavil or argument all losses, damages, costs, charges and expenses on a full indemnity basis suffered or incurred by the Government arising from or in connection with the failure of the Contractor to perform fully or promptly any of his, her or their obligations terms conditions stipulations or provisions of the Contract.
- (c) The Guarantor further agrees that all dividends, compositions and payments which the Government may at any time receive from the Contractor or from his, her or their estate or estates, whether in liquidation, bankruptcy or otherwise, in respect of all such losses, damages, costs, charges and expenses shall be taken and applied by the Government as payments in gross, and that this Guarantee shall stand good in respect of the balance to the full amount of \_\_\_\_\_.
- (3) This Guarantee shall not be affected by any change of name or status in the company, firm or individual described as "the Contractor" or where "the Contractor" is a partnership, any change in the partners or in its constitution.

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

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

- (a) any suspension, termination, amendment, variation, novation or supplement of or to the Contract from time to time (including without limitation extension of time for performance);
- (b) any provision of the Contract being or becoming illegal, invalid, void, voidable or unenforceable;
- (c) the termination of the Contract or of the engagement of the Contractor under the Contract for any reason;
- (d) any forbearance, variation, extension, discharge, compromise, dealing with exchange, waiver or renewal in respect of any right of action or remedy that the Government may have, now or after the day of this Guarantee, against the Contractor and/or the negligence, failure, omission, indulgence or delay by the Government in enforcing any right, power, privilege to or remedy available to the Government in relation to the obligations of the Contractor set out in the Contract;
- (e) the voluntary or involuntary liquidation, bankruptcy, dissolution, sale of assets, receivership, general assignment for benefit of creditors, insolvency, reorganisation arrangement, composition, or other proceedings of or affecting the Contractor or its assets, or any change in the constitution of the Contractor;
- (f) any assignment, novation or sub-contracting by the Contractor of any or all of its obligations set out in the Contract;

- (g) without prejudice to the generality of the foregoing, any fact or event (whether similar to any of the foregoing or not) which in the absence of this provision would or might constitute or afford a legal or equitable discharge or release of or defence to the Guarantor, other than the express release of its obligations.
- (6) This Guarantee shall extend to any variation, novation of or amendment to the Contract and to any agreement supplemental thereto agreed between the Government and the Contractor and for the avoidance of doubt, the Guarantor hereby authorises the Government and the Contractor to make any such amendment, variation, novation or supplemental agreement without its notice or assent.
- (7) This Guarantee shall have immediate effect 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 three (3) months after the expiry of the Contract; or
  - (b) the date on which all the obligations and liabilities of the Contractor under the Contract have been duly carried out, completed and discharged in accordance with the Contract,
- whichever is the later.
- (8) This Guarantee is in addition to and shall not merge with or otherwise prejudice or affect any contractual or other right or remedy or any guarantee, indemnity, lien, pledge, bill, note, charge or any other security which the Government may at any time hold (collectively "Other Security") and this Guarantee may be enforced by the Government without first having recourse to any of the Other Security or taking any steps or proceedings against the Contractor, and notwithstanding any release, waiver or invalidity of the Other Security.
- (9) Any demand, notification or certificate given by the Government specifying amounts due and payable under or in connection with any of the provisions of this Guarantee shall be conclusive and binding on the Guarantor.
- (10) The obligations expressed to be undertaken by the Guarantor under this Guarantee are those of primary obligor and not as a surety.

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

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

(a) upon the Government, at the Agriculture, Fisheries and Conservation Department of <Address>[7/F, Cheung Sha Wan Government Offices, 303 Cheung Sha Wan Road, Kowloon] marked for the attention of < Dr. Michelle YEUNG\_>, facsimile number <2156 0215\_>;

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

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

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

(15) The Guarantor hereby acknowledges that

(a) the Guarantor should read and fully understand, with the benefit of independent legal advice if necessary, the terms and conditions of this Guarantee before entering into this Guarantee.; and

(b) no Government officer is authorised to advise on, make representations regarding or amend (other than by a written instrument signed by both the Guarantor and the Government) the terms and conditions of this Guarantee.

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

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

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

\* Please delete as appropriate

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

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



Tender Ref. : AFCD/IQ/TS/01/17  
File Ref. : AF TSD 8-3/10 Pt. 1

### **Part 3 - Conditions of Contract**

#### **1. Contract Period and Completion of Services**

- 1.1 The Contractor must provide the Services to the Government for a two-year period (i.e. **24** months) which is expected to commence on a date specified in the Letter of Acceptance, whichever is later, subject to early termination or extension provided for in the Contract.
- 1.2 The Contractor shall not be regarded as having completed the Services until all the tasks set out herein have been completed to the satisfaction of the Government, including without limitation the submission of all the deliverables specified in Clause 4 below.
- 1.3 If the Government is of the view that the Contract Period under Clause 1.1 above should be extended for the Contractor to complete the Services pursuant to Clause 1.2 above, the Government reserves the right to extend the Contract for a period as the Government deems fit on the same terms and conditions by giving a written notice to the Contractor no later than one (1) month before the expiry of the Contract Period. The extended Contract Period shall commence immediately upon the expiry of the current Contract.
- 1.4 Notwithstanding anything to the contrary under the Contract, if the Contract Period is extended pursuant to Clause 1.3 above, no amount shall be added to the Contract Price.
- 1.5 The Contractor shall agree to the extension of the Contract made under Clause 1.3 above when the Government exercises its right to extend the Contract.

#### **2. Services to be Provided and Variation of Services**

- 2.1 The Services to be performed under the Contract shall be as laid down in the Service Specifications and shall be carried out, as and when required, to the satisfaction of the Government Representative.

- 2.2 The Contractor shall not extend the Services beyond the requirements specified in the Service Specifications but, without prejudice to Clause 2.1 hereof, the Government Representative may, subject to the proviso hereinafter contained, at any time during the Contract Period by not less than seven (7) days' notice in writing direct the Contractor to alter, amend, omit, add to, or otherwise vary any of the Services and/or the requirements specified in the Service Specifications, and the Contractor shall carry out such variations, and be bound by the same conditions, so far as are applicable, as though the said variations were stated in the Service Specifications.
- 2.3 Where a variation has been made to the Contract under Clause 2.2 hereof, the amount to be added to or deducted from the Contract Price in accordance with that variation shall be determined by mutual agreement between the Government and the Contractor and shall be reasonable in the circumstances.
- 2.4 After entering into the Contract, the Contractor shall carry out the Services and follow instructions given by the Government Representative in accordance with the provisions of the Contract.
- 2.5 The Contractor shall perform the Services in accordance with the testing procedures and standards stipulated by the Government.
- 2.6 The Contractor shall indemnify and keep indemnified the Government, its authorised users, assigns and successors-in-title against all claims, losses, damages and liabilities attributable to the acts, omissions, misconduct, breach of contract or breach of duty committed by the Contractor or any of its employees, agents and permitted sub-contractors.
- 2.7 Data and testing results collected from all rounds of testing on Sampled Pet Food Products and all other Materials furnished to or acquired by the Contractor in connection with this Contract including all data on individual brands of Pet Food Products sampled for the Pet Food Testing Exercise **must** be treated in strict confidence. The Contractor shall exercise due care in handling the Sampled Pet Food Products and the test results to avoid loss and leakage of information. The Contractor shall prepare and submit a disposal plan for the

Sampled Pet Food Products, working files and related documents carrying identification data to the Government Representative for approval before completion of the Pet Food Testing Exercise. At the completion or earlier termination of the Contract, the Contractor shall, upon receipt of the Government's written approval, return to the Government or destroy all fully/partially completed testing records, working files and related documents carrying identification data immediately or within such period as stipulated by the Government. The Contractor shall not destroy or obliterate the testing records (whether completed or not) or any parts thereof at any time whether during or after the Contract Period without having first obtained the Government's approval in writing. A written notice has to be submitted to the Government Representative after the disposal of the testing records, working files and related documents.

