

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

**HONG KONG POLICE FORCE**

**TENDER FOR THE PROVISION OF SERVICES**

**TENDER FORM**

Tender Ref.: (19) in SF (3) in CP/SUP 141/10 Pt.2

Contract No.: \_\_\_\_\_

---

**LODGING OF TENDER**

To be acceptable as a Tender, this form, properly completed in triplicate and enclosed in a sealed plain envelope marked “Tender Ref.: (19) in SF (3) in CP/SUP 141/10 Pt.2 – Tender for **“Provision of COVID-19 Combined Nasal and Throat Swab Testing Services for the Hong Kong Police Force”** and addressed to the Chairman, Tender Opening Committee, Government Logistics Department, must be deposited in the Government Logistics Department Tender Box situated on Ground Floor, North Point Government Offices, 333 Java Road, North Point, Hong Kong before 12:00 noon on 21<sup>st</sup> June 2021. Late Tenders will not be accepted.

---

**INTERPRETATION**

**PART 1 — TERMS OF TENDER**

**PART 2 — GENERAL CONDITIONS OF CONTRACT**

**PART 3 — SPECIAL CONDITIONS OF CONTRACT**

**PART 3A — SERVICE SPECIFICATIONS**

**PART 3B — SCHEDULE A (Price Schedule) & SCHEDULE B (Other  
Information)**

**PART 3C — FORM OF BANKER’S GUARANTEE**

Attached to this Tender Form.

Dated this 7<sup>th</sup> of June 2021

Mr. YEUNG Yuk-leung  
Government Representative

**PART 4 – OFFER TO BE BOUND**

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

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

\_\_\_\_\_

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

\_\_\_\_\_

Name of Tenderer in English :

\_\_\_\_\_

Name of Tenderer in Chinese :

\_\_\_\_\_

Date :

\_\_\_\_\_

Tender Ref.: (19) in SF (3) in CP/SUP 141/10 Pt.2

**PART 5 – MEMORANDUM OF ACCEPTANCE**

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

I .....  
*(name and position of officer)*

accept your Tender for the Contract relating to the following item(s). A copy of each document constituting the Contract is hereby attached for identification purposes.

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

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

Signed by the said ..... in the presence of : .....  
.....  
.....

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

**Provision of COVID-19 Combined Nasal and Throat Swab Testing Services  
for the Hong Kong Police Force**

**INTERPRETATION**

In this Tender Documents and the Contract, the following words and expressions have the following respective meanings ascribed to them unless otherwise defined or the context otherwise requires:

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

“Alternative Authentication Method” or “AAM”	means the use of an identification code for the submission of a Tender via the e-Tender Box in lieu of the use of a digital certificate;
“Appendix”	means the appendix of the Tender Documents;
“associate”	of 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;
“associated person”	in relation to another person means: (a) any person who has control, directly or indirectly, over another person; or (b) any person who is controlled, directly or indirectly, by another person; or (c) any person who is controlled by, or has control over, a person at (a) or (b) above;
“Companies Registry”	means the Companies Registry of the Government;
“Confidential Information”	means the information about the premises where the Services are to be rendered, all the materials, data and information concerning the dealings, transactions or affairs of the Government, and all the materials, data and information which may come to the Contractor’s knowledge in connection with, incidental to or in the course of carrying out of the Services, recommendations, advice or tests made, given or undertaken by the Contractor in connection with the performance of its obligations hereunder and any other

information and data which the Government considers secret, confidential or commercially sensitive;

- “Contract” means the contract between the Government and the Contractor for the provision of the Services on and subject to the terms and conditions as set out in the Tender Documents and the Tender submitted by Contractor (to the extent accepted by the Government);
- “Contract Deposit” has the meaning given to it in Paragraph 30 of the Terms of Tender and Clause 9 of the General Conditions of Contract;
- “Contract Period” means the period specified in Clause 1 of the Special Conditions of Contract, subject to any early termination or extension provided for the Contract;
- “Contract Price” means the amount calculated in accordance with paragraph (b) under Section 1 of the Price Schedule, which is payable by the Government to the Contractor under the Contract for the full and proper performance by the Contractor of its obligations to the full satisfaction of the Government under the Contract;
- “Contractor” means the Tenderer whose Tender having been accepted by the Government;
- “control” in relation to another person means 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, articles of association, partnership, agreement or arrangement (whether legally enforceable or not) affecting that or any other person; or
  - (c) by virtue of being or holding office as a director in that or any other person;
- that the affairs of the first-mentioned person are conducted in accordance with the wishes of that other person;
- “director” means any person occupying the position of director by whatever name called and includes without limitation a de facto or shadow director;

“Electronic Record”	has the meaning given to it under the Electronic Transactions Ordinance (ETO), Cap. 553;
“Electronic Tendering”	means the making and submission of a Tender through the e-Tender Box whether through the use of a digital certificate or through the use of an identification code;
“Essential Requirements”	means the essential requirements specified in Paragraph 6 of the Terms of Tender for the purpose of assessing the Tenders;
“Estimated Contract Price”	means the total amount specified under the heading under paragraph (a) of Section 1 of Schedule A;
“e-Tender Box” or “ETB”	means the electronic tendering platform of the information technology system known as “Procurement and Contract Management System” or “PCMS” of the GLD for ETB Users to view tender notices and tender documents, and prepare and submit tenders electronically whether through the use of a digital certificate or an identification code;
“ETB User”	means a person who has registered with the PCMS whether as a GLD supplier, or a GLD subscriber, or a person who is for the time being just an applicant to become a GLD supplier up to the time of the notification of the result of its application;
“Force Majeure Event”	means:  (a) any outbreak of war, hostilities (whether war be declared or not), invasion, acts of foreign enemies, rebellion, revolution affecting Hong Kong or the place of origin or the delivery route from the place of origin to Hong Kong, overthrow (whether by external or internal means) of the Government or the government of the place of origin; or  (b) any event which is not caused or contributed to by, and is beyond the control of the Contractor, its related persons (as defined in Paragraphs 24.6 and 24.7 of the Terms of Tender) or any employee or agent or ex-employee or ex-agent thereof and none of them can prevent the consequences of such event from happening;  and which, in any case of (a) and (b) above, materially prevents the performance of the duties and obligations of any Party hereunder; for the avoidance of doubt, any change of law and

regulation of whichever jurisdiction shall not be treated as a Force Majeure Event;

“general holiday” or “public holiday” means every Sunday and any other day which is a general holiday by virtue of the General Holidays Ordinance (Chapter 149 of the Laws of Hong Kong);

“Good Industry Practice” means the standards, practices, methods and procedures conforming to law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances;

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

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

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

“Government Representative” means:  
(a) the Commissioner of Police;  
(b) any public officer of the Government authorised by (a) for the purposes of the Contract; and  
(c) any other public officer authorised by the public officer referred to in (b) for the purpose of the Contract.

