

**THE GOVERNMENT OF
THE HONG KONG SPECIAL ADMINISTRATIVE REGION**

QUOTATION FOR THE PROVISION OF SERVICES

**TERMS OF QUOTATIONS AND
GENERAL CONDITIONS OF CONTRACT**

FOREWORD

This document contains the terms and conditions for acquisition of quotation for the provision of services for the Working Family and Student Financial Assistance Agency of the Government of the Hong Kong Special Administrative Region (WFSFAA). The WFSFAA may issue addenda to these terms and conditions before the quotation closing date.

Service Providers who respond to the invitation of quotations should confirm compliance with the Quotation Documents, these terms and conditions and those issued under the addenda.

INTERPRETATION

In this document and the invitation to quotation, unless the context otherwise requires:

1.1 the following expressions shall bear the same meanings as set out below:

“Contract”	means the agreement made between the Government and the Contractor pursuant to the invitation to quotation, and reference to the terms thereof shall include the terms set out in the Quotation Documents, completed, modified or expanded as necessary or appropriate to include the terms accepted by the Government and the Contractor;
“Contract Period”	means, subject to early termination or extension provided for in the Contract, the period specified in the Quotation Documents as the contract period;
“Contract Price”	means the amount calculated in accordance with Contract Schedule, which is payable by the Government to the Contractor under the Contract for the full and proper fulfillment by the Contractor of its obligations under the Contract;
“Contract Schedule”	means the schedules attached to the invitation to quotation;
“Contractor”	means the Service Provider whose quotation has been accepted by the Government;
“General Holiday”	means a Sunday and any other day which is a general holiday by virtue of the General Holidays Ordinance (Chapter 149 of the Laws of Hong Kong);
“Government”	means the Government of the Hong Kong Special Administrative Region of the People’s Republic of China;
“Government Representative”	means any officer of the Government specified by the Head, Working Family and Student Financial Assistance Agency for the purposes of the Contract;
“Hong Kong”	means the Hong Kong Special Administrative Region of the People’s Republic of China;
“Inspecting Officer”	means the officer appointed by the Government Representative for the purpose of inspecting the stores delivered/ Services performed in pursuit of the Contract;
“Intellectual Property Rights”	means patent, trade marks, service marks, trade names, design rights, copyright, domain name, database right, right in know-how and other intellectual property rights (of whatever nature and whatsoever arising) in

	each case whether registered or unregistered and including applications for the grant of any such rights;
“Letter of Acceptance of Quotation”	means the fax or letter of acceptance issued by the Government to the Contractor as referred in Clause 7.1 of the Terms of Quotation;
“Month”	means a calendar month;
“Non-collusive Tendering Certificate”	means a document known as such and in the form attached for completion and submission by the Service Provider as part of its Quotation under Clause 17.2 of the Terms of Quotation;
“Quotation Closing Date”	means the latest date (Hong Kong time) by which quotations must be lodged;
“Quotation Documents”	<p>means the documents issued by the Government for the purpose of the Invitation to Quotation and shall include all documents forming part of the Standard Terms and Conditions (viz., the Interpretation, the Terms of Quotation and their Annexes and Appendix and the General Conditions of Contract) and, all or any of the documents specified below:</p> <ul style="list-style-type: none"> (a) Interpretation; (b) Terms of Quotation; (c) Special Conditions of Contract; (d) Service Specifications; (e) Contract Schedule(s); (f) Non-collusive Tendering Certificate; and (g) all other documents attached or any of the aforesaid documents whether as a Schedule or Annex or other attachment by whatever name called;
“Quotation Validity Period”	means the period of time described in Clause 4.1 of the Terms of Quotation during which a quotation shall remain open;
“Schedule”	means the Contract Schedule, the Non collusive Tendering Certificate and any other schedule(s);
“Services”	means the services referred to in the invitation to quotations;
“Service Provider”	means the person, firm or company that is invited to offer quotations for the Services referred to in the invitation to quotations and who will sign and submit the Offer to be Bound if a quotation is submitted;
“WFSFAA”	means the Working Family and Student Financial Assistance Agency; and

“Working Day” means Monday to Friday , other than a public holiday, or a day on which Tropical Cyclone Warning Signal No. 8 or above is hoisted, or Black Rainstorm Warning Signal or “extreme conditions after super typhoons” announced by the Government is/are in force, for any time during the normal business hours.

1.2 In this Contract, unless the content otherwise requires, the following rules of interpretation shall apply –

- (a) The masculine includes the feminine.
- (b) The singular includes the plural and vice versa.
- (c) Working Days shall not include a General Holiday.
- (d) Reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended by any subsequent enactment, order, regulation or instrument.
- (e) The heading to individual clauses of the Contract is for ease of reference only and shall not affect the interpretation or construction of the Contract.

PART I
TERMS OF QUOTATION

1. Invitation to Quotation

- 1.1 Service Providers are invited for the execution of the whole (or any part) of the Items more particularly set out in the Contract Schedule subject to and in accordance with these Terms of Quotation, the General Conditions of Contract set out in Part II hereof and the Special Conditions of Contract, Service Specifications and Annex(es) (if applicable), the Contract Schedules and the Offer to be Bound set out in the invitation to quotation.
- 1.2 Each Service Provider will be regarded to be thoroughly conversant with all aspects of the Quotation Documents and in general to have obtained all necessary information of any circumstances which may influence or affect its Quotation or its performance of the Contract. The Government does not assume any liability in respect of any errors or mistakes made by a Service Provider or any neglect or failure of a Service Provider to obtain any information or clarification relating to the provision of the Services to the Government in accordance with the Contract.
- 1.3 No error, mistake, neglect or failure by a Service Provider shall affect any provision of the Quotation Documents or relieve the Service Provider from any of its obligations or liabilities under the Quotation Documents. For the avoidance of doubt, a successful Service Provider shall not be entitled to any additional payment, compensation, exemption from compliance or observance, or allowance by reason of any such error, mistake, neglect or failure. If a Service Provider is awarded the Contract, it shall not be excused from any obligation or liability under the Contract as a consequence of any misinterpretation by it of any provision in the Quotation Documents or the Contract.
- 1.4 The provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Invitation to Quotation and a Quotation submitted by a Service Provider in response to this Invitation to Quotation.