2.8 The Contractor shall ensure that all data quality control arrangements are implemented to the satisfaction of the Government. The Contractor shall also provide the quality control plans for ensuring data quality at various stages of the Pet Food Testing Exercise (including data collection and processing) in consultation with the Government. Relevant documents to demonstrate the proper performance of the quality control measures shall also be furnished to the Government. In addition, the Government shall conduct separate and direct quality control checks from time to time as the Government may consider appropriate on such random sample(s) of the completed testing records and invalid cases to ensure that the quality of pet food tests is of high professional standard. The Contractor shall render the required documents and support to facilitate such checking to be conducted by the Government.

2.9 The results of the Pet Food Testing Exercise and any of the output of the Contractor shall not be made available or accessible to any parties other than the Government without the prior written consent of the Government.

### **3. Contractor's Office and Staffing**

3.1 The Contractor shall maintain an office in Hong Kong for conducting the Pet Food Testing Exercise during the entire Contract Period, to be

put under the control of its nominated Project Manager who shall assume full responsibility for the overall planning, implementation and management of the Pet Food Testing Exercise.

- 3.2 The Contractor shall ensure and procure that the Project Team and all other persons engaged by the Contractor for the purpose of this Contract shall carry out the Pet Food Testing Exercise as specified in the Service Specifications with due diligence and strictly in accordance with the Government's requirements and the provisions of this Contract.
- 3.3 The Contractor shall be responsible for the good conduct of its permitted sub-contractor, employees or agent while they are performing the Services under the Contract and shall ensure that they will behave accordingly.
- 3.4 All Services shall be provided by members of the Project Team who have been approved by the Government for the purposes of providing the Services. In the event of the death, incapacity or termination of employment with the Contractor of any approved member of the Project Team before the completion of the Services, the Contractor shall at its own expense and as soon as practicable arrange to substitute or replace the member concerned.
- 3.5 The Contractor shall ensure that the substitute or replacement meets the requirement of the Government for the specific post and is available at the relevant time to act as such replacement or substitute. The Contractor shall without delay forward the curriculum vitae of the proposed substitute or replacement to the Government Representative and shall warrant that it is complete and accurate in all material respects. The deployment of such substitute or replacement shall be subject to the Government's written approval, which approval shall not be unreasonably withheld or delayed. In the event that the Government reasonably objects to or is not reasonably satisfied with the proposed substitute or replacement, the Contractor shall forthwith forward a curriculum vitae of another substitute or replacement, who shall be no less qualified or experienced as aforesaid for the approval of the Government.

- 3.6 The Contractor shall also through its Project Manager provide detailed proposals on the overall Work Plan of the Project Team, including the Market Survey on Pet Food Products, sampling design and samples testing methodologies and timeframe as well as quality control plan to the Government for scrutiny and approval before the commencement of the Pet Food Testing Exercise.

#### 4. Deliverables and Payment Schedule

- 4.1 In consideration of the Contractor's performance of the Services in accordance with the terms and conditions of the Contract and subject to the satisfactory completion of the Services including the submission of the required deliverables set out below, the Government shall pay the Contractor the Contract Price in accordance with the following payment schedule:

- (1) **10%** of the Contract Price upon the Government's acceptance of an **Inception Report** which sets out in detail the Contractor's overall Work Plan for carrying out the Market Survey, sampling design, methodology and approach as well as testing of Sampled Pet Food Products;
- (2) **5%** of the Contract Price upon the Government's acceptance of a "list containing sampled pet food brands commonly accessible by pet owners in Hong Kong" and the proposed sampling plan and testing methods for testing the Sampled Pet Food Products covering all **8** Substances;
- (3) **12%** of the Contract Price upon completion of the **first round** of laboratory tests on **60** Sampled Pet Food Products and the Government's acceptance of corresponding test report;
- (4) **12%** of the Contract Price upon completion of the **second round** of laboratory tests on another **60** Sampled Pet Food Products and the Government's acceptance of corresponding test report;
- (5) **12%** of the Contract Price upon completion of the **third round** of laboratory tests on another **60** Sampled Pet Food Products and the Government's acceptance of corresponding test report;

- (6) **5%** of the Contract Price upon the Government's acceptance of a **Yearly Report** on the Pet Food Testing Exercise covering the first three rounds of tests on Sampled Pet Food Products;
- (7) **12%** of the Contract Price upon completion of the **fourth round** of laboratory tests on another **60** Sampled Pet Food Products and the Government's acceptance of corresponding test report;
- (8) **12%** of the Contract Price upon completion of the **fifth round** of laboratory tests on another **60** Sampled Pet Food Products and the Government's acceptance of corresponding test report;
- (9) **12%** of the Contract Price upon completion of the **sixth round** of laboratory tests on another **60** Sampled Pet Food Products and the Government's acceptance of corresponding test report; and
- (10) **8%** of the Contract Price upon satisfactory completion of all Services, including but not limited to (i) the Government's acceptance of the Final Report on the Pet Food Testing Exercise (incorporating all Government's amendments) on all **six (6) rounds** of laboratory tests on the Sampled Pet Food Products and (ii) presentations of the test results to the Government.

4.2 The Contractor shall address and forward all invoice(s) and correspondence concerning payment to AFCD at the address specified in Clause 21.1 below. The Government shall not be held responsible for any delay in payment if invoice and correspondence are not properly addressed.

4.3 Unless otherwise agreed by AFCD, payment will be made direct to the Contractor's bank account maintained with a bank within the meaning of the Banking Ordinance (Cap. 155) in Hong Kong within thirty (30) days of the date after receipt of invoice by AFCD. The Contractor is not entitled to issue any invoice until and unless the relevant deliverables rendered for each relevant stage of payment as detailed in Clause 4.1 above are accepted in full by the Government in writing.

- 4.4 The Contract Price shall be inclusive of **all** fees, costs, charges and disbursements incurred by the Contractor in the performance of the Services including without limitation all out-of-pocket expenses, including all travelling expenses and allowances for expatriates and others, postage, international telephone calls, facsimile, telex, e-mail expenses, office and hotel accommodation, secretarial support, computer facilities, production of any reports/tabulations and any other out-of-pocket expenses incurred in carrying out the Services. The Contract Price shall further be inclusive of all fees, costs, charges and disbursements incurred by the Contractor in appointing or engaging any sub-contractors, advisers, external experts or others to perform any part of the Services under this Contract, or to advise or assist in relation thereto.