The Government may change the Government Representative and/or his post title from time to time as it thinks fit without prior notice to the Contractor;

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

“Hong Kong Police Force” or “HKPF”	means the Hong Kong Police Force of the Government;
“Inspecting Officer”	means the officer appointed by the Government Representative for the purpose of inspecting the Services performed in pursuance of the Contract;
“Intellectual Property Rights”	means patents, trade marks, service marks, trade names, design rights, copyright, domain names, database rights, rights in know-how, new inventions, designs or processes and other intellectual property rights, whether now known or created in the future (of whatever nature and wherever arising) and in each case whether registered or unregistered and including applications for the grant of any such rights;
“Invitation to Tender”	means this invitation to tender for the provision of the Services to the Government on the terms and conditions set out in the Tender Documents;
“Materials”	means any and all works and materials (including their drafts and uncompleted versions) collected, compiled, produced, created, developed, written or prepared by the Contractor, its employees, agents or sub-contractors in relation to the Services (whether individually or collectively or jointly with the Government) including without limitation, any reports, summaries, models, questionnaires, analyses, papers, documents, records, plans, drawings, formula, tables, charts, data or information collected, compiled, produced or created by the Contractor in relation to the Services recorded or stored by whatever means;
“Paper-based Tendering”	means the making and submission of a Tender in paper form in accordance with the “Lodging of Tender” section of the Tender Form;
“Parties” (in upper or lower case)	means the Government and the Contractor; and “Party” (in upper or lower case) means any one of them;
“Personnel”	means the employee(s) of the Contractor and its permitted sub-contractors to be deployed for the performance of the Services;
“PRC”	means the People’s Republic of China;



“Restricted Group”		means the Contractor (including each and every officer, employee and agent of the Contractor) and each of its sub-contractors and each of their respective employees, officers and agents engaged in the discharge of the obligations hereunder, and each of their respective associates and associated persons;
“relative”		means the spouse, parent, child, brother or sister of the relevant person, and, in deducing such a relationship, an adopted child shall be deemed to be a child both of the natural parents and the adopting parent and a step child to be a child of both the natural parents and the step parent;
“Services”		means all the services, works, duties and obligations to be carried out by the Contractor pursuant to the provisions of this Contract;
“Schedule” “Schedules”	or	means the schedules in Part 3B of the Tender Form that constitute part of the Tender Documents;
“Specified Tender Box”		means the tender box specified in the “LODGING OF TENDER” section of the Tender Form or, where applicable, other places assigned by a Government officer for depositing bulky tenders;
“Tender”		means an offer to provide the Services as submitted by a Tenderer in response to the Invitation to Tender;
“Tender Acceptance”		has the meaning given to it in Paragraph 28 of the Terms of Tender;
“Tender Closing Date”		means the date specified as such in the Tender Form as the same may be extended by the Government from time to time in accordance with Paragraphs 3.10(b) or 3.10(c) of the Terms of Tender;
“Tender Closing Time”		means the time on the Tender Closing Date before which Tenders must be deposited with the Government in the manner stipulated in the Tender Form as the same may be extended by the Government from time to time in accordance with Paragraphs 3.10(b) or 3.10(c) of the Terms of Tender;
“Tender Documents”		has the meaning given to it in Paragraph 1 of the Terms of Tender;
“Tender Form”		means the tender form issued for the Invitation to Tender;

“Tender Submission Date”	means the date of the Offer to be Bound in Part 4 of the Tender Form;
“Tenderer”	means a person which or who has capacity to contract and has submitted a Tender in response to this Invitation to Tender;
“terms and conditions of use of the PCMS and the e-Tender Box”	means all those terms and conditions for the use of the PCMS and the e-Tender Box from time to time published on the website of the e-Tender Box including the “Terms and Conditions of Use of the PCMS and the e-Tender Box” and the “e-Tender Box System and File Attachment Requirements” in the version prevailing immediately prior to the Tender Closing Date;
“Virus”	means a subversive computer programme or piece of code that may corrupt or erase computer data files and/or change the normal behaviour of a computer; 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 Tender Documents and the Contract, unless the content otherwise requires, the following rules of interpretation shall apply:

- (a) References to statutes or statutory provisions shall be construed as references to those statutes or statutory provisions of Hong Kong as replaced, amended, modified or re-enacted from time to time; and shall include all subsidiary legislations made under those statutes.
- (b) Words importing the singular shall include the plural and vice versa.
- (c) Words importing a gender shall include all other genders.
- (d) References to any person shall include any individual, firm, body corporate or unincorporate (wherever established or incorporated).
- (e) Headings to individual clauses or paragraphs of the Tender Documents or Contract are inserted for ease of reference only and shall not affect the construction of the Tender Documents or the Contract.

- (f) References to a document shall:
  - (i) include all schedules, appendices, annexures and other materials attached to such document; and
  - (ii) mean the same as from time to time amended or supplemented in accordance with the terms of the Tender Documents or the Contract.
- (g) References to “Tenderer” or “Contractor” shall include its permitted assigns, successors, or any persons deriving title under them.
- (h) References to “Government” shall include its assigns, successors-in-title and persons deriving title under them, regardless of whether or not any of these persons are mentioned separately in the relevant provisions.
- (i) Where in this Tender Documents or the Contract there is a reference to a clause, sub-clause, paragraph, section, schedule, appendix or attachment by number or letter, and not in conjunction with an ordinance or regulation, such reference shall be construed as a reference to the clause, sub-clause, paragraph, section, schedule, appendix or attachment of that number or letter contained in the Tender Documents or the Contract.
- (j) References to “law” and “regulation” shall include any constitutional provisions, treaties, conventions, ordinances, subsidiary legislation, orders, rules and regulations having the force of law and rules of civil and common law and equity.
- (k) Any word or expression to which a specific meaning has been attached in any part of the Tender Documents shall bear such meaning whenever it appears in the same and other parts of the Tender Documents.
- (l) References to a time of a day shall be construed as a reference to Hong Kong time.
- (m) References to “normal business hours” mean 0900 to 1800 hours.
- (n) References to a day mean a calendar day.
- (o) References to a month or a monthly period mean a calendar month.
- (p) Any negative obligation imposed on any party shall be construed as if it were also an obligation not to permit or suffer the act or thing in question, and any positive obligation imposed on any party shall be construed as if it were also an obligation to procure that the act or thing in question be done.

- (q) Any act, default, neglect or omission of any employee, licensee, agent or sub-contractor of the Contractor shall be deemed to be the act, default, neglect or omission of the Contractor.
  - (r) Words importing the whole shall be treated as including a reference to any part of the whole.
  - (s) The expressions “include” and “including” shall be construed without limitation to the words following.
  - (t) Words and expressions extend to their grammatical variations and cognate expressions where those words and expressions are defined in the Tender Documents or by reference to any other definition.
  - (u) References to “writing” include typewriting, printing, lithography, photography, facsimile and the printed out version of a communication by electronic mail and other modes of representing and reproducing words in a legible form.
  - (v) Where a general obligation in the Tender Documents or the Contract is followed by more specific obligations, the general obligation shall not be construed restrictively by reference to the specific obligations or deemed to be fully performed by reason only that the specific obligations have been performed.
- 1.3 Nothing in the Tender Documents or the Contract shall be taken to restrict, derogate from or otherwise interfere with any power or duty, or the exercise or performance of any power or duty conferred or imposed by or under any law upon the Government or any person in the service of the Government.
- 1.4 All rights and powers of the Government under the Tender Documents and/or the Contract may be exercised by the Government Representative. The Government may change the Government Representative and/or its post title from time to time as it thinks fit without prior notice to the Contractor.
- 1.5 If any provision of the Tender Documents and/or Contract provides for a determination of any matter by the Government or the Government Representative, the determination made by the Government or the Government Representative (as the case may be) shall, in the absence of manifest error, be final and conclusive.
- 1.6 Unless otherwise provided for in the Tender Documents, all quotations and payments shall be made in Hong Kong Dollars.
- 1.7 Unless otherwise expressly stated, all provisions of the Tender Documents shall apply regardless of whether Paper-based Tendering or Electronic Tendering is used for the submission of the Tender or formation of the Contract.