2. Supplementary Information/Quotation Addenda

All supplementary information or quotation addenda to the invitation to quotation will be provided in writing by the Government Representative and forwarded to all Service Providers who are invited to offer quotation. These supplementary information or quotation addenda if comprising an amendment, clarification or adjustment to any provisions of the Quotation Documents, shall form a part of the Contract and shall take priority over the documents previously issued.

3. Quotation Preparation

- 3.1 The quotation relates to the execution of all (or any part) of the Items during the Contract period as specified in the Schedule.
- 3.2 The Offer to be Bound shall be duly signed by the Service Provider (in the case of sole proprietorship) or a partner of the Service Provider (in the case of partnership) or an authorised person or persons for and on behalf of the Service Provider (in the case of a company). The Service Provider shall not make any alteration to the original text set out in Offer to be Bound, otherwise the Quotation will not be considered further. Deleting inapplicable word in Offer to be Bound is however not to be treated as an alteration.
- 3.3 Service Providers shall submit the duly completed Contract Schedule(s) and a Non collusive Tendering Certificate.
- 3.4 Service Providers should note that their quotations will not be considered if by the Quotation Closing Date they fail to submit a duly signed Offer to be Bound.
- 3.5 Quotation must be written in English and in ink or typescript and submitted with all necessary information including supporting documents which are necessary for evaluation.
- 3.6 The Quotation Documents must not be altered by Service Provider.
- 3.7 The Quotation Documents including figures must not be altered or erased by Service Providers. Any alternation to the figures shall be effected by striking through the incorrect figures and inserting the correct figures in ink above the original figures. All such amendments shall be initialed by the Service Provider in ink.
- 3.8 Service Providers may also include other materials as appropriate to facilitate the consideration of their quotations by the Government.
- 3.9 All parts of the quotation submitted and offered by the Service Provider will be binding on the Service Provider. The Service Provider is deemed to have satisfied itself as to the correctness of its quotation. In the event that the Service Provider discovers an error in its quotation after the quotation has been deposited, the Service Provider may correct the same in a separate letter before the Quotation Closing Date. No request for adjustment or variation whatsoever will be allowed or entertained after the Quotation Closing Date unless prior written approval is given by the Government.
- 3.10 Failure to comply with the requirements specified in Clauses 3.1 to 3.9 above may render the quotation invalid.

4. Quotations to Remain Open

- 4.1 Quotations shall, unless otherwise indicated by the Service Provider, remain open for not

less than ninety (90) days after the Quotation Closing Date (“Quotation Validity Period”). If Service Providers are unable to comply with this requirement, they must clearly state the period for which their quotation is valid for acceptance. If before the expiry of the Quotation Validity Period their offer is withdrawn, they are advised that due notice will be taken of their action and this may well prejudice their future standing as a Government service provider.

4.2 Quotation Closing Date and Time

All quotations must be submitted before the Quotation Closing Date and time (Hong Kong time). **Late quotations will not be considered.**

- 4.3 In case Tropical Cyclone Warning Signal No. 8 or above is hoisted, or Black Rainstorm Warning Signal or “extreme conditions after super typhoons” announced by the Government is/are in force for any duration between 9:00 a.m. and 12:00 noon on the Quotation Closing Date, the latest date and time before which Quotations are to be deposited at the quotation box and/or despatched to such facsimile number referred to in the invitation to quotations will be extended to 12:00 noon on the next working day (all times mentioned are Hong Kong time).

5. Prices

- 5.1 The prices to be quoted by the Service Providers are to be shown in Hong Kong dollars. Such prices shall be net and where applicable, they shall include all expenses incidental to the due and proper performance of the Contract by the Contractor. The prices to be quoted by the Service Provider must only be shown in Contract Schedule provided in the Quotation Documents.
- 5.2 If, at the request of the Contractor, assistance of any Government staff is provided after normal working hours (i.e. Mondays to Fridays, inclusive, 9:00 a.m. to 6:00 p.m.; Saturdays, Sundays and General Holidays excluded), the Contractor will be responsible for the overtime remuneration, subsistence allowances and travelling expenses of such Government staff directly engaged in such assistance.
- 5.3 Prices quoted

It will be assumed, unless the Service Providers clearly stipulate otherwise, that their offers will remain valid for the duration of the Contract. The Service Provider must quote fixed prices. A quotation with any price variation clause, including one based on foreign exchange market fluctuation, will not be considered further.

5.4 Accuracy of Quotation Prices

Service Providers should make certain the prices quoted are accurate before submitting their quotations. Under no circumstances will the Government accept any request for

price adjustment on grounds that a mistake has been made in the quotation prices.

6. Compliance with Essential Requirements

A Service Provider shall comply with all the essential requirements (if any) stipulated in the Quotation Documents. If a Service Provider fails to do so, its Quotation will not be considered further.