**5. Insurance Compensation Policy for the Contractor's Employees**

- 5.1 The Contractor must effect and maintain throughout the Contract Period a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor in connection with the performance or attempted performance of its obligations under the Contract, including death, personal injury, loss of or damage to property or any other loss. Such insurances must include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor. The insurance company or companies must be authorised under the Insurance Companies Ordinance (Cap. 41).
- 5.2 Without prejudice to Clause 5.1, the Contractor must effect and maintain employer's liability insurance in respect of all its employees and other staff in accordance with all applicable legal requirements.
- 5.3 If required by the Government, the Contractor must deliver to the Government copies of all insurance policies referred to in the Contract together with receipts or other evidence of payment of the latest premium due under the policies.
- 5.4 If the Contractor fails to give effect to or maintain any insurance required under the Contract, the Government may make such alternative arrangements as it considers appropriate to protect its

interests and may recover from the Contractor the costs of putting such in place and maintaining such arrangements.

- 5.5 No provision in any insurance and no amount of insurance covered will relieve the Contractor of any liability under the Contract. It is the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability under the Contract.

## **6. Government Property**

- 6.1 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 employees, the Contractor shall pay promptly for the loss and damage suffered by the Government. 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.

## **7. Prevention of Bribery**

- 7.1 Without prejudice to any rights and claims of the Government under the Contract or otherwise at law, the Government will be entitled to forthwith terminate the Contract if the Contractor, any officer (including director), employee, agent or sub-contractor of the Contractor commits an offence under the Prevention of Bribery Ordinance (Cap. 201) or any law of a similar nature in relation to the Contract or any other contract made by the Contractor with the Government.
- 7.2 The Contractor shall be liable for all expenses necessarily incurred by the Government as a result of such termination of the Contract.

## **8. Performance Monitoring**

- 8.1 The Contractor acknowledges and agrees that their performance during the execution of this Contract will be monitored and may be



taken into account when their future Tenders/study proposals of similar nature are evaluated (without prejudice to any other rights and remedies that the Government may have against the Contractor). The Contractor will also be required to provide evidence or proof that relevant activities of the Pet Food Testing Exercise have been properly performed.

## **9. Personal Data (Privacy) Ordinance**

9.1 The Contractor shall comply with the provisions of the Personal Data (Privacy) Ordinance (Cap. 486) in collecting, processing and storing the personal data of the persons involved in this Testing Exercise.

9.2 Without prejudice to any of the foregoing in Clause 9.1;-

- (a) the Contractor shall ensure that the person from whom personal data are or are to be collected are informed, amongst other things, on or before collecting the personal data the purpose (in general or specific terms) for which the personal data are to be used and the classes of persons (including the Government) to whom the personal data may be transferred; and
- (b) the Contractor shall not disclose or allow access to any personal data acquired by the Contractor or provided by the Government during the course of performing its obligations under this Contract, other than to the Government, members of the Project Team and its permitted sub-contractors. Any disclosure of or allowed access to personal data shall be made in confidence and shall extend only so far as is necessary for the purposes of carrying out the Contractor's duties and obligations under this Contract.

9.3 The Contractor shall fully indemnify the Government, its authorised users, assigns and successors-in-title from and against all losses, liabilities, claims, actions, proceedings, demands, costs, charges or expenses arising out of or in connection with any claim instituted by any person made in respect of information subject to the Personal Data (Privacy) Ordinance (Cap. 486) which claims would not have arisen but for an act, omission or negligence on the part of the Contractor, members of the Project Team or any of its permitted

sub-contractors.

- 9.4 The terms “personal data” and “data subject” shall have the meanings ascribed to them in section 2(1) of the Personal Data (Privacy) Ordinance (Cap. 486).

## **10. Sub-contracting and Assignment**

- 10.1 Unless otherwise provided for in the Contract, the Contractor must not, without the prior written consent of the Government, assign, transfer, sub-contract or otherwise dispose of any of its interests, rights, benefits or obligations under the Contract.
- 10.2 If the Contractor proposes to appoint any sub-contractor, it must submit the proposed sub-contract to the Government for approval. The Government reserves the right to grant permission for sub-contracting and determine the terms and conditions of the sub-contract. A certified copy of the sub-contract must be deposited with the Government within 7 days after the effective date of the sub-contract.mm
- 10.3 The Contractor must remain fully liable and must not be relieved from any of its obligations hereunder by entering into any sub-contract for the performance of any part of the Contract and the Contractor must be responsible for the acts, defaults or neglect of any sub-contractor, its employees and agents.

## **11. Conflict of Interest**

- 11.1 The Contractor shall during the Contract Period and for six (6) months thereafter :
- (a) ensure that it or its Associates or Associated Persons, or any one of the Contractor’s permitted sub-contractors or any member of the Project Team or his Associates and Associated Persons undertake no service, task or job or do anything whatsoever for or on behalf of any third party (other than in the proper performance of this Contract) which conflicts or which may be seen to conflict with the Contractor’s duties

or obligations under the Contract without the prior written approval of the Government; and

- (b) forthwith notify the Government in writing of all or any facts which may reasonably be considered to give rise to a situation where the financial or other interests of the Contractor or its Associates or Associated Persons, or any one of the Contractor's permitted sub-contractors or any member of the Project Team or his Associates and Associated Persons, conflict or compete, or may conflict or compete, with the Contractor's duties to the Government under this Contract.

11.2 The Contractor shall report the findings of the Pet Food Testing Exercise under this Contract to the Government on an impartial basis without giving favour to any particular brands of Pet Food Products, Services or equipment in which the Contractor has a commercial interest. The Contractor shall notify the Government immediately and in writing of any actual or potential financial, professional, commercial, personal or other interests it or its Associates or Associated Persons, or any of its permitted sub-contractors or any member of the Project Team or his Associated Persons may have in, or any association or connection it or the aforesaid persons may have with, any product, Services or equipment proposed or recommended by the Contractor under this Contract.

11.3 The Contractor shall obtain from each member of its Project Team and each of its permitted sub-contractors a legally binding written undertaking in favour of the Contractor and the Government jointly and severally in a form prescribed by the Government agreeing to observe Clauses 11.1 and 11.2 above. The Contractor shall provide the original or certified true copies of all such undertakings to the Government as may be required by the Government. The Contractor further agrees that, if so required by the Government, it shall take all such steps as are lawful and necessary to enforce such undertakings or to co-operate with the Government in their enforcement.

11.4 The Contractor shall ensure that its Associates and Associated Persons, each of its permitted sub-contractors and each member of the Project

Team and his Associates and Associated Persons shall inform the Contractor and keep it informed regularly of all facts which may reasonably be considered to give rise to a situation where the financial interests of such persons, conflict or compete, or may conflict or compete, with the Contractor's duties to the Government under this Contract.

- 11.5 The provisions of this Clause shall survive the expiration or early termination of this Contract.