**Provision of COVID-19 Combined Nasal and Throat Swab Testing Services  
for the Hong Kong Police Force**

**PART 1  
TERMS OF TENDER**

**1. Tender Documents**

This Tender Documents identified as (19) in SF (3) in CP/SUP 141/10 Pt.2 comprise of:

Tender Form

Interpretation

Part 1 – Terms of Tender

Part 2 – General Conditions of Contract

Part 3 – Special Conditions of Contract

Part 3A – Service Specifications

Part 3B – Schedules

Schedule A

Price Schedule

Schedule B

Other Information

Part 3C – Form of Banker's Guarantee

Each of the above Tender Documents is referred to by their names as stated above throughout the Tender Documents and the Contract.

**2. Invitation to Tender**

2.1 Tenders are invited for the provision of the whole of the Services specified in Service Specifications, subject to and in accordance with the terms and conditions of the Tender Documents.

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

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

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

2.5 A Tenderer will be regarded to be thoroughly conversant with all aspects of the Tender Documents (including the Contract) and in general to have

obtained all necessary information of any circumstances which may influence or affect its Tender or its performance of the Contract. The Government does not assume any liability in respect of any errors or mistakes made by a Tenderer or any neglect or failure of the Tenderer to obtain any information or clarification relating to the provision of the Services to the Government in accordance with the Contract.

- 2.6 No error, mistake, neglect or failure by a Tenderer shall affect any provision of the Tender Documents (including the Contract) or relieve the Tenderer from any of its obligations or liabilities under the Tender Documents (including the Contract). For the avoidance of doubt, a successful Tenderer shall not be entitled to any additional payment, compensation or allowance by reason of any such error, mistake, neglect or failure. If a Tenderer is awarded the Contract, it shall not be excused from any liability under the Contract as a consequence of any misinterpretation by it of any matter or fact relating to the Tender Documents or the Contract.
- 2.7 Information, statistics and forecasts set out in the Tender Documents are provided for a Tenderer's reference only. The Government does not warrant or represent that the information, statistics and forecasts are complete, true or accurate. The Government does not bind itself to adhere to such information, statistics and forecasts. They are given for a Tenderer's reference only and are not figures to which the Government binds itself to adhere. The Government's actual requirements may vary depending on the actual need of the Government and the successful Tenderer must accept any increase or decrease of the stated estimates.
- 2.8 Unused.
- 2.9 By submitting a Tender, a Tenderer will be regarded to have agreed to all terms and conditions set out in the Tender Documents.

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

#### Tender Preparation

- 3.1 A Tenderer shall submit, in one of the following manners, its completed Tender together with all proposals, documents and information required under the Tender Documents or relevant to its Tender in accordance with the terms of the Tender Documents. A Tender submitted through a method other than Paper-based Tendering or Electronic Tendering will not be considered.

Tender Submission:

(a) Paper-based Tendering

The Tender (including the Tender Form) shall be completed in ink or typescript and shall be submitted in triplicate in accordance with the “Lodging of Tender” section of the Tender Form.

(b) Electronic Tendering

The Tender shall be submitted:

(i) in accordance with the terms and conditions of use of the PCMS and the e-Tender Box; and

(ii) through the e-Tender Box through the use of any one type of digital certificates recognised by and uploaded to the e-Tender Box or through an identification code.

3.2 A Tenderer is required to complete all the relevant places as indicated on the Schedules to be submitted. Tenderers should read carefully the instructions specified in the Tender Documents before completing the Schedules. **If a Tenderer fails to provide the information as required in Schedule B before the Tender Closing Time, its Tender may not be considered further.**

3.3 When completing Schedule A, a Tenderer:

(a) shall make a complete offer for all items in paragraph (a) of Section 1 of Schedule A. The quoted unit rates shall be **in Hong Kong Dollars** and inclusive of all fees, costs, charges and disbursements incurred by the Tenderer for and incidental to the performance of the Services, and will be binding on the Tenderer once accepted by the Government. For the avoidance of doubt, a **Tender with no complete offer by the Tender Closing Time will result in the entire Tender not being considered further;**

(b) shall ensure that the prices quoted are accurate before submitting its Tender. Under no circumstances will the Government accept any request for price adjustment on grounds that a mistake has been made in the tender prices;

(c) shall indicate in Section 3 of Schedule A what discount it will allow on the tender prices if payment is made in full for the Services within the specified period. Any prompt payment discount offered by the Tenderer will not be taken into consideration in tender price assessment; and

- (d) shall indicate in Section 4 of Schedule A the payment method of Contract Deposit if a Contract is awarded to it.

### 3.4 Execution and Submission of Tenders

#### (a) Paper-based Tendering

- (i) A Tender submitted through Paper-based Tendering will be regarded to have been submitted by a Tenderer or authorised to have been submitted by a Tenderer (as the case may be) if the submitted Part 4 “Offer to be Bound” of the Tender Form is signed in the following applicable manner:
  - (1) if the Tenderer is a sole proprietorship, the Tenderer signing the Tender in the name of the Tenderer (or of the sole proprietorship), or a person authorised by the Tenderer signing the Tender for and on behalf of the Tenderer;
  - (2) if the Tenderer is a partnership, one or more partner(s) of the Tenderer signing in the name of the partnership (and in the case of limited partnership, that partner must be a general partner); or a person authorised by the partnership, signing the Tender for and on behalf of the Tenderer; or
  - (3) if the Tenderer is a company, a director of the Tenderer or one or more persons who are duly authorised by the Tenderer signing the Tender for and on behalf of the Tenderer.

#### (b) Electronic Tendering

- (i) A Tender submitted through Electronic Tendering will be regarded to have been submitted by a Tenderer or authorised to have been submitted by a Tenderer (as the case may be) if it is submitted in any one of the following ways:
  - (1) submission of the Tender via the e-Tender Box through the use of an identification code; or
  - (2) submission of the Tender via the e-Tender Box through the use of such type of digital certificate recognised by the ETB, and uploaded by the Tenderer to the ETB. Save in the case where the Tenderer is a partnership, a Tenderer shall use a digital certificate



which is issued in its name as appearing in the applicable document mentioned in Paragraph 3.5(a) or (b) or (c) below; otherwise the Tender will not be considered further. In the case that the Tenderer is a partnership, the Tenderer may use a digital certificate issued in the name of one of its partners (or a general partner in the case of a limited partnership), or a digital certificate issued in the name of the partnership; otherwise the Tender will not be considered further.

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

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

and such non-compliance of file format, Virus contamination, or file corruption has resulted in failure to submit the relevant proposal, document or information as described in Paragraph 3.7(a)(ii) or (b) below by the Tender Closing Time, the Tender will not be considered further and its Tenderer will be notified of such.

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

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

is not a digital certificate recognised in the e-Tender Box for submission of Tenders) upon verification.

3.5 When preparing for its Tender, a Tenderer shall ensure that the name of the Tenderer is the same as the name shown in:

- (a) if the Tenderer is a company incorporated in Hong Kong,
  - (i) the Certificate of Incorporation of the Tenderer; or
  - (ii) if there is a change of name of the Tenderer since the date of its Certificate of Incorporation, the latest Certificate of Change of Name of the Tenderer; or
  - (iii) its business name as shown in the current business registration certificate of the Tenderer.
- (b) if the Tenderer is a sole proprietorship or a partnership, the latest business registration certificate of the Tenderer; or
- (c) if the Tenderer is formed, established or incorporated outside Hong Kong, a document equivalent to Paragraph 3.5 (a)(i), (a)(ii), (a)(iii) or (b) above (as the case may be) issued by a governmental or competent authority of the place where the Tenderer is formed, established or incorporated.

3.6 A Tenderer shall ensure that:

- (a) no false, inaccurate or incorrect information is given in its Tender;
- (b) complete information (including descriptive literature, catalogues and any other document required under any provision of the Tender Documents) is given with the Tender;
- (c) all particulars or data requested for in the Tender Documents are furnished in full in its Tender; and
- (d) all documents to be submitted with its Tender shall either be originals or certified true copies of the documents.