7. Acceptance

7.1 The successful Service Provider will receive a fax order or Letter of Acceptance as an indication of award of the Contract. This fax order or Letter of Acceptance together with the Terms of Quotation, the General Conditions of Contract, the Special Conditions of Contract, Service Specifications and Annex(es) (if applicable), the submitted Contract Schedules and the Offer to be Bound shall constitute a binding Contract. Service Providers who do not receive any notification within the Quotation Validity Period of their offer shall assume that their quotations have not been accepted.

7.2 Schedule of Compliance

Service Providers shall complete the “Schedule of Compliance” at the Contract Schedule. Failure to complete the “Schedule of Compliance” may invalidate the quotation. Service Providers are requested to confirm in the “Schedule of Compliance” that offers submitted comply with the required specification in every respect.

8. Request for Information

8.1 In the event that the Government determines that:

- (a) clarification in relation to any part of the Quotation is necessary; or
- (b) a document or a piece of information, other than those specified in Clause 3 of the Terms of Quotation, is missing from any Quotation,

it may, but is not obliged to, request the Service Provider concerned to make the necessary clarification, or submit the required document or information. The Service Provider shall within five (5) working days from the date of the request or within such other period as specified in the request submit the clarification, information or document. If the clarification or information or document is not provided by the aforesaid deadline, the Quotation may not be considered further (or will not be considered further where the missing information or document is of the type specified in Clause 3 of the Terms of Quotation).

8.2 Any excess proposal or information supplied by a Service Provider which goes beyond what has been requested by the Government pursuant to Clause 8.1 above will be ignored for the purposes of the quotation evaluation or will entitle (but not oblige) the Government not to consider the Quotation further.

9. Negotiation

The Government reserves the right to negotiate with any Service Provider about the terms of the offer.

10. Government Discretion

Notwithstanding anything to the contrary in the Quotation Documents, the Government reserves the right to disqualify a Service Provider on the grounds that the Service Provider has engaged, is engaging, or is reasonably believed to have engaged or be engaging in acts or activities that are likely to cause or constitute the occurrence of offences endangering national security or otherwise the exclusion is necessary in the interest of national security, or is necessary to protect the public interest of Hong Kong, public morals, public order or public safety.

11. Consideration of Offers

The Government Representative is not bound to accept the lowest or any quotation and reserves the right to accept all or any part of any quotation at any time within the period mentioned in Clause 4 hereof.

12. Documents of Unsuccessful Service Providers

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

13. New Information Relevant to Qualified Status

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

14. Latest Audited/Unaudited Accounts

Service Providers shall upon request by the Government Representative whilst their quotations remain open submit the latest audited accounts or unaudited accounts as appropriate for checking within fourteen (14) days from the date of such request. Late submission of the accounts may

render their quotations not to be considered further.

15. Complaints about Bidding Process or Contract Awards

The bidding process is subject to internal monitoring to ensure that contracts are awarded properly and fairly. Any Service Provider who feels that its offer has not been fairly evaluated may write to the Head, Working Family and Student Financial Assistance Agency. The Service Provider shall lodge the complaint before disposal of documents of unsuccessful Service Providers which may be within three (3) months after the award of Contract.

16. Personal Data Provided

- 16.1 All personal data provided in the quotation will be used by the Government for the purposes of the invitation to quotation and all other purposes arising from or incidental to it (including for the purposes of quotation evaluation, the award of the Contract and resolution of any dispute arising from the invitation to quotation). If insufficient and inaccurate information is provided, the quotation may not be considered.
- 16.2 By submitting a quotation, a Service Provider is regarded to have agreed to, and to have obtained from each individual whose personal data is provided in the quotation his consent for the disclosure, use and further disclosure by the Government of the personal data for the purposes set out in Clause 16.1 above.
- 16.3 An individual to whom personal data belongs and a person authorised by him in writing has the right of access and correction with respect to the individual's personal data as provided for in Sections 18 and 22, Principle 6 of Schedule 1 of the Personal Data (Privacy) Ordinance (PD(P)O) (Chapter 486 of the Laws of Hong Kong). The right of access includes the right to obtain a copy of the individual's personal data provided in the quotation.
- 16.4 Enquiries concerning the personal data collected by means of the invitation to quotation, including the making of access and corrections, should be addressed to the Personal Data Privacy Officer of the WFSFAA.

17. Warranty against Collusion

- 17.1 The Service Provider must ensure that the Quotation is prepared without any agreement, arrangement, communication, understanding, promise or undertaking with any other person (except as provided in paragraph 3 of the Non-collusive Tendering Certificate referred to in Clause 17.2 below), regarding, amongst other things, price, quotation submission procedure or any terms of the Quotation. Bid-rigging is inherently anti-competitive and is considered serious anti-competitive conduct under the Competition Ordinance (Chapter 619 of the Laws of Hong Kong). Service Providers who engage in

bid-rigging conduct may be liable for the imposition of pecuniary penalties and other sanctions under the Competition Ordinance.

- 17.2 The Service Provider shall complete and submit to the Government a Non collusive Tendering Certificate (in the form set out in one of the Schedules titled as such) as part of its Quotation.
- 17.3 In the event that a Service Provider is in breach of any of the representations, warranties and/or undertakings in Clause 17.1 above or in Non collusive Tendering Certificate submitted by it under Clause 17.2 above, the Government shall be entitled to, without compensation to any person or liability on the part of the Government:
- (a) reject the Service Provider's Quotation;
 - (b) if the Government has accepted the Quotation, withdraw its acceptance of the Service Provider's Quotation; and
 - (c) if the Government has entered into the Contract with the Service Provider, terminate the Contract under Clause 10.1 of the General Conditions of Contract.
- 17.4 By submitting a Quotation, a Service Provider is regarded to have undertaken to indemnify and keep indemnified the Government against all losses, damages, costs or expenses arising out of or in relation to any breach of any of the representations, warranties and/or undertakings in Clause 17.1 above or in Non-collusive Tendering Certificate submitted by it under Clause 17.2 above.
- 17.5 A breach by a Service Provider of any of the representations, warranties and/or undertakings in Clause 17.1 above or in Non-collusive Tendering Certificate submitted by it under Clause 17.2 above may prejudice its future standing as a Government contractor or service provider.
- 17.6 The rights of the Government under Clauses 17.3 to 17.5 above are in addition to and without prejudice to any other rights or remedies available to it against the Service Provider.