## **12. Confidentiality**

- 12.1 The Contractor shall ensure that the terms and conditions of this Contract and the Materials in relation to this Contract, and all other Materials furnished to or acquired by the Contractor in connection with this Contract including all data on individual persons or Sampled Pet Food Products wholesalers / retailers are treated as strictly confidential information ("Confidential Information") throughout the performance of the Services and at any time thereafter. The Contractor shall not, during the continuance of this Contract or at any time thereafter, disclose to any person, any Confidential Information, PROVIDED that the restrictions on disclosure contained in this clause shall not apply to :

- (a) the disclosure of any information to any person in circumstances where such disclosure is necessary for the performance of the Contractor's duties and obligations under this Contract;
- (b) the disclosure of any information already known to the recipient other than as a result of disclosure by a breach of confidentiality obligation of the Contractor, its Associates or Associated Persons or the Project Team;
- (c) the disclosure of any information which is or becomes public knowledge other than as a result of disclosure by the Contractor, its Associates or Associated Persons or the Project Team;
- (d) the disclosure of any information in circumstances where such disclosure is required pursuant to any law or order of a Court of

competent jurisdiction;

- (e) the disclosure of any information to the Contractor's professional advisers who receive the same under the aforesaid duty of confidentiality; and
- (f) the disclosure of any information with the prior written consent of the Government.

The Government shall have the right to determine in good faith at any time whether any information is within that described in (b) or (c) above and the Contractor shall comply with that determination.

- 12.2 Any disclosure permitted under Clause 12.1 above shall be in strict confidence and shall extend only so far as may be necessary for the purpose specified in Clause 12.1 above and the Contractor shall ensure the confidentiality of any such disclosure by taking all appropriate actions to restrain or restrict any further disclosure.
- 12.3 The Contractor shall not without the prior written consent of the Government issue, making available of copies of and performing, playing or showing copies of, either alone or in conjunction with any other person, in any newspaper, magazine, periodical, film, video, or other medium, any reports, charts, documents, plans, software, data, deliverables or computer models produced or created in relation to this Contract, and all Materials furnished to or acquired by the Contractor in connection with this Contract including all data on individual persons or sampled pet food wholesalers / retailers as well as Confidential Information relating to the Services (including without limitation the advice provided by it or the duties undertaken by it under this Contract).
- 12.4 The Contractor shall require each member of the Project Team to execute a legally binding written undertaking in favour of the Contractor in a form to be determined by the Government (unless otherwise agreed between the Contractor and the Government) agreeing not to disclose any such Confidential Information. The Contractor shall provide certified true copies of all such undertakings to the Government as may be required by the Government. The

Contractor further agrees that, if so required by the Government, it shall take all such steps as are lawful and necessary to enforce such undertakings.

- 12.5 The Contractor shall not reproduce or make use of any Confidential Information other than in the performance of its obligations under this Contract or with the prior written consent of the Government.
- 12.6 Without prejudice to any other provisions herein, the Contractor shall take all necessary security measures to ensure that Confidential Information are protected against unauthorised access and the Contractor shall notify the Government immediately upon its becoming aware of any unauthorised access or attempt to access any Confidential Information or any reason to suspect any of the foregoing.
- 12.7 The Contractor shall ensure that every person to whom any Confidential Information is disclosed pursuant to this Clause 12 (other than sub-clauses 12.1(b) and 12.1(c)) is aware of and will comply with the restrictions contained in this Clause 12 attaching to Confidential Information.
- 12.8 The Contractor shall ensure every person to whom any Confidential Information is disclosed are aware of and comply with the provisions of this Clause 12 and the Official Secrets Ordinance (Cap. 521) and the Contractor shall indemnify the Government and keep the Government fully and effectively indemnified against all actions, costs (including without limitation the fees and disbursements of lawyers, agents and expert witnesses), claims, demands, expenses, loss, damage and liabilities whatsoever which the Government may suffer incur or sustain as a result of any breach of confidence (whether under this Contract or general law) by any such persons.
- 12.9 The Contractor further agrees that it shall not at any time whether itself or through any subsidiary or agent use, sell, license, sub-license, create, develop or otherwise deal in any Confidential Information supplied to it by the Government or obtained by it while performing this Contract.

- 12.10 The Contractor shall promptly notify the Government and give the Government all reasonable assistance in connection with any proceedings which the Government may institute against any persons pursuant to any of the provisions in this Clause 12 or any undertakings.
- 12.11 The provisions of this clause shall survive the expiration or early termination of this Contract and shall continue in full force and effect notwithstanding such termination.

### **13. Intellectual Property Rights**

- 13.1 Subject to Clause 13.4 below, the Materials and all the Intellectual Property Rights in the Materials shall remain the exclusive property of the Government and shall vest in the Government absolutely at the time they come into existence.
- 13.2 In the event and to the extent that any of the Intellectual Property Rights in the Materials is deemed for any reason not to vest in the Government pursuant to Clause 13.1 above, then, upon request by the Government, the Contractor shall forthwith at its sole cost and expense, free of any charge to the Government, assign or otherwise transfer or cause to be assigned or otherwise transferred the same to the Government absolutely free of any encumbrance or compensation to the Contractor.
- 13.3 The Contractor hereby irrevocably waives and undertakes to procure at its own cost and expense all relevant authors of the Materials referred to in Clauses 13.1 and 13.2 above and the Licensed Property referred to in Clause 13.4 below or part thereof to irrevocably waive all moral rights (whether past present or future) in the respective items, such waiver shall operate in favour of the Government, its authorised users, assigns and successors-in-title and shall take effect upon the vesting or delivery of such items to the Government or upon the grant of licence under Clause 13.5 below to the Government, its authorised users, assigns and successors-in-title (as the case may be).
- 13.4 The provisions of Clause 13.1 above shall not apply to the following type of property (“Licensed Property”) namely that of a kind which is or was specifically produced or created solely and exclusively in

relation to Services, other than the Services or other Services provided to the Government, and which is incorporated in or used in the Materials or otherwise used by or on behalf of the Contractor in the proper performance of the Services. The Contractor shall keep the Government informed in writing of any Materials that are the subject matter(s) of the Licensed Property or any pre-existing Intellectual Property Rights and any restrictions whatsoever affecting the use thereof.

- 13.5 The Contractor hereby grants to the Government, its authorised users, assigns and successors-in-title a perpetual, worldwide sub-licensable, freely-transferable, irrevocable and non-exclusive licence, free of royalty, licence fee or other charge, to use the Licensed Property in any way whatsoever, including without limitation the right to make copies of the Licensed Property, to issue or make available copies of the Licensed Property to the public, to perform or show the Licensed Property in public and to make any adaptation of the Licensed Property for the implementation or attempted implementation in whole or in part of the Pet Food Testing Exercise conducted by the Contractor under the Contract.
- 13.6 At the request of the Government, the Contractor shall, free of any charge to the Government, do all such things and sign all documents or instruments reasonably necessary in the opinion of the Government to enable the Government to obtain, defend and enforce its rights in the Materials and its rights in respect of the Licensed Property.
- 13.7 Upon request by the Government, or in the event of the expiration or termination of this Contract, the Contractor shall at its sole costs and expense promptly deliver to the Government all originals and copies of the Materials then in the custody, control or possession of any members of the Project Team, the Contractor and their permitted sub-contractors or their respective officers, employees and agents and shall certify to the Government that no copies thereof have been retained.
- 13.8 The Contractor shall indemnify and keep the Government, its authorised users, assigns and successors-in-title fully and effectively indemnified against all actions costs claims demands damages



expenses (including without limitation the fees and disbursements of lawyers agents and expert witnesses) and any awards and costs which may be agreed to be paid in settlement of any proceedings (where that settlement has first been proposed or approved in writing by/on behalf of the Contractor) and liabilities of whatsoever nature which the Government may sustain or incur as a result of or in connection with any allegation of and/or claim for infringement of the Intellectual Property Rights of any person arising from or in any way related to the provision of the Services.