A Tenderer that fails to comply with any of the above requirements may have its Tender not being considered further.

Tender Submission

3.7 **A Tender will not be further considered if a Tenderer fails to include in its Tender before the Tender Closing Time:**

(a) (i) **(for Paper-based Tendering) a duly signed Part 4 “Offer to be Bound” of the Tender Form in English or Chinese containing an original signature by or on behalf of the Tenderer. Other than printing from a softcopy of the Tender Form obtained from the Government or photocopying of the Tender Form, other means of reproduction by the Tenderer (e.g. by retyping) of the Tender Form for Tender submission is not acceptable; or**

(ii) **(for Electronic Tendering) the box signifying the Tenderer’s agreement with Part 4 “Offer to be Bound” must have been checked; and**

(b) **the price information as required in Section 1 of Schedule A.**

3.8 A Tenderer is required to provide all other information/ supporting documents requested in the Tender Documents or relevant to its Tender, including but not limited to the following:

(a) Schedule B duly completed by the Tenderer;

(b) Documents supporting Tenderer’s compliance with the tender requirements including without limitation the Essential Requirements.

A Tenderer is encouraged to provide the above information as much as possible at the time of submission of its Tender. If any of the above information is missing in a Tender and is not provided upon any request which may be made pursuant to Paragraph 19, the Tender will not be considered further.

3.9 Unused.

3.10 Tender Closing Time

(a) (i) Paper-based Tendering

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

(ii) Electronic Tendering

Transmission of a Tender through the e-Tender Box shall be successfully completed in accordance with the requirements of the e-Tender Box before the Tender Closing Time. Save as otherwise provided for in the Tender Documents, a Tender will not be considered if the relevant proposal, document or information as described in Paragraph 3.7(a)(ii) or (b) above is not successfully and completely transmitted through the e-Tender Box before the Tender Closing Time.

- (b) In case Tropical Cyclone Warning Signal No. 8 or above is hoisted, or Black Rainstorm Warning Signal or “extreme conditions after super typhoons” announced by the Government is/are in force, for any duration between 0900 and 1200 hours on the date specified in the “Lodging of Tender” section of the Tender Form, the latest date and time before which Tenders are to be deposited in the Specified Tender Box and at the e-Tender Box will be extended to 1200 hours on the next working day.
- (c) In case of blockage of the public access to the location of the Specified Tender Box at any time between 0900 and 1200 hours on the Tender Closing Date, the Government will announce extension of the Tender Closing Time until further notice. Following removal of the blockage, the Government will announce the extended tender closing time as soon as practicable. The above announcements will be made via press releases on the website of Information Services Department (<https://www.info.gov.hk/gia/general/today.htm>).

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

- 3.12 All documents to be submitted by a Tenderer shall either be originals or certified true copies of the documents. If a Tenderer fails to comply with this requirement, its Tender may not be further considered.
- 3.13 All supplementary information or tender addenda to the Invitation to Tender 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 Documents.
- 3.14 The Tender comprising all relevant documents should be enclosed in a sealed plain envelope addressed to the person specified in the “Lodging of Tender” section of the Tender Form and clearly marked “Tender Ref.: (19) in SF (3) in CP/SUP 141/10 Pt.2 – Tender for the Provision of COVID-19 Combined Nasal and Throat Swab Testing Services for the Hong Kong Police Force”.
- 3.15 If a Tenderer submits a Tender by Electronic Tendering, the Tenderer shall, in addition to compliance with the Tender Documents, observe and comply with all terms and conditions of use of the PCMS and the e Tender Box as set out in or referred to in the e-Tender Box.
- 3.16 Modification of Tender
- (a) Before the Tender Closing Time, a Tenderer who has lodged a Tender may modify its Tender as considered necessary.
- (b) Paper-based Tendering
- Any modification to the submitted Tender considered necessary by the Tenderer shall be the subject of a separate letter accompanying the Tender. Figures/words shall not be altered or erased; any modification shall be effected by striking the incorrect figure/word and inserting the correct figure/word in ink above the original figure/word. All such amendments shall be initialed by the Tenderer in ink.
- (c) Electronic Tendering
- In case of modification to the submitted Tender, the Tenderer shall submit either a complete set of the revised Tender superseding the original Tender, or just the revisions to the original Tender. Either way, this shall be stated clearly in the submission.
- 3.17 Apart from Part 4 “Offer to be Bound” (which, in the case of Paper-based Tendering, must be originally signed by or on behalf of the Tenderer as required under Paragraph 3.7(a)(i) above), wherever there is any provision

in the Tender Documents requiring that the original of any document or the document as mentioned in Paragraph 3.17.1(b) below to be submitted as part of the Tender,

- 3.17.1 In the case of Paper-based Tendering, (a) the Tenderer may submit a photocopy certified to be true and complete by the person(s) specified in Paragraph 3.4(a)(i) above; (b) in the case of any certificate which is required to be issued by a specified body (for example an independent accredited laboratory or a recognised certification body (if applicable)), the photocopy certificate must be certified as true and complete by that specified body or a lawyer duly qualified to practise in Hong Kong or the laws of the place of incorporation, formation or establishment of the Tenderer; and (c) if only a photocopy without any certification has been submitted, the Government reserves the right to request a certified true copy as required in (a) or (b) above (whichever is applicable) (“certified true copy”) after the Tender Closing Date. The Tender may not be considered further if the certified true copy is not provided; and
- 3.17.2 In the case of Electronic Tendering, the Tenderer shall first submit the certified true copy as described in Paragraph 3.17.1(a) or (b) above (whichever is applicable) in electronic format as part of its Tender via the e-Tender Box. Subsequently, the Government reserves the right to request a certified true copy (hardcopy) after the Tender Closing Date. If only a photocopy without any certification has been submitted in electronic format as part of its Tender via the e-Tender Box, the Government reserves the right to request a certified true copy (hardcopy) after the Tender Closing Date. The Tender may not be considered further if the certified true copy (hardcopy) is not provided.

#### **4. Tenders to Remain Open**

- 4.1 A Tender once submitted by a Tenderer will be binding on the Tenderer.
- 4.2 A Tender shall remain valid and open for acceptance for not less than one hundred and twenty (120) days after the Tender Closing Date (“Tender Validity Period”).
- 4.3 If a Tenderer offers in its Tender a period that is shorter than the Tender Validity Period prescribed in Paragraph 4.2 above for whatever reasons, **its Tender will not be further considered.**

## 5. Conflict of Interest

- 5.1 The Tenderer shall perform the Services on an impartial basis without giving favour to any particular person, business, company, product, services or equipment in which the Contractor or any its employees or agents or any of their respective associates or associated persons has a commercial or personal interest. The Tenderer shall notify the Government immediately and in writing, upon the Tenderer having actual or constructive knowledge of any actual or potential financial or other interest it or its associates or associated persons, or any its employees or agents or any of their associates or associated persons may have in, or any association or connection it or any of the aforesaid persons may have with, any of the persons, businesses, companies, services, products or equipment proposed or recommended by the Tenderer under this Contract.
- 5.2 The Tenderer shall ensure that its associates and associated persons, each employee or agents and its associates and associated persons inform the Tenderer and keep it informed regularly of all facts which may reasonably be considered to give rise to a situation in which the interests of such persons, conflict or compete, or may conflict or compete, which the Tenderer's duties to the Government under this Contract.