18. Warning against Bribery

- 18.1 The offer of an advantage to any Government officers with a view to influencing the award of the Contract is an offence under the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong). Any such offence committed by the Service Provider or any of its officers (including directors), employees or agents will render its quotation null and void.
- 18.2 The successful Service Provider shall inform its officers, employees (whether permanent or temporary) and agents who are connected with the supply of stores/ provision of Services that the soliciting or accepting of advantages, as defined in the Prevention of

Bribery Ordinance (Chapter 201 of the Laws of Hong Kong) is not permitted. The successful Service Provider shall also caution its officers (including directors), employees, agents and sub-contractors against soliciting or accepting any excessive hospitality, entertainment or inducement which may impair their impartiality in relation to the selection of its sub-contractors, if any, or the supervision of the work of the sub-contractors once selected.

19. Environmental Protection

19.1 Service Providers are encouraged to minimise the impact of their activities on the environment.

19.2 The following environment-friendly measures are recommended to be adopted in the preparation of documents relating to an invitation to quotation and the future performance of the Contract –

- (a) all documents should be printed on both sides and on recycled paper. Paper that exceeds 80 gsm should not be used for the text;
- (b) use of plastic laminates, glossy covers or double covers should be avoided as far as possible. If art board paper has to be used as document covers, recyclable non-glossy paper should be used; and
- (c) single line spacing should be used and excessive space in the margins and in between paragraphs should be avoided.

20. Consent to Disclosure

20.1 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 Service Provider) without any further reference to or consent from the successful Service Provider or any other Service Provider,

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

20.2 Nothing in Clause 20.1 above shall prejudice the Government's power to disclose whenever it considers appropriate information of any nature whatsoever in relation to or concerning any Service Provider (successful or unsuccessful) or its Quotation (whether or not the information is specified in Clause 20.1 above and including information recorded in whatever media) if the disclosure is made under any one of the following circumstances (even if disclosure may also mean the information will at the same time, or subsequently, become public information):

- (a) the disclosure of any information to any public officer or public body as defined in the Interpretation and General Clauses Ordinance (Chapter 1 of the Laws of Hong Kong) or any other person employed, used or engaged by the Government (including agents, advisers, contractors and consultants);
- (b) the disclosure of any information already known to the recipient;
- (c) the disclosure of any information which is public knowledge (including because of any disclosure under Clause 20.2(a) above);
- (d) the disclosure of any information in circumstances where such disclosure is required pursuant to any law of Hong Kong, or an order of a court of Hong Kong or a court or tribunal with competent jurisdiction;
- (e) the disclosure of any information regarding anti-competitive collusive conduct to the Competition Commission of Hong Kong (and other authorities as relevant); or
- (f) without prejudice to the power of the Government under Clause 20.1 above, to the extent the information relates to or concerns a Service Provider, with the prior written consent of that Service Provider.

21. Basis of Acceptance

21.1 The Government is not bound to accept the lowest or any quotation. The Government reserves the right to accept all or any part of any quotation at any time within the Quotation Validity Period. The Government Representative may elect, at its sole option, to reject any quotations if, in its opinion, the Service Provider is incapable of understanding or fulfilling the Contract.

21.2 Without prejudice to and in addition to the provision of these terms and conditions, the Service Provider, who meets the following criteria, will normally be recommended for the award of the Contract –

- (a) the Government is of the opinion that the Service Provider is fully capable of undertaking the Contract; and
- (b) the Service Provider has submitted the lowest conforming offer.

22. Company / Business Organisation Status

A Service Provider shall provide a copy of a valid Business Registration Certificate or copies of other documents evidencing its business status relating to itself in the quotation.

23. Contractors' Performance Monitoring

Service Providers are advised that should they be awarded the Contract their subsequent performance will be monitored and may be taken into account when their future quotations are evaluated. A quotation will be rejected if by the Quotation Closing Date, the Service Provider is under suspension from bidding for the quotations issued by the WFSFAA.

24. Cost of Quotation

A Service Provider shall submit its quotation at its own cost and expense. The Government shall not be liable for any costs and expenses whatsoever incurred by the Service Provider in connection with the Service Provider's submission of its quotation, including but without limitation, all costs relating to the preparation or submission of its quotation proposal, the certificate(s), the document(s), and costs related communication or negotiation with the Government, whether before or after the Quotation Closing Date.

25. Cancellation of Quotation

Without prejudice to the Government's right to cancel this Invitation to Quotation at its absolute discretion or for public interest reasons, where there are changes in requirement after Quotation Closing Date for operational or whatever reasons, the Government is not bound to accept any conforming quotation offer and reserves the right to cancel the Invitation to Quotation.

26. Enquiries

26.1 Any enquiries from the Service Providers concerning the Quotation Documents up to the date of the lodge of the quotation with the Government shall be in writing and made to –

Head, Working Family and Student Financial Assistance Agency
Room 1201, 12/F, Cheung Sha Wan Government Offices,
303 Cheung Sha Wan Road, Kowloon
(Attn: ADS(S)3)
Fax: 2519 3857

26.2 After lodging a quotation with the Government, the Service Providers shall not attempt to

initiate any further contact, whether direct or indirect, with the Government on its quotation or this invitation to quotation. The Government shall have the sole right to initiate any such further contact and all such contacts and any replies of the Service Providers thereto shall be in writing or formally documented in writing.