- 13.9 All Intellectual Property Rights in the terms so delivered up shall, if those rights have not already been vested in the Government, forthwith be assigned and transferred to the Government. The Contractor shall take all necessary steps to so assign and transfer such Intellectual Property Rights to the Government or procure such Intellectual Property Rights to be assigned and transferred to the Government.
- 13.10 The provisions of this clause shall survive the expiration or early termination of this Contract and shall continue in full force and effect notwithstanding such termination.

#### **14. Warranties of the Contractor**

- 14.1 The Contractor warrants to the Government that : -
- (a) the Contractor has the full capacity power and authority to enter into this Contract including without limitation the grant of the rights referred to in Clause 13 above upon the terms and conditions of this Contract;
  - (b) the Contractor, members of the Project Team and the Contractor's permitted sub-contractors shall each possess the necessary qualifications, competence and experience specified in this Contract and have the necessary skills and experience to provide the Services on the terms and conditions herein;
  - (c) the Contractor, members of the Project Team and the Contractor's permitted sub-contractors shall perform the Services under this

Contract in accordance with the approach and methodology as agreed by the Government;

- (d) the Services shall be performed and completed in an impartial, timely and diligent manner;
- (e) the Contractor, members of the Project Team, the Contractor's permitted sub-contractors and each and every person employed, used or engaged by the Contractor in the performance of the Services shall use all the experience, skills, care and diligence in the performance, or in rendering support of the performance, of the Services and the discharge of all the duties and obligations under this Contract as may be expected from a person who is an expert in providing Services of a kind similar to the Services;
- (f) all information supplied and statements and representations made by or on behalf of the Contractor in relation to the Technical Proposal and the Services are true and accurate;
- (g) the Materials (other than the Licensed Property) and other things and Materials developed by the Contractor specifically under this Contract shall be original works created, developed or made by the Contractor for the Government during the course of or in connection with this Contract;
- (h) the provision of the Services by the Contractor and the use or possession by the Government and its authorised users, assigns and successors-in-title of the Materials or any part thereof (including the Licensed Property) for any of the purposes contemplated by this Contract do not and will not infringe any Intellectual Property Rights of any person;
- (i) the exercise of any of the rights granted under this Contract by the Government, its authorised users, assigns and successors-in-title will not infringe any Intellectual Property Rights of any person; and
- (j) in respect of the Licensed Property and any other software and Materials supplied or used by the Contractor in the performance of this Contract and in respect of which any Intellectual Property Rights are vested in a third party : -

- (i) the Contractor has or shall have a valid and continuing licence under which it is entitled to sub-license the Licensed Property and other software and Materials and the third party Intellectual Property Rights for itself and for the Government, its authorised users, assigns and successors-in-title to use the Licensed Property and such software and other Materials for any of the purposes contemplated by this Contract; or
- (ii) prior to the use of the Licensed Property and other software and Materials in the provision of the Services, the Contractor will have obtained the grant of all necessary clearances for itself and for the Government, its authorised users, assigns and successors-in-title authorising the use of the Licensed Property and such other software and Materials for any of the purposes contemplated by this Contract.

14.2 The provisions of this Clause 14 shall survive the termination of this Contract (howsoever occasioned) and shall continue in full force and effect notwithstanding such termination.

## **15. Use of the Government's name**

15.1 The Contractor must not use the Government's name in any document, publication, advertisements or publicity material without the prior written consent of the Government except pursuant to the Contractor's performance of the Services and to the extent that the relationship between the Government and the Contractor in relation to the Services is public knowledge and, without prejudice to Clause 12 of the Conditions of Contract, shall not disclose to the media any information relating to the Services (including without limitation the advice provided by it or the duties undertaken by it under this Contract).

15.2 All Materials and data connected with the Pet Food Testing Exercise shall not be made available to any other parties, including the general public, nor shall the Contractor use those Materials and data for its own purposes without prior written consent of the Government.

- 15.3 The provisions of this clause shall survive the expiration or early termination of this Contract and shall continue in full force and effect notwithstanding such termination.

**16. Default**

Any act, default, neglect or omission of any Contractor's Employees, or any other persons employed, used or engaged by the Contractor in the performance of the Services shall be deemed to be the act, default, neglect or omission of the Contractor.

**17. Publicity**

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

**18. Recovery of Sums Due**

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

**19. Time is of Essence**

Time shall be of the essence in the Contract but no failure or delay on the part of either party to exercise or invoke any right, power or remedy under the Contract shall operate as a waiver thereof, nor shall

any single or partial exercise or invocation by either party of any right, power or remedy hereunder preclude any other or further exercise or invocation thereof or the exercise or invocation of any other right, power or remedy. The rights, powers and remedies provided herein are cumulative and are not exclusive of any rights, powers or remedies provided by law.

## **20. Entire Agreement**

The Contract constitutes the entire Contract and understanding between Government and the Contractor concerning the subject matter hereof. Every schedule, appendix or attachment to or table in the Contract and any notes to such schedule, appendix, attachment or table shall be construed and have effect as part of the Contract. Subject to the provisions in the Contract, no addition to or modification of any of the 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.

## **21. Service of Notice**

- 21.1 All notices, demands or other communications given or made under the Contract shall be in writing and delivered or sent to the Contractor at its address or facsimile number set out in the “Offer to be Bound” submitted by the Contractor and/or such other address or facsimile number as the Contractor has by five (5) days’ prior written notice specified to AFCD. Notices and other communications given or made under the Contract by the Contractor to the Government shall be in writing and delivered or sent to the Government at its address or facsimile number set out below:

Technical Services Division  
Inspection & Quarantine Branch  
Agriculture, Fisheries and Conservation Department  
Room 708, 7/F, Cheung Sha Wan Government Offices,  
303, Cheung Sha Wan Road, Kowloon  
(Attn.: Dr Michelle YEUNG)  
Fax: 2156 0215

21.2 Such notices, demands or other communications shall be addressed as provided in Clause 21.1 above and, if so addressed, shall be deemed to have been duly given or made as follows :

- (a) if sent by personal delivery, upon delivery at the address of the relevant party;
- (b) if sent by post, two (2) working days (for local post) and five (5) working days (for overseas post) after the date of posting; and
- (c) if sent by facsimile, when despatched with confirmed receipt as evidenced by the transmission report generated at the end of the transmission of facsimile by the facsimile machine used for such transmission.