## 6. Essential Requirements

- 6.1 **Those Tenders that fail to meet any of the Essential Requirements set out in Paragraph 6.2 below or fail to confirm in Section 2 of Schedule B its compliance will not be considered further.**
- 6.2 A Tenderer shall:-
- a) be a holder of valid certificate of Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2) quality assurance programme (QAP) issued by the Centre for Health Protection (CHP) of the Department of Health;
  - b) be accredited by the Hong Kong Laboratory Accreditation Scheme (HOKLAS), or HOKLAS's Mutual Recognition Arrangement partners based on ISO 15189:2012;
- 6.3 A Tenderer shall provide documentary proof to substantiate the claims on their compliance with Paragraphs 6.2 (a) and 6.2 (b) above at the time of submission of its Tender. **If any of the above documentary proof is missing in a Tender and is not provided to the full satisfaction of the Government upon any request which may be made pursuant to Paragraph 19, its Tender will not be considered further.**

## 7. Prices

- 7.1 A Tenderer shall quote all the prices requested for in the Tender Documents in Hong Kong Dollars. Such prices shall be net prices allowing for all trade and cash discounts. The prices shall cover all expenses incidental to the due and proper performance of the Contract by the Contractor.
- 7.2 Prices quoted by a Tenderer shall only be shown in the Price Schedule.
- 7.3 A Tenderer must quote fixed prices. **A Tender with any price variation clause will not be considered further.**
- 7.4 A Tenderer should make sure that all prices quoted in its Tender are accurate before it submits the Tender. The Tenderer shall be bound by the Tender prices quoted in its Tender if the Tender is accepted by the Government. Under no circumstances will the Government be obliged to accept any request for price adjustment on any ground (including any mistake made in prices quoted).
- 7.5 Without prejudice to the generality of the Terms of Tender, the Government may require a Tenderer who in the opinion of the Government has submitted an unreasonably low price to justify and demonstrate that such a Tenderer is capable of carrying out and completing the Contract. The Government may reject the Tender if the Tenderer fails to so justify and demonstrate to the Government's satisfaction.

## 8. Company/Business Organisation Status

- 8.1 The Tenderer shall provide the following details relating to itself in Section 1 of Schedule B:
- (a) name and principal place of business of the Tenderer;
  - (b) length of business experience;
  - (c) shareholders/ partners/ proprietor of the Tenderer and their percentage of ownership;
  - (d) names of the following:
    - (i) managing director and other directors;
    - (ii) partners; or
    - (iii) sole proprietor;



- (e) a copy of a valid Business Registration Certificate issued under the Business Registration Ordinance (Chapter 310 of the Laws of Hong Kong) or documentary evidence showing that the Tenderer is exempted from business registration under the Business Registration Ordinance (Chapter 310 of the Laws of Hong Kong); or if the Tenderer does not carry on business in Hong Kong, the equivalent document issued by the authority of the place of business of the Tenderer;
- (f) if the Tenderer is a company, its Memorandum (if any) and Articles of Association, Certificate of Incorporation, Certificate of Change of Name (if any); or the equivalent documents issued by the authority of the place of incorporation of the Tenderer if the Tenderer was not incorporated under the Companies Ordinance (Chapter 622 of the Laws of Hong Kong) (or its predecessor Ordinance);
- (g) if the Tenderer is a company incorporated in Hong Kong or is a registered non-Hong Kong company under the Companies Ordinance (Chapter 622 of the Laws of Hong Kong), a copy of the latest annual return filed with the Companies Registry and all subsequent filings since the latest annual return; or the equivalent documents issued by the authority of the place of incorporation of the Tenderer if the Tenderer was not incorporated or registered under the Companies Ordinance (Chapter 622 of the Laws of Hong Kong) (or its predecessor Ordinance);
- (h) place and date of its incorporation or formation;
- (i) business profile information of the Tenderer including the number and location of full time/contract employees, core business strategies and strength, and industry expertise;
- (j) notwithstanding the deeming provision specified in Paragraphs 3.4(a)(i) and 3.4(b) of the Terms of Tender, a Tenderer shall provide a certified extract board resolution or other documentary evidence acceptable to the Government demonstrating authorisation and approval for the submission of its Tender. This requirement shall always be applicable to a Tenderer which is a company regardless of the mode of submission of Tender. In the case that a Tenderer is a sole proprietorship or a partnership, documentary evidence acceptable to the Government demonstrating authorisation and approval for the submission of its Tender shall also be required if (a) (in the case of Paper-based Tendering), the signatory of the Offer to be Bound, or (b) in the case of Electronic Tendering using an identification code, the person submitting the

Tender, is not the sole proprietor or a partner (or a general partner in the case of a limited partnership) (as the case may be);

- (k) where a Tenderer is not a company, a partnership, or a sole proprietorship, some of the information mentioned in the foregoing Sub-paragraphs of this Paragraph 8.1 may not apply and may not be available. Regardless of the mode of submission of its Tender, the Government reserves the right to request such relevant information and documents in relation to the Tenderer to ascertain the identity of the Tenderer as well as to ensure that the submission of the Tender has been duly authorised and approved; and
- (l) names and addresses of banks which are prepared to provide references or other relevant financial data which indicate the financial viability of the Tenderer.

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

- (a) the Tenderer is duly incorporated, formed or established and validly existing and in good standing under the laws of the place of the Tenderer's incorporation, formation or establishment and that the Tenderer has full power, capacity and authority to carry on the business as it is now conducting and to provide the Services to the Government on the terms and conditions of the proposed Contract. By "validly existing and in good standing", it is meant that no event mentioned in any of the Clauses 12.2(a) to (e) of the General Conditions of Contract or any event which has an equivalent effect to any such event has occurred in relation to the Tenderer;
- (b) the Tenderer has the full power, authority and legal capacity to:
  - (i) execute and submit its Tender and to incur the liabilities and perform the obligations under the Tender Documents; and
  - (ii) enter into and execute the Contract and to incur the liabilities and perform the obligations thereunder;

- (c) the proposed Contract with the Government will, upon its formation pursuant to Paragraph 28 of the Terms of Tender, constitute the legal, valid and binding obligations of the Tenderer in the place of its incorporation, formation or establishment and is enforceable against the Tenderer in accordance with its terms; without prejudice to the generality of the foregoing, where an Electronic Record is used in the formation of the Contract (whether with or without any electronic or digital signature), the Contract shall not be denied legality, validity or enforceability on the sole ground that an Electronic Record was used for that purpose;
- (d) the submission of its Tender and the performance of the Contract (if awarded to the Tenderer) have been duly authorised by all necessary corporate action of the Tenderer, and does not violate any provision of any applicable law, regulation or decree of the Tenderer's place of incorporation, formation or establishment, or the Memorandum (if any) and Articles of Association or similar constitutional documents of the Tenderer;
- (e) no authorisations, consents, approvals are required from any governmental authorities or agencies or other official bodies in the place of incorporation, formation or establishment in connection with the execution and delivery of the Tenderer's Tender, or the performance by the Tenderer of its obligations under the Tender Documents and the Contract;
- (f) the Tenderer's Tender and the Contract (if awarded to the Tenderer) need not be registered or filed in the place of incorporation, formation or establishment in order to secure their validity and/or priority;
- (g) there is no restriction under the laws of the place of the Tenderer's incorporation, formation or establishment affecting the Tenderer's obligations under the Tender Documents and the Contract;
- (h) the choice of the laws of Hong Kong to govern the Tender Documents and the Contract is a valid choice of laws;
- (i) the judgment handed by the courts of Hong Kong after the adjudication of any dispute arising from the Contract will be recognised and given effect to by the courts of the place of incorporation, formation or establishment of the Tenderer; and
- (j) it is not necessary under the laws of the place of incorporation, formation or establishment of the Tenderer that the Government be licensed, qualified or otherwise registered in such place of

incorporation, formation or establishment in order to enable it to enforce its rights under the Tender Documents and the Contract.