PART II
GENERAL CONDITIONS OF CONTRACT (FOR PROVISION OF SERVICES)

1. Contract Period

- 1.1 Subject to the provisions in the Contract for earlier termination, and without prejudice to Clause 11 of the General Conditions of Contract, this Contract shall have a duration specified as the Contract Period in the Special Conditions of Contract or Service Specifications. Where the Special Conditions of Contract or Service Specifications do not specify any period as the Contract Period, the Contract Period shall be the period commencing from the Date of Acceptance and ending on the date when the Contractor has discharged all its obligations in relation to the Services.
- 1.2 Unless otherwise expressly specified in the Special Conditions of Contract or Service Specifications, an Order for the Services may be placed by the Government any time during the Contract Period up to the last date of the Contract Period.

2. Instruction for the Performance of the Services

- 2.1 The Contractor shall take instructions and directions only from the Government Representative.
- 2.2 No act or omission by the Government Representative in the performance of any of his duties under the Contract shall in any way operate to relieve the Contractor of any of his duties, responsibilities, obligations or liabilities imposed upon the Contractor by any of the provision of the Contract.
- 2.3 The powers of the Government Representative exercisable under the Contract shall continue and be in force until all the Services under the Contract shall have been completed and the Contract Period has expired, or until final payment of the Contract Price has been made on all the Services provided under the Contract, whichever is later.

3. Total Services and Variation

- 3.1 The Services to be performed under the Contract shall be as laid down in the Quotation Documents and shall be carried out in accordance with the timetable as set out in the Contract; or for those Services which are to be performed on demand, as and when required, to the satisfaction of the Government Representative. For those Services to be performed on demand, all orders placed under the Contract shall be issued in writing and the Government will not be responsible for Services performed on oral instructions issued by any person whomsoever.
- 3.2 The Contractor shall not extend the Services beyond the requirements specified in the

Special Conditions of Contract, Service Specifications and/or other part of the Contract except as directed in writing by the Government Representative; but the Government Representative may, subject to the proviso hereinafter contained, at any time during the Contract Period by notice in writing direct the Contractor to alter, amend, omit, add to, or otherwise vary any of the Services and/or the Contract Period, and the Contractor shall carry out such variations, and be bound by the same conditions, so far as are applicable, as though the said variations were stated in the Special Conditions of Contract or Service Specifications.

- 3.3 Where a variation has been made to the Contract, the amount to be added to or deducted from the Contract Price in accordance with that variation shall be determined in accordance with the rates specified in the Contract Schedule so far as the same may be applicable and where rates are not contained in the said Schedule, or are not applicable, such amount shall be such sum as is reasonable in the circumstances.

Due account shall be taken of any partial execution of the Services which are rendered useless by any such variation.

4. Assignment and Sub-contracting

The Contractor shall not, without the written consent of the Government Representative, assign or otherwise transfer the Contract, or any part share or interest therein, and the performance of the Contract by the Contractor shall be deemed to be personal to it. The Contractor shall not sub-contract the Services to any other party.

5. Quality of Services

- 5.1 The Services shall be as specified in the Special Conditions of Contract and Service Specifications. The Contractor shall fulfill all the conditions and terms of any drawings and specifications (if any).
- 5.2 Any drawings and specifications reasonably required for the Contractor's guidance in the execution of the Contract shall be provided by the Government free of charge but shall be returned on completion of the Contract.

6. Inspection and Acceptance

All Services performed in pursuit of the Contract shall be subject to inspection and shall not be deemed to have been accepted unless the Services are not rejected as being unsatisfactory within twenty-one (21) days of the date upon which they were executed.

7. Rejections

- 7.1 Without prejudice to any statutory rights, the Government Representative or the Inspecting Officer may reject any Services (or part thereof) which do not strictly conform to the condition of Clause 5.1 above.
- 7.2 Within twenty-four (24) hours of being notified in writing of the rejection of any Services the Contractor shall be required to take the necessary action to rectify such rejected Services and within seven (7) days or such later date as may be specified by the Government complete all such Services necessary to correct the same at its sole cost and expenses to the Government's satisfaction.

8. Government Property

When Government property is issued to the Contractor under the Contract, the Contractor shall be responsible for the due return of all such property. Should any such property be lost or damaged from any cause whatsoever while in the possession or control of the Contractor or its servants, workmen or agents, the Contractor shall pay for the same at total original cost plus twenty per cent (20%). 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 for this purpose.

9. Government Premises/Contractor's Premises

- 9.1 The Contractor shall ensure that all persons engaged by it in carrying out the Contract keep to such parts of Government premises as are necessary for the due discharge of the Contractor's obligations under the Contract.
- 9.2 Where the Services are carried out in the Contractor's premises such premises shall be open to inspection by the Government Representative at all reasonable times.
- 9.3 The safety of any craft, vessel and vehicle used by the Contractor and brought alongside or onto Government premises, piers or wharves, as the case may be, shall be the responsibility of the Contractor, who shall indemnify the Government in respect of any loss or damage to such Government premises, piers or wharves.

10. Payment for Services

- 10.1 In consideration of the Contractor's due and proper performance of all its obligation in accordance with the Contract, the Government shall pay the Contractor the Contract Price in arrears in accordance with the Contract Schedule.
- 10.2 Notwithstanding any provision in the Contract, unless otherwise agreed in writing by the

Government, in respect of any Services provided to the Government, the Government shall not have any obligation to pay the Contractor any Contract Price for such Services unless and until the Services have been accepted by the Government. The Government shall pay the Contractor the Contract Price within thirty (30) days after the date of acceptance of the Services.