## **22. Termination of Contract**

22.1 Without prejudice to any other rights and remedies which the Government has or may have under the Contract or otherwise, the Government shall be entitled to terminate the Contract forthwith under the following circumstances –

- (a) the Contractor goes into liquidation or a petition is being filed for the bankruptcy or the winding up of the Contractor (otherwise than for the purpose of a reconstruction or amalgamation previously approved by the Government Representative in writing) or the Contractor becomes insolvent or makes any composition or arrangement with creditors;
- (b) the Contractor, being a company shall pass a resolution or the court shall make an order for the liquidation of its assets, or a receiver or manager shall be appointed on behalf of the debenture holders, or circumstances shall have arisen which entitle the court or debenture holders to appoint a receiver or manager;
- (c) non-payment of any sums due from the Contractor to the Government in accordance with the terms and conditions of the Contract;
- (d) the Contractor assigns or purports to assign the Contract or any part thereof without the prior written consent of the Government Representative;
- (e) the Contractor refuses and / or neglects to perform the Services or any part thereof as and when directed by the Government Representative;
- (f) the Contractor fails to perform the Services or any part thereof with due diligence or to perform the Services or any

part thereof in accordance with the terms and conditions of the Contract and to the satisfaction of the Government Representative;

- (g) the Contractor fails to perform the Services in accordance with the approved Work Plans and work schedules;
- (h) the Contractor is in material breach of and / or has committed repeatedly breaches of any of his obligations under the Contract;
- (i) discovery of material misrepresentation by the Contractor during the Tendering process;
- (j) the Contractor is in breach of Clause 10 of the Conditions of Contract regarding sub-contracting; or
- (k) The Contractor is found to have employed illegal workers or to have aided and abetted another person to breach its condition of stay or is found to have employed any persons who are forbidden by law or not entitled for whatever reasons to undertake any employment in Hong Kong.

22.2 Notwithstanding the foregoing, the Government may at any time terminate the Contract without cause by giving one (1) month's prior written notice to the Contractor.

### **23. Effect of Termination**

23.1 If the Contract is terminated by the Government in accordance with the provisions of the Contract, the Government shall -

- (a) cease to be under any obligation to make further payment to the Contractor until the costs, loss and/or damage resulting from or arising out of the termination of the Contract shall have been calculated and provided such calculation shows a sum or sums due to the Contractor;
- (b) not be responsible for any loss and expenses suffered or incurred by the Contractor due to the termination of the Contract; and
- (c) have without prejudice to any claims by the Government for breach of the whole or any part of Contract, the right to assign the uncompleted Services to another contractor or contractors whereupon the Contractor shall be liable for any amounts in excess of the prices quoted by the Contractor under the Contract and the Government shall be entitled to use all such Contractor's Materials, clothing, equipment, vehicles or other goods for the purposes thereof free of charge until a new contractor or contractors are formally engaged by the Government to perform the uncompleted Services.

23.2 The rights of the Government in Clause 23 above are in addition to and without prejudice to any other rights the Government may have whether against the Contractor directly or pursuant to any guarantee or indemnity.

23.3 Any termination of the Contract shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision of the Contract which is expressly or by implication intended to come into or continue in force on or after such termination

23.4 The Contractor shall be liable for all costs and expenses necessarily incurred by the Government as a result of the termination of the Contract by the Government in accordance with the provisions of the Contract.

## **24. Exclusion Clause**

24.1 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).



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File Ref. : AF TSD 8-3/10 Pt. 1

## **Part 4 - Service Specifications**

### **1. Background**

- 1.1 Currently there is no legislation on the regulation of pet food products sold in Hong Kong. Although there have been no major incidents concerning the safety of pet food in Hong Kong in recent years, in order to assess whether the safety of pet food is a concern and consider whether the present measures on pet food products need to be enhanced, it is considered imperative to commission a study to survey and test pet food products available on the Hong Kong market. In addition, some legislators have expressed concerns about the safety of pet food products and suggested that a regulatory regime for pet food products available on the Hong Kong market should be put in place. Against this background, the Agriculture, Fisheries and Conservation Department (AFCD) has undertaken to commission a contractor to conduct a testing exercise on pet food products sold in Hong Kong.

### **2. Objectives of the Pet Food Testing Exercise**

- 2.1 The objectives of the Pet Food Testing Exercise are to:-
- (a) enhance the Government's understanding on the safety of the Pet Food Products; and
  - (b) provide the necessary information for the Government's policy deliberations on the safety standards of Pet Food Products, drawing reference to the standards adopted by other countries and importing countries/places.

### **3. Scope of the Pet Food Testing Exercise**

- 3.1 The Pet Food Testing Exercise shall cover commercially produced /processed and packaged food products and homemade food products for pet animals (dogs, cats, birds and rodents) that are being sold through

the retail channels to pet owners in Hong Kong. Common forms of Pet Food Products available on the market in Hong Kong such as dry food, canned food, semi-moist food, freeze dried food and frozen food shall be included in the Pet Food Testing Exercise.

- 3.2 The primary focus of the Pet Food Testing Exercise will be testing of a number of selected common microbial contaminants and substances of concern as set out in Clause 6.1 below which may be found in pet food products and potentially affect the health of pets kept in Hong Kong.

#### **4. Services to be provided by the Contractor**

- 4.1 To conduct the Pet Food Testing Exercise, the Contractor is required to assign a **Project Team** comprising at least a **Project Manager** as the Team Leader and one or more than one **Laboratory Manager(s)** to provide laboratory testing services on Pet Food Products to be surveyed and sampled in consultation with the Government for testing the presence of the 8 Substances prescribed in Clause 6.1 below.

- 4.2 The Contractor shall, through its Project Team, provide the following **one-stop Services** for the Pet Food Testing Exercise during the Contract Period:

- (a) To develop a plan for conducting a **Market Survey** on the various brands of Pet Food Products commonly available for sale in the 18 Districts of Hong Kong and then conduct the Market Survey. [Note: The Contractor may, pursuant to Clause 10 of the Conditions of Contract, engage another company to carry out the Market Survey. The Contractor must state clear the intention of engagement of other company to carry out the Market Survey and the name of the (potential) company/companies in the Work Plan.] Based on the findings of this Market Survey and in consultation with the AFCD, the Contractor shall after the completion of the Market Survey produce a list of Pet Food Products to be tested in the Pet Food Testing Exercise. Such list shall provide information as follows:

- (i) brand names;
- (ii) types of Pet Food Products;

- (iii) local distributor or wholesaler (if available);
  - (iv) manufacturers;
  - (v) country of production; and
  - (vi) any other relevant details in consultation with AFCD.
- (b) To carry out **random sampling** of Pet Food Products and deliver the Sampled Pet Food Products to the Accredited Laboratories (as specified in Clause 2.1(e) of the Terms of Tender) for testing in accordance with the sample size and the list of Substances specified in Clauses 5 and 6 below. The Accredited Laboratories must provide testing on the Sampled Pet Food Products for the Substances specified in Clause 6.1 of the Service Specifications.
- (c) To conduct **one (1) round of testing** on the Sampled Pet Food Products in the manner aforementioned **once every four (4) months**, totalling **three (3) rounds per year** or **six (6) rounds** within the two-year Contract Period with effect from a date to be specified by AFCD and to provide a **testing report** which must include results of the tests performed to the AFCD within two (2) months after completion of each round of testing.
- (d) During the Contract Period, for any Sampled Pet Food Products that is tested positive, or above the cut-off value as determined in Clause 4.3 below, the Contractor shall carry out repeated test on that particular Sampled Pet Food Products, or as requested by AFCD, for the purpose of ascertaining the test result. Such cost should be included in Contract Schedule A – Price Schedule.
- 4.3 Before conducting laboratory tests on the Sampled Pet Food Products, the Contractor must determine the cut-off value of each testing result for the Substances to be tested under Clause 6.1 below and obtain agreement with the Government Representative.