- 8.3 The Government may require a Tenderer to provide, at its own expense, additional legal opinion satisfactory to the Government in all respects issued by a lawyer duly qualified to practise the laws of the place of incorporation, formation or establishment of the Tenderer and acceptable to the Government on any other matters arising from its Tender. Where the opinion on the question specified in Paragraph 8.2(i) above is negative or otherwise subject to qualifications not satisfactory to the Government, the additional legal opinion shall opine that any ruling made by the arbitrator under the arbitration provision set out in Paragraph 8.4 below will be recognised and given effect to by the courts of the place of incorporation, formation or establishment of the Tenderer (“additional opinion on arbitration”). Together with the additional opinion on arbitration to be provided, the Tenderer shall also be required to provide a confirmation in writing that in consideration of the award of the Contract, it agrees that Clause 26 of the General Conditions of Contract shall be replaced by the arbitration clause in Paragraph 8.4 below.
- 8.4 Where the opinion on the question specified in Paragraph 8.2(i) above is negative or otherwise subject to qualifications not satisfactory to the Government, subject to the obtaining of the additional opinion on arbitration as mentioned in Paragraph 8.3 above, Clause 26 of the General Conditions of Contract shall be deemed deleted and replaced by the following: “Any dispute arising from the Contract shall not be adjudicated by the courts of Hong Kong but shall be adjudicated by arbitration to be held in accordance with the Hong Kong International Arbitration Centre Domestic Arbitration Rules prevailing at the time when a notice of arbitration is issued by a Party (“Arbitration Rules”) except that regardless of whether the Arbitration Rules providing anything to the contrary, unless the Parties otherwise agree in writing: (a) the arbitration hearing must be held in Hong Kong and that the Arbitration Ordinance (Chapter 609 of the Laws of Hong Kong) shall apply to the arbitration (including the whole of Schedule 2); and (b) without prejudice to section 18(2) of the Arbitration Ordinance, the Government may on its own disclose any information relating to (i) the arbitral proceedings under the arbitration agreement; and (ii) an award made in those arbitral proceedings, under any of the circumstances mentioned in Paragraph 33.2 of the Terms of Tender”.

## 9. Statement of Compliance

- 9.1 A Tenderer shall confirm in **Section 2 of Schedule B** that its Tender is in compliance with the Essential Requirements specified in Paragraph 6 hereof and will comply with the Service Specifications.

- 9.2 **A Tenderer's Tender will not be considered further if the Tenderer expressly indicates in its Tender non-compliance with any Essential Requirements stipulated in Paragraph 6 hereof or the Service Specifications.**

## **10. Counter-Proposals**

- 10.1 The Tenderer must not submit any proposal that has the effect of varying or modifying (a) any Essential Requirements specified in the Tender Documents; (b) any provisions in the Tender Documents concerning the preparation, submission and evaluation of Tenders and award of Contract; and (c) those additional provisions which are not permitted to be subject to any counter-proposal as identified in this Terms of Tender (if any).
- 10.2 The Tenderer must not directly or indirectly attempt to preclude or limit the effect of any requirements or instructions set out in the Tender Form, these Terms of Tender or the Schedules.
- 10.3 If a Tenderer fails to comply with Paragraph 10.1 or 10.2 above, subject to any clarification which the Government may, but is not obliged to, seek from the Tenderer, its Tender will not be further considered.
- 10.4 Counter-proposal to other provisions of the Tender Documents not specified in Paragraph 10.1 or 10.2 above, whilst not strictly disallowed, is not encouraged. If the Tenderer wishes to submit one or more counter-proposals to any provision in the Tender Documents not of the types specified in Paragraph 10.1 or 10.2 above ("Counter-Proposals"), the Counter-Proposals shall be submitted in the following manner:
- (a)
    - (i) for Paper-based Tendering, the Counter-Proposals shall be attached to Part 4 "Offer to be Bound" of the Tender Form; or
    - (ii) for Electronic Tendering, the Counter-Proposals shall be attached as a separate attachment and identified as such;
  - (b) the original provisions which the Counter-Proposals relate to shall be fully recited before the proposed alteration or deletion;
  - (c) the proposed alteration to the original provisions shall be underlined and shall bear the corresponding clause number of the original provisions unless it is an addition;
  - (d) if it is an addition, the additional provisions shall be underlined;

- (e) words to be deleted shall be crossed out by a single line only; and
- (f) an explanation shall be given below the alteration or deletion and put in square brackets “[ ]”.

10.5 Unless the Government otherwise agrees, Counter-Proposals that are not submitted in accordance with Paragraph 10.4 above will not be considered by the Government and will not be regarded to form part of the Tender submitted by a Tenderer. In such event, the Tenderer shall be deemed to have agreed to the original provisions to which the Counter-Proposals relate and the Government will continue to consider the Tenderer’s Tender on this basis.

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

## **11. Authenticity of Documents Submitted**

All documents submitted by a Tenderer to the Government in relation to its Tender shall be original documents or certified true copies of the original documents. If a Tenderer fails to comply with this requirement or fails to provide such verification as the Government may require to prove the authenticity, the Government may not further consider the Tender.

## **12. Personal Data Provided**

12.1 All personal data provided in a Tender will be used by the Government for the purposes of the Invitation to Tender and all other purposes arising from or incidental to it (including for the purposes of tender evaluation, the award of the Contract and resolution of any dispute arising from the Invitation to Tender).

12.2 By submitting a Tender, a Tenderer is regarded to have agreed to, and to have obtained from each individual whose personal data is provided in the

Tender, his consent for the disclosure, use and further disclosure by the Government of the personal data for the purposes set out in Paragraph 12.1 above.

- 12.3 An individual to whom personal data belongs and a person authorised by him in writing has the right of access and correction with respect to the individual's personal data as provided for in sections 18 and 22 and Principle 6 of Schedule 1 to the Personal Data (Privacy) Ordinance (Chapter 486 of the Laws of Hong Kong). The right of access includes the right to obtain a copy of the individual's personal data provided in the Tender.
- 12.4 Enquiries concerning the personal data collected by means of the Invitation to Tender, including the making of access and corrections, should be addressed to the Personal Data Privacy Officer of HKPF.

### **13. Warranty against Collusion**

- 13.1 The Tenderer must ensure that the Tender is prepared without any agreement, arrangement, communication, understanding, promise or undertaking with any other person (except as provided in paragraph 3 of the Non-collusive Tendering Certificate referred to in sub-Paragraph 2 below), regarding, amongst other things, price, tender submission procedure or any terms of the Tender. Bid-rigging is inherently anti-competitive and is considered serious anti-competitive conduct under the Competition Ordinance (Chapter 619 of the Laws of Hong Kong). Tenderers who engage in bid-rigging conduct may be liable for the imposition of pecuniary penalties and other sanctions under the Competition Ordinance.
- 13.2 The Tenderer shall complete and submit to the Government a Non-collusive Tendering Certificate (in the form set out in **Section 5 of Schedule B**) as part of its Tender.
- 13.3 In the event that a Tenderer is in breach of any of the representations, warranties and/or undertakings in sub-Paragraph 1 above or in the Non-collusive Tendering Certificate submitted by it under sub-Paragraph 2 above, the Government shall be entitled to, without compensation to any person or liability on the part of the Government:
  - (a) reject the Tenderer's Tender;
  - (b) if the Government has accepted the Tender, withdraw its acceptance of the Tenderer's Tender; and

- (c) if the Government has entered into the Contract with the Tenderer, terminate the Contract under Clause 12 of the General Conditions of Contract.