- 10.3 The Contract Price is inclusive of all charges for provision of Services. Subject to Clause 10.1 abovementioned and save as otherwise expressly provided for in the Contract, the Contractor shall not be entitled to any adjustment in the Contract Price for any reason (including foreign exchange fluctuations).
- 10.4 The Contractor shall invoice the Government for any payment of the Contract Price. In respect of each provision of the Services, the Contractor shall deliver to the Government an invoice setting out the particulars of the Services provided (including the unit rate), the Order number (if any), the amount of Contract Price payable for the Services and such other information as the Government Representative may require from time to time.
- 10.5 Notwithstanding any provision of the Contract, the Government is entitled to withhold payment of all or any part of the Contract Price and any other sum by the Government to the Contractor if –
- (a) the Contractor fails to observe or perform any provision of the Services;
 - (b) the Government disputes on any reasonable ground its obligation to pay the amount in question;
 - (c) the Government has reasonable grounds to believe that the Contractor is or will be liable to the Government under any provision of the Contract for loss or damage suffered by the Government; or
 - (d) withholding of payment is required by any applicable law.
- 10.6 No payment made by the Government under the Contract shall prejudice or carry any implication whatsoever on any rights or cause of action which has accrued or may accrue, or any remedy available, to the Government in respect of any breach of the Contract by the Contractor.

11. Termination

- 11.1 During the Contract Period, the Government may at any time at its option suspend or terminate this Contract by giving notice with immediate effect upon the occurrence of any of the following events:
- (a) the Contractor is found to have provided false or incomplete information in

bidding this Contract;

- (b) the Contractor is in breach of any terms/provisions of this Contract and fails to rectify such breach within five (5) days of being required to do so by the Government;
- (c) the Contractor fails to pay his staff (Contractors who do not make timely wages payment in accordance with the provisions under the Employment Ordinance (Chapter 57 of the Laws of Hong Kong) are treated as failure to pay);
- (d) the Contractor has persistently or flagrantly neglected its duties and obligations under this Contract;
- (e) the Contractor has not performed the Services in accordance with the provisions of this Contract;
- (f) the Contractor assigns, transfers, sub-contract or purports to assign, transfer or sub-contract any of its benefit, interest or obligation under this Contract without the prior written consent of the Government;
- (g) the Contractor has failed to carry out all or any of the Services specified in this Contract within the Contract Period or such extended period as agreed by the Government. Such suspension or termination shall not prejudice or affect any rights of action or other remedies that may have accrued to the Government, including but not limited to the right of the Government to assign the balance of the uncompleted Services to another contractor or contractors whereupon the Contractor shall be liable for any sums so incurred in excess of the Contract Price. The Contractor will not be able to claim any compensation and will only be paid for the Services satisfactorily performed under the Contract. The amount of Monthly Payment for the month in which the Contract is terminated shall be calculated on a pro-rata basis up to the date of suspension or termination. The Government will have no obligation whatsoever to pay for any work performed but not to the satisfaction of the Government, or for any work agreed but not yet performed by the Contractor;
- (h) the Contractor has engaged or is engaging in acts or activities that are likely to constitute or cause the occurrence of offences endangering national security or which would otherwise be contrary to the interest of national security;
- (i) the continued engagement of the Contractor or the continued performance of the Contract is contrary to the interest of national security; or
- (j) the Government reasonably believes that any of the events mentioned above is about to occur.

- 11.2 Without prejudice to the foregoing, the Government **may at any time during the Contract Period suspend or terminate this Contract by giving the Contractor one (1) month notice.**
- 11.3 The Contractor and his employees shall vacate the Sites on the date of termination or on an earlier date as otherwise instructed by the Government Representative.

12. Termination Consequences

- 12.1 Upon expiry or early termination of the Contract (howsoever occasioned):
- (a) No compensation of whatsoever shall be payable by the Government to the Contractor as a result of the suspension or early termination of this Contract under Clause 11 of the General Conditions of Contract.
 - (b) The Government shall cease to have any further obligations under the Contract upon termination thereof, including without limitation the obligation to make Monthly Payment to the Contractor.
 - (c) The Government shall not be responsible for any loss or expenses suffered or incurred by the Contractor due to the suspension or early termination of the Contract.
 - (d) Without prejudice to any other rights or remedies of the Government, the Government is entitled to perform the Services itself or to engage other contractors to perform the same for the remainder of the Contract Period or to issue new invitations to quotation for the provision of the Services.
 - (e) The Government shall be entitled to repossess forthwith any of its materials, clothing, equipment or other goods loaned to or hired by the Contractor and shall have a lien on any such items belonging to the Contractor for any sum due hereunder or otherwise from the Contractor to the Government.

13. Illegal Workers

- 13.1 The Contractor undertakes not to employ illegal workers in the execution of any Government contracts. Should the Contractor be found to have employed illegal workers in breach of this undertaking, the Government Representative may, on behalf of the Government, by notice in writing, terminate the Contract and the Contractor is not entitled to claim any compensation.
- 13.2 The Contractor shall be liable for all expenses necessarily incurred by the Government as a result of the termination of the Contract.

14. Default

If the Contractor shall fail to carry out all or any of the Services provided for in the Contract within the Contract Period or such extended period as may be agreed in accordance with Clause 3.2 above, the Government may at its absolute discretion terminate the whole or any part of the Contract by notice in writing to the Contractor, but without prejudice to any claims by the Government for breach of the Contract including but not limited to its right of Government to assign the balance of the uncompleted Services to another contractor or contractors whereupon the Contractor shall be liable for any sums so incurred in excess of the Contract Price.