## **5. Sampling Design and Sample Size**

- 5.1 50% and 30% of the Sampled Pet Food Products such as dry food and canned food shall be drawn from Pet Food Products for dogs and cats respectively. The remaining 20% of the Sampled Pet Food Products shall include treats, semi-moist food, freeze dried food, and frozen

food and feed for other species such as birds and rodents. It is estimated that a total of **360** Sampled Pet Food Products will be tested by the end of the Pet Food Testing Exercise. The Government will consult with the Contractor on the number of brands and the number of Sampled Pet Food Products to be tested after the commencement of the Contract.

5.2 The Contractor shall also –

- (a) collect appropriate and sufficient number of packets of Pet Food Products from the same batch / slot (must provide proof with identifiable batch number or slot number) for testing purpose. A minimum of one packet must be kept for each Sampled Pet Food Product for storage as control in each round of testing. If the volume of packets is too small for repeated testing (as stated in Clause 4.2(d) above) for all eight Substances, then a sufficient number should be collected and stored;
- (b) provide adequate facilities for storage of samples for control in a suitable environment that will minimise the chances of spoilage of stored samples, for no less than two (2) months upon the submission of testing results to the AFCD for each round of testing. Further extension of storage may need be provided upon request by the AFCD at a specified and reasonable cost; and
- (c) bear the costs of delivering the Sampled Pet Food Products to overseas laboratories for testing, if required. In doing so, the Contractor must ensure that such samples are sent in an appropriate package to prevent spoilage or deterioration of the samples which may affect the accuracy or quality of the test results.

**6. Substances for Testing**

- 6.1 The Contractor shall make reference to the testing on pet foods carried out by the Consumer Council in 2014 and 2015, overseas regulatory authorities and pet food associations, the tests which are more commonly carried out in accordance to international standards by local laboratories, as well as Substances found in pet food products that cause significant concerns and potentially affect both the health

of human and the animals. The following **eight (8)** common microbial contaminants and Substances of concern shall be tested by the Contractor: –

- (a) Salmonella;
- (b) Escherichia coli (including E coli O157);
- (c) Listeria monocytogenes;
- (d) Aflatoxin B1;
- (e) Melamine;
- (f) Lead;
- (g) Arsenic; and
- (h) Malathion

## **7. Quality Control Mechanism**

7.1 The Contractor shall strictly follow its Quality Control Plan that was submitted in its Tender at the invitation to tender stage and accepted by the Government and review the same from time to time during the Contract Period either by itself or upon request of the Government.

7.2 Upon the written request of the Government, the Contractor shall submit to the Government a revised Quality Control Plan for approval within seven (7) days after receiving the written request. The revised Quality Control Plan shall include at least the following information:

- (a) the approach to ensure the performance quality;
- (b) the mechanism for monitoring and auditing the operation of quality control system and to determine the quality of Services provided to the Government hereunder;
- (c) the approach to remedy performance default and to prevent the re-occurrence of any sub-standard Services; and
- (d) the approach to work with Government Representative to resolve issues arising from the Contract

7.3 The Contractor shall implement and comply with the Quality Control

Plan and shall not alter, vary and amend the Quality Control Plan that are currently in force or implement a revised Quality Control Plan without the prior written approval of the Government. Where the Government has given approval for the revised Quality Control Plan, the Contractor shall implement the revised Quality Control Plan forthwith or on such date specified by the Government.

- 7.4 The Contractor shall, at half-yearly intervals and at its own cost, conduct inter-laboratory comparisons with two (2) Accredited Laboratories on the Sampled Pet Food Products with the same testing methods and criteria, for the eight (8) Substances.
- 7.5 The Contractor shall instruct its Accredited Laboratories to forward the reports on the inter-laboratory comparison conducted under Clause 7.4 above directly to AFCD under confidential cover, with copies of the results sent to the Contractor for reference.
- 7.6 If the comparison results are not satisfactory, the Contractor shall arrange further quality checks within two (2) months upon notification by the AFCD until the quality checks have been done to the satisfaction of the AFCD.
- 7.7 The AFCD may visit the Contractor's Accredited Laboratories located in Hong Kong as and when necessary to ensure that quality checks are done properly.

## **8. Traceability**

- 8.1 The Contractor shall ensure the traceability of all Sampled Pet Food Products by means of a reliable, documented, recorded electronic identification system along the chain from sampling to testing and to storage. The AFCD reserves the right to retrieve any sampled or tested Pet Food Products from storage at any time during the Contract Period.

## **9. Working Meetings and Illustrated Presentations**

- 9.1 The Contractor and members of its Project Team shall attend working meetings with and make illustrated presentations of the testing results

of the Sampled Pet Food Products for the Government Representatives as and when required. For the purpose of attending the meetings, the Contractor and members of his Project Team shall prepare the necessary presentation Materials and all these Materials shall be passed to the Government Representatives.

- 9.2 The Contractor shall bear all costs for attending the above mentioned meetings and conducting presentations.

## **10. Ethical practices/code of conduct**

- 10.1. The Contractor is required to conduct the Pet Food Testing Exercise in legal, honest, truthful manners in accordance with appropriate scientific principles. It shall issue a code of conduct guiding the members of the Project Team and its employees on ethical practices, such as preservation of the right to privacy of pet food product manufacturers and retailers, upholding standard of competency and commitment of professionalism. The code of conduct shall be prepared by the Contractor and shall be subject to vetting and prior written approval of the Government Representative.

## **11. Disclosure of Information on the Pet Food Testing Exercise**

- 11.1 The Contractor must **not** disclose to the public any information on the Pet Food Testing Exercise including the testing methodologies and testing results without the prior written approval of the Government.

## Part 5 - OFFER TO BE BOUND

1. Having read the Terms of Tender, the Conditions of Contract, Service Specifications, the Schedules, Annexes and Appendixes and all other attachments of these Tender Documents, I/we agree to be bound by the terms and conditions as stipulated therein.

2. I/We agree to abide by this tender for the period of one hundred and twenty (120) days from Tender Closing Date and my/our tender shall remain binding upon me/us and may be accepted at any time before the expiration of that period.