- 13.4 By submitting a Tender, a Tenderer is regarded to have undertaken to indemnify and keep indemnified the Government against all losses, damages, costs or expenses arising out of or in relation to any breach of any of the representations, warranties and/or undertakings in sub-Paragraph 1 above or in the Non-collusive Tendering Certificate submitted by it under sub-Paragraph 2 above.
- 13.5 A breach by a Tenderer of any of the representations, warranties and/or undertakings in sub-Paragraph 1 above or in the Non-collusive Tendering Certificate submitted by it under sub-Paragraph 2 above may prejudice its future standing as a Government contractor or service provider.
- 13.6 The rights of the Government under sub-Paragraphs 3 to 5 above are in addition to and without prejudice to any other rights or remedies available to it against the Tenderer.

#### **14. Warning against Bribery**

- 14.1 The offer of an advantage to any Government officer with a view to influencing the award of the Contract is an offence under the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong). Any such offence committed by a Tenderer or any of its officers (including directors), employees or agents will render its Tender null and void.
- 14.2 The successful Tenderer shall inform its officers, employees (whether permanent or temporary), agents and sub-contractors who are connected with the provision of the Services that soliciting or accepting of advantages, as defined in the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong) is not permitted. The successful Tenderer shall also caution its officers (including directors), employees, agents and sub-contractors against soliciting or accepting any hospitality, entertainment or inducement which may impair their impartiality in relation to the selection of its sub-contractors, if any, or the supervision of the work of the sub-contractors once selected.

#### **15. Environmental Protection**

- 15.1 Tenderers are requested to minimise the impact of their activities on the environment.



15.2 The following environment-friendly measures are recommended to be adopted in the preparation of documents relating to a Tender and the future performance of the Contract:

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

## **16. Tenderer's Commitment**

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

16.2 The Government reserves the right not to consider a Tender that directly or indirectly attempts to preclude or limit the effect of the requirement stated in Paragraph 16.1 above.

## **17. New Information**

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

## **18. Costs of Tender**

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

## 19. Request for Information

19.1 In the event that the Government determines that:

- (a) clarification in relation to any Tender is necessary; or
- (b) a document or a piece of information, other than the document or information set out in Paragraph 19.2 below, is missing from any Tender,

it may, but is not obliged to, request the Tenderer concerned to make the necessary clarification, or submit the required document or information. Each Tenderer shall thereafter within five (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 as 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.

19.2 The document and information not covered by Paragraph 19.1 above are:

- (a) duly completed and signed Offer to be Bound of the Tender Documents;
- (b) Schedule A with the price information duly completed; and
- (c) any other document or information in respect of which it is specified in the Tender Documents that a failure to provide to the Government in a Tender at the time of submission of the Tender or by the Tender Closing Time will result in the Tender not being considered.

19.3 Tenderers should also note that the Government will not consider any clarification or information submitted by a Tenderer after the Tender Closing Time irrespective of whether or not the clarification or information is submitted at the invitation 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 the other Tenderers.

## 20. Tender Evaluation

20.1 Without prejudice to other rights and powers of the Government not to consider a Tender under other applicable provisions in the Tender Documents, the evaluation of Tenders will be conducted as follows:

(a) Completeness Check

A completeness check will be conducted by checking whether the Tender has been submitted in accordance with the requirements of the Tender Documents.

(b) Assessment of Compliance with Essential Requirements

A Tender will be checked for its compliance with the Essential Requirements as detailed in the Tender Documents including but not limited to those set out in Paragraph 6 above. **Any Tender which fails to meet any of the Essential Requirements will not be considered further.**

(c) Price Assessment

(i) The Estimated Contract Price quoted by the Tenderer in Section 1(a) of the Price Schedule will be used in the price assessment.

(ii) Any prompt payment discount offered by the Tenderer in Section 3 of Schedule A will not be taken into consideration in the price assessment.

20.2 Offers received will be considered on an “**overall**” basis.

20.3 Unless the Government decides in the public interest not to proceed with the Contract, subject to the other provisions of the Tender Documents, the Tenderer whose Tender passes the completeness check, complies with all the Essential Requirements, and who submits the lowest Estimated Contract Price among the conforming offers in accordance with Paragraph 20.1 above will normally be awarded the Contract.

## 21. Tenderer's Enquiries

21.1 Any enquiries from the Tenderer concerning the Tender Documents up to the date of lodging its Tender with the Government shall be in writing and shall be submitted to:

Hong Kong Police Force,  
41/F, Arsenal House, Police Headquarters,  
No.1, Arsenal Street,

Wan Chai, Hong Kong  
(Attn.: SIP OS&OSH 2 SUPPORT)  
Facsimile: (852) 2200 4329

- 21.2 After lodging a Tender with the Government, the Tenderer shall not attempt to initiate any further contact, whether direct or indirect, with the Government on its Tender or the Tender Documents. The Government shall have the sole right to initiate any such further contact and all such contacts and any replies of the Tenderer thereto shall be in writing or formally documented in writing.
- 21.3 Unless otherwise expressly stated by the Government in writing, a statement made by the Government (whether oral or written) in response to any enquiry made by a prospective Tenderer shall be for information only. No such statement shall constitute a representation or warranty by the Government of any nature whatsoever (whether express or implied), and no invitation is made by the Government to any Tenderer or prospective Tenderer to rely on such statement. No such statement shall form part of the Tender Documents or alter, negate or constitute a waiver of any provision of the Tender Documents. Confidential information of the Government, for example, data, records, text, drawings, images or diagrams, etc. will NOT be disclosed to the Tenderer when responding to its enquiries. The execution of a confidentiality undertaking from the Tenderer is required if some confidential information will be disclosed by the Government under special circumstances, if any.

## 22. Communication with the Government

- 22.1 All communications given or made by the Government or a Tenderer in relation to the Invitation to Tender shall be in writing and sent or delivered to the other party in the manner provided in Clause 24 of the General Conditions of Contract, save that the Government may, by prior notice to a Tenderer, require the Tenderer to send or deliver a written communication by post or facsimile only. A Tenderer shall complete **Section 6 of Schedule B** and should note that the Government will not accept the use of a postal box as the Tenderer's correspondence address for any purpose whether before or after the award of the Contract.
- 22.2 All communications in relation to the Invitation to Tender shall be conducted directly between the Government and the Tenderer irrespective of the number of sub-contractors involved.

### **23. Negotiations**

- 23.1 The Government reserves the right to negotiate with any Tenderer the terms of the Tenderer's Tender and conditions of the Contract.
- 23.2 Negotiations will normally be conducted only with the Tenderer whose Tender complies with all the Essential Requirements and is in the sole opinion of the Government the most advantageous to the Government. Where there is no Tender (despite having complied with all the Essential Requirements) is so considered by the Government or where the most advantageous Tender cannot be determined until after any Counter-Proposals have been resolved or withdrawn, the Government reserves the right to hold negotiations also with the other Tenderers.

### **24. Government Discretion**

- 24.1 Notwithstanding anything to the contrary in the Tender Documents, the Government reserves the right to disqualify a Tenderer on grounds including any one of the following:
- (a) a petition is presented or a proceeding is commenced which has not been withdrawn as on the Tender Closing Date or an order is made or a resolution is passed for the winding up or bankruptcy of the Tenderer;
  - (b) the Tenderer has made or submitted a false, inaccurate or incomplete statement or representation or a forged document in the Tender or in any subsequent submission by the Tenderer or communication between the Government and the Tenderer since submission of that Tender;
  - (c) in the event of a claim or an allegation or the Government having grounds to believe that any thing(s), service(s) or material(s) to be supplied or recommended by the Tenderer infringe or will infringe any Intellectual Property Rights or any other rights of any person;
  - (d) the Tenderer has made significant or persistent breaches or deficiencies in performance of any substantive requirement or obligation under any Government or other contracts;
  - (e) the Tenderer has been convicted by the final judgement in respect of serious crimes or other serious offences;

- (f) in the event of the professional misconduct or acts or omissions that adversely reflect on the commercial integrity of the Tenderer;
- (g) any failure of the Tenderer to pay taxes to the Government; or
- (h) the Tenderer has made any restrictions or limitations 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 Contract, or reasonably expected of the Tenderer/Contractor under the Contract in the Tender or in any subsequent submission by the Tenderer or communication between the Government and the Tenderer since submission of the Tender.