15. Recovery of Sum Due

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

16. Liability and Indemnities

16.1 The Government and its employees or agents shall not be under any liability whatsoever for or in respect of:

- (a) any loss of or damage to any of the Contractor's property or that of its employees or agents however caused (whether by any Negligence of the Government or any of its employees or agents or otherwise).
- (b) any injury to or death of any of the Contractor's employees or agents save and except any such injury or death caused by the Negligence of the Government or any of its employees or agents.

16.2 The Contractor shall indemnify the Government and its employees or agents against any claim or demand made against or liability incurred (including all costs, charges or expenses whatsoever) by the Government or any of its employees or agents in respect of:

- (a) any loss, damage, injury or death referred to in Clause 16.1 above (save and except injury or death caused by the Negligence of Government or any of its employees or agents); or
- (b) any loss or damage sustained by or any injury to or death of any third party in consequence of any Negligence of the Contractor or any of its employees or agents.

16.3 The Contractor shall indemnify the Government against any loss of or damage to any

property of the Government or of any of its employees or agents or any injury to any employee or agent of the Government arising out of the Negligence of the Contractor or any of its employees or agents.

- 16.4 For the purposes of this clause 'Negligence' shall have the same meaning as that assigned to it in Section 2(1) of the Control of Exemption Clauses Ordinance (Chapter 71 of the Laws of Hong Kong).

17. Policy of Insurance and Compensation

- 17.1 Where and to the extent it is stated to be required in the Special Conditions of Contract or Service Specifications, the Contractor shall effect a policy of insurance against all claims, demands or liability under the Contract with an insurance company approved by the Government which refers to the insurance company authorised under the Insurance Ordinance (Chapter 41 of the Laws of Hong Kong) and shall continue such insurance during the continuance of the Contract and shall when required, deposit with the Government Representative for safe keeping during the execution of the Contract such policy of insurance together with the receipt of payment of the current premium.
- 17.2 If the Contractor shall fail to effect and keep in force the insurance referred to or any other insurance which it may be required to effect under the terms of the Contract then and in any such cases the Government may effect and keep in force any such insurance and pay such premium or premiums as may be necessary for that purpose and from time to time deduct the amount so paid by the Government as aforesaid from any moneys due or which may become due to the Contractor or recover the same as a debt due from the Contractor.
- 17.3 In the event of any of the Contractor's employees or agents suffering any injury or death in the course of or arising out of the Contract and whether there be a claim for compensation or not, the Contractor shall within seven (7) clear Working Days give notice in writing of such injury or death to the Government Representative.

18. Bankruptcy

- 18.1 The Government Representative may at any time by notice in writing summarily terminate the Contract without entitling the Contractor to compensation in any of the following events:
- (a) if the Contractor shall at any time be adjudged bankrupt, or shall have a receiving order or orders for administration of its estate made against it, or shall take any proceedings for liquidation or composition under any Bankruptcy Ordinance (Chapter 6 of the Laws of Hong Kong) for the time being in force, or make any conveyance or assignment of its effects or composition or arrangement for the benefit of its creditors or purports so to do; or

- (b) if 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 entitled the court or debenture holders to appoint a receiver or manager.

18.2 Provided always that such determination shall not prejudice or affect any right or action or remedy which shall have accrued or shall accrue thereafter to the Government.

19. 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.

20. Intellectual Property Rights

- 20.1 The Contractor hereby warrants that the goods or product or any materials supplied for the purpose of the performance of this Contract do not infringe the Intellectual Property Rights of any third party.
- 20.2 The Contractor hereby undertakes to inform the Government immediately if any claim for infringement or alleged infringement of Intellectual Property Rights is lodged against them during the currency of this Contract in respect of the goods or product of any materials supplied hereunder.
- 20.3 The Contractor shall indemnify the Government and keep the Government fully and effectively indemnified against all claims, actions, proceedings, liabilities, losses, damages, demands, charges, costs and expenses of whatsoever nature arising from or incurred by reason of infringement or alleged infringement of any Intellectual Property Rights in connection with the use or possession of the goods or product or materials or any part thereof by the Government.
- 20.4 In the event of a claim being received by the Government alleging or the Government having grounds to believe that the goods or product or any materials supplied hereunder are infringing copies or have otherwise infringed the Intellectual Property Rights of a third party, the Government Representative may, at its election, either –
 - (a) forthwith terminate this Contract in respect of the Deliverables not yet received by the Government; or

- (b) suspend the performance of this Contract until the claim in question is resolved to the satisfaction of the Government provided that election to suspend performance under Clause 20 shall not preclude the Government from terminating this Contract any time after such election.

20.5 The Government shall not be liable to pay any cost or compensation to the Contractor by reason of any termination under Clause 20.4 above irrespective of whether the goods or product or any materials are later found by a court of law to have infringed any person's Intellectual Property Rights or not.

20.6 The rights of the Government under Clauses 20.4 and 20.5 above shall be without prejudice to the provisions of Clauses 20.1 to 20.3 above.

21. Admission of Contractor Personnel to Government Premises

21.1 Upon request from time to time by the Government, the Contractor shall provide to the Government a list of the names, posts, staff identity card numbers, addresses and telephone numbers of all Contractor's employees, agents, sub-contractors and those employees and agents of the aforementioned sub-contractors (collectively "Relevant Personnel") who may at any time require admission on behalf of the Contractor to any premises occupied by the Government for the purposes of the Contract if so required by the Government Representative, and in that event such list shall specify the capacities in which those persons are employed by or connected with the Contractor and shall contain such other particulars as the Government Representative may reasonably require.