3. I/We do hereby agree to carry out the whole of the Services which may, during the Contract Period or any extension thereto be required, by or on behalf of the Government Representative to be carried out, at the prices quoted by me/us in the Price Proposal free of all other charges, subject to and in accordance with the Terms of Tender, Conditions of Contract, Service Specifications, the Schedules, Annexes and all other attachments.

4. I/We hereby declare that the information provided by me/us in the tender is true and accurate.

5. I/We also certify that the particulars given by me/us below, are correct:

- (a) The number of my/our/the Company's/Companies' Business Registration Certificates is/are .....
- (b) The date of expiry of my/our/the Company's/Companies' Business Registration Certificate(s) is/are .....  
.....  
.....

- (c) I am/We are/The Company/The Companies Note(i) is/are covered by an Employees' Compensation Insurance Policy (or Policies) the particulars of which are as follows:

Policy No. ....  
 Name of Insurance Company .....  
 Period covered by the Policy is from .....  
 to .....

Brief particulars of the cover provided and any special



conditions are as follows:

.....  
.....

*Note* (i) If the Tenderer is a consortium, please provide the details of the Employees’ Compensation Insurance Policy of each company comprising the consortium.

6. I am/We are duly authorised to bind the Company by my/our signature(s).

— or —

I am a partner/We are partners in the Firm and duly authorised to bind the Firm and the partners of the Firm for the time being.

7. The name of the Company/Firm is .....

8. The registered office of the Company is situated at .....  
.....  
.....Hong Kong.

— or —

The names and residential addresses of the partners of the Firm are as follows:

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

— or —

The respective names and registered offices of the companies comprising the consortium are as follows:

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

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

9. Name(s), Title(s) and address(es) of person(s) signing:

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

Signature(s):

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

Dated this ... day of..... 20.....

- Notes*
- (ii) All the particulars required above must be provided.
  - (iii) Strike out clearly alternatives which are not applicable.
  - (iv) If the Tenderer is a consortium, the Offer to be Bound must be SIGNED by EACH of the members/participants of the consortium.

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**Contract Schedule A - Price Schedule**<sup>\*</sup>  
(To be completed by the Tenderer)

The Estimated Contract Price for the Pet Food Testing Exercise:  
HK\$ \_\_\_\_\_

**Details of the Tenderer's Bank Account**

- (a) Name of Bank : \_\_\_\_\_
- (b) Bank Account No. : \_\_\_\_\_

Name of Tenderer : \_\_\_\_\_

An authorised signatory for and  
on behalf of the Tenderer : \_\_\_\_\_

Name and capacity of person  
authorised to sign Tender for  
and on behalf of the Tenderer : \_\_\_\_\_

Date : \_\_\_\_\_

\_\_\_\_\_

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**Contract Schedule B - List of Key Personnel of the proposed Project Team for the Pet Food Testing Exercise**

No.	Position in the Proposed Project Team	Name and existing position in the Tenderer's Company	Academic qualifications (e.g. a degree or diploma in a science subject or related to the food testing field)	Position(s) previously held that are equivalent to corresponding position in this Pet Food Testing Exercise	Years of experience in the food testing field	Remarks
1.	Project Manager					CV1
2.	Laboratory Manager(s)					CV2 CV(3) etc.

Name of Company: \_\_\_\_\_

Authorised signatory for and on behalf of the Tenderer : \_\_\_\_\_

Name and position of the Person Authorised to Sign : \_\_\_\_\_  
(in Block Letters)

Tel. No.: \_\_\_\_\_ Fax No. : \_\_\_\_\_ Date : \_\_\_\_\_

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**Contract Schedule C – Statement of Compliance**

.

(# Delete where inapplicable)

# (a) I/We, \_\_\_\_\_, on behalf of \_\_\_\_\_, confirm full compliance against each item in the Service Specifications of the Tender Document.

# (b) I/We, \_\_\_\_\_, on behalf of \_\_\_\_\_, confirm that the Services proposed to be offered by me/us on the terms of my/our Tender do not comply with the Service Specifications for the Services to the extent and in the manner as mentioned below. **I/We set out our proposed modification of the Services below.** In the event the modifications stated below are not accepted by the Government, I/we agree and acknowledge that I/we will be deemed to have made an offer to provide the Services on the basis that I/we will comply with all aspects of the Service Specifications for the Services as if I/we had not made any such modification.

<u>Item(s)/Clause(s)</u>	<u>Details of Deviation</u>	<u>Modifications</u>
(Please use separate sheet if required.)		

An authorised signatory for and on behalf of the Tenderer : \_\_\_\_\_

Name of Person Authorised to Sign (in Block Letters) : \_\_\_\_\_

Name of Tenderer in English (in Block Letters) : \_\_\_\_\_

Company Chop of Tenderer : \_\_\_\_\_

Tel. No. : \_\_\_\_\_ Fax No. : \_\_\_\_\_ Date : \_\_\_\_\_

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**Contract Schedule D - Tenderer's Experience in Conducting Testing on Pet Food Products or Feed for the Government or Public Organisations or Private Companies (including those in progress)**

*(NOTE: By providing the following information, the Tenderer authorises the Government to contact any of the client(s) as specified and obtain any information concerning the exercise(s) conducted by the Tenderer without further reference to or consent from the Tenderer)*

Name of Tenderer: \_\_\_\_\_

Title/Name of Testing	Period of Testing	Brief description of the testing Services provided (including types of tests and sample size involved)

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<b>Name of Client</b>	<b>Contact Person's Details</b>

Name of Company: \_\_\_\_\_

Authorised signatory for and on behalf of the Tenderer : \_\_\_\_\_

Name and position of the Person Authorised to Sign : \_\_\_\_\_  
(in Block Letters)

Tel. No.: \_\_\_\_\_ Fax No. : \_\_\_\_\_ Date : \_\_\_\_\_

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**Contract Schedule E – Information on Accreditation of Laboratories and Testing Methods Proposed for the Pet Food Testing Exercise**

**Part I – Information on Accreditation of Laboratories proposed for the Pet Food Testing Exercise**

(#Delete where inapplicable)

#(a) Our laboratories can provide the required Services including the conduct of a Market Survey to produce a list of pet food product brands in Hong Kong **AND** our laboratories are **registered and accredited by the Hong Kong Laboratory Accreditation Scheme (HKLAS)** in respect of the required testing methods as detailed below:

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#(b) Our laboratories can provide the required Services to conduct a Market Survey to produce a list of pet food brands in Hong Kong **AND** our laboratories are **accredited by association/organisation under mutual recognition arrangement (MRA) with the Hong Kong Accreditation Service (HKAS)** under the scope and field of Pet Food or Feed in respect of the required testing methods as detailed below:

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Part II – Information on Accreditation of the Proposed Testing Methods for the Substances prescribed in Clause 6.1 of the Service Specifications-

Name of Company: \_\_\_\_\_

Authorised signatory for and on behalf of the Tenderer : \_\_\_\_\_

Name and position of the Person Authorised to Sign : \_\_\_\_\_  
(in Block Letters)

Tel. No.: \_\_\_\_\_ Fax No. : \_\_\_\_\_ Date : \_\_\_\_\_