21.2 The Contractor shall ensure that while any of the Relevant Personnel is on the Government's premises they will conform to the Government's normal codes of staff and security practice.

21.3 The Government Representative reserves the right to refuse to admit to the Government premises any person, whose admission would be, in the reasonable opinion of the Government Representative, undesirable.

21.4 In the event that the Contractor fails to comply with this Clause 21 and it is determined that such failure is prejudicial to the interests of the Government, the Government Representative may thereupon terminate the Contract forthwith pursuant to Clause 11 of the General Conditions of Contract.

22. Confidentiality and Protection of Personal Data

22.1 The Contractor should strictly comply with the provisions of the Personal Data (Privacy) Ordinance (Chapter 486 of the Laws of Hong Kong) in collecting, processing, storing and disposing the personal data obtained in relation to this Contract.

- 22.2 The Contractor shall treat as proprietary and confidential all Government data, information, drawings, specifications, documents, contracts and all other data (including but not limited to any personal particulars records and personal data (as defined in the Personal Data (Privacy) Ordinance (Chapter 486 of the Laws of Hong Kong)) which the Government has for the purposes of or in the course of performing the Contract supplied, made available or communicated to the contractor or are otherwise accessible by the Contractor provided that this sub-clause shall not extend to any information which was rightfully in the possession of the Contractor prior to the commencement of the negotiations leading to this Contract. The Contractor should ensure that each of its employees, agents, associates, consultants and any other persons engaged in any work in connection with this Contract have signed the Part V Declaration of Confidentiality. The signed declaration forms should be passed to the WFSFAA before commencement of this Contract.
- 22.3 The Contractor shall indemnify and keep the Government its employees and all authorised persons fully and effectively indemnified against all action, damages, costs, claims, demands, expenses (including but not limited to 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 and liabilities of whatsoever nature arising from or incurred by reason of any actions and/or claims made in respect of information subject to the Personal Data (Privacy) Ordinance (Chapter 486 of the Laws of Hong Kong) which action and/or claim would not have arisen but for the negligence or omission of the Contractor and/or any of its employees or agents (or any one acting on its/their behalf) in connection with the provision or receipt of the services provided under this Contract.
- 22.4 The Contractor agrees that it will use such confidential information solely for the purposes of this Contract and that it will not, at any time before or after the completion, expiry or termination of this Contract (howsoever occasioned) –
- (a) disclose or divulge the same or allow the same to be disclosed by itself and/or any of its employees or agents (or any one acting on its/their behalf) in connection with the provision or receipt of the services provided under this Contract or transfer any personal data contained in the source data, storage media and printouts to a place outside Hong Kong or whether directly or indirectly to any other third party; or
 - (b) use or allow to be used the same for any other purposes without the Government's prior written consent and shall prevent any such disclosure thereof.

23. Probity

- 23.1 The Contractor acknowledges it has been reminded that:
- (a) dishonesty, theft and corruption on its part or that of its officers, employees, agents

or sub-contractors are criminal offences and may lead to prosecution under section 9 of the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong), sections 17, 18D and 19 of the Theft Ordinance (Chapter 210 of the Laws of Hong Kong) and section 161 of the Crimes Ordinance (Chapter 200 of the Laws of Hong Kong); and

- (b) the soliciting or accepting of advantages, as defined in the Prevention of Bribery Ordinance is not permitted.

- 23.2 The Contractor shall inform its officers, employees (whether permanent or temporary), agents and sub-contractors that the soliciting or accepting of advantages (as defined in the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong)) is not permitted. The Contractor shall also caution its officers (including directors), employees and agents and sub-contractors against soliciting or accepting any hospitality, entertainment or inducement which may impair their impartiality in relation to the selection of its sub-contractors, if any, or the supervision of the work of the sub-contractors.
- 23.3 The Government shall have the right to terminate the entire Contract pursuant to Clause 10 of the General Conditions of Contract in the event that the Contractor or any of its officers, employees, agents and sub-contractors is convicted of an offence under the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong), the Theft Ordinance (Chapter 210 of the Laws of Hong Kong) or the Crimes Ordinance (Chapter 200 of the Laws of Hong Kong).
- 23.4 The Contractor shall within two (2) weeks after the commencement of the Contract draw up and submit a staff code of conduct to the Government Representative including, among other probity issues, a statement explicitly prohibiting its sub-contractor (if any), or any person employed by it to provide the Services from soliciting or accepting any form of advantages in discharging his duties under the Contract. It shall ensure that its sub-contractor (if any), or any person employed by it to provide the Services is well aware of the prohibited acts explicitly stated in Clause 23.2 above and of the staff code of conduct. The code of conduct should form part of the employment contract to ensure acknowledgement and compliance by the employees.

24. Governing Law and Jurisdiction

- 24.1 The Contract shall be governed by and construed in accordance with the laws of Hong Kong.
- 24.2 The Parties hereby agree to submit to the exclusive jurisdiction of the courts of Hong Kong in relation to any matters or dispute arising out of or in connection with or in relation to the Contract.

25. Contracts (Right of Third Parties) Ordinance

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

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

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

27. Order of Precedence

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

- (a) Special Conditions of Contract;
- (b) Service Specifications and Annex(es) (if applicable);
- (c) Offer to be Bound;
- (d) Contract Schedules;
- (e) Non-collusive Tendering Certificate;
- (f) General Conditions of Contract;
- (g) Terms of Quotation;
- (h) Interpretation; and
- (i) Any other materials which were submitted by the Contractor as part of its quotation and attached to the Contract.