The grounds specified in Paragraphs 24.1(a) to 24.1(h) above are separate and independent, and shall not be limited by reference to or inference from the other of them.

24.2 For the purposes of Paragraph 24.1 above, each Tenderer shall provide in **Section 4 of Schedule B** at the time of submission of its Tender (and thereafter up to the time of award in relation to any event occurring between the time of submission and the time of award) all information at least in relation to itself that is reasonably relevant to facilitate the Government's determination as to whether to exercise its right of disqualification, including but not limited to the following:

- (a) details of any petition or proceeding mentioned in Paragraph 24.1(a) above;
- (b) details of conviction of the Tenderer in Hong Kong or any overseas jurisdictions in respect of (i) serious offences; and (ii) other offences involving bribery, false accounting, corruption, dishonesty or employment handed down any time during a period of five (5) years preceding the Tender Closing Date and thereafter up to the time of award;
- (c) details of all infringement claims as mentioned in Paragraph 24.1(c) above; and
- (d) details of all breaches or performance deficiencies of the Tenderer or a related person as mentioned in Paragraph 24.1(d) above.

If none of the events as mentioned in Paragraphs 24.2(a) to 24.2(d) above has ever occurred within the applicable period as mentioned above, the Tenderer shall provide a statement to that effect by completing the relevant part of **Section 4 of Schedule B** at the time of submission of its Tender. If

found missing, the Government reserves the right to seek clarification pursuant to Paragraph 24.3 below.

24.3 In addition to the information mentioned in Paragraph 24.2 above, the Government reserves the right to request from a Tenderer and take into account all information about:

- (a) the Tenderer itself;
- (b) any of the directors or management staff of the Tenderer who conduct similar business as the Tenderer or whose businesses any of which is similar to the business of the Tenderer; and
- (c) any of the related persons of the Tenderer and of any directors and management staff of the related persons who conduct similar business as the Tenderer or whose businesses any of which is similar to the business of the Tenderer,

and such information is reasonably relevant to facilitate the Government's determination as to whether to exercise its right of disqualification under Paragraph 24.1 above.

Such information relating to any of the aforesaid persons may include, without limitation, details of any conviction in respect of offences referred to in Paragraph 24.2(b) above or details of any breaches or performance deficiencies referred to in Paragraph 24.1(d) above, details of any serious crimes or serious offences referred to in Paragraph 24.1(e) above, of any professional misconduct, acts or omissions referred to in Paragraph 24.1(f) above and of any failure to pay taxes to the Government referred to in Paragraph 24.1(g) above.

24.4 If the Tenderer fails to comply with the request made by the Government pursuant to Paragraph 24.3 above within such time as required by the Government or has otherwise submitted false, inaccurate or incomplete information, the Government may disqualify the Tenderer pursuant to Paragraph 24.1(b) above.

24.5 In providing the information required under Paragraphs 24.2 and 24.3 above, the Tenderer may show cause to satisfy the Government that the petition, proceedings, conviction record, infringement claim, breach or performance deficiency, or professional misconduct, as the case may be, does not cast doubt on the fitness, propriety or capability of the Tenderer to perform the Contract to be awarded in this Invitation to Tender.

24.6 If the Tenderer is a company, the expression "related person" of the Tenderer includes any one of the following:

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

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

24.7 If the Tenderer is a sole proprietor or partnership, the expression “related person” includes any one of the following:

- (a) any partner of the Tenderer (if it is a partnership);
- (b) the spouse, parent, child, brother or sister of the Tenderer, and, in deducing such a relationship, an adopted child shall be deemed to be a child of both his/her natural parents and adopting parent(s) and a step child shall be deemed to be a child of both his/her natural parents and step parent(s);
- (c) a company in which the Tenderer or any partner of the Tenderer beneficially directly or indirectly owns fifty (50) percent or more of its issued share capital or controls the composition of its board of directors.

24.8 References to related persons, directors and management staff of the Tenderer or of a related person include persons who were in such capacity at such time of the incident referred to in Paragraphs 24.1(d), 24.1(e), 24.1(f), 24.1(g) or 24.2(b) above.

## **25. Cancellation of the Invitation to Tender**

Without prejudice to the Government’s right to cancel the Invitation to Tender at its absolute discretion or for public interest reasons, where there are changes of requirement after the Tender Closing Date for operational or whatever reasons, the



Government is not bound to accept any conforming tender and reserves the right to cancel the Invitation to Tender.

## **26. Financial Vetting**

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

- (a) Originals (or copies certified by its auditors) of the audited accounts of the Tenderer, and the audited consolidated accounts of the group if the Tenderer is a subsidiary of another company for the three (3) financial years prior to the Tender Submission Date. The audited accounts must comply with the following requirements:
  - (i) The audited accounts must be prepared on the same basis for each year in accordance with the accounting principles generally accepted in Hong Kong and the disclosure requirements of the Companies Ordinance (Chapter 622 of the Laws of Hong Kong).
  - (ii) The latest audited accounts must be for the period ending no more than eighteen (18) months before the Tender Submission Date.
  - (iii) The audited accounts must contain the Director's Report, Auditor's Report, Balance Sheet, Income Statement (or commonly referred to as Profit & Loss Account), Statement of Changes in Equity, Cash Flow Statement and Notes to the Accounts.
  - (iv) All such accounts must have been audited by certified public accountants (practising) or for a non-Hong Kong company, by auditors recognised by its local law.
  - (v) If any such accounts are in a language other than Chinese or English, translations, certified as accurate by the respective consulate or a notary public registered in Hong Kong, must be provided.
  - (vi) If the Tenderer is a joint venture or partnership, audited accounts for each of the members/participants of the joint venture or partnership must be submitted if the members/participants are incorporated bodies.

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

- (b) Management accounts with a period ending not more than three (3) months before the Tender Submission Date if this has not been covered by the latest audited accounts. The accounts shall be prepared on the same basis in accordance with accounting principles generally accepted in Hong Kong. They must be certified by (i) the sole proprietor, partners or directors of the Tenderer, or (ii) certified public accountants or other accountants acceptable to the Government;
- (c) Projected profit and loss accounts and cash flow statements of the Contract for each contract year and the pre-operating period (if applicable) and, if possible, those of the company during the Contract Period, setting out the revenue, details of operating expenses, capital expenditure including the initial investments and the sources of finance, and other particulars showing how the Tenderer will deal with the Contract. The projected accounts and statements must comply with the following requirements:
  - (i) They should be certified by the company's chief executive. For a joint venture or partnership, separate certification from the chief executive of each of the members/participants of the joint venture or partnership is required.
  - (ii) The assumptions used in preparing the projections should be reasonable and must be clearly stated. All the supporting schedules and detailed calculations should also be provided.
  - (iii) The assumptions by the Government included in the Tender Documents must be reflected in the Tenderer's projections.
- (d) Copy of the latest annual return filed with the Companies Registry if the Tenderer is a corporate entity or similar statutory filings showing the authorised and issued share capital, name of shareholders and directors if the Tenderer is an overseas company;

- (e) The latest three (3) to six (6) months' bank statements (originals or certified true copies) confirming balances of its major bank accounts;
- (f) Original letters from bankers, where applicable, confirming lines of credit facilities available to the Tenderer and the current undrawn/unutilised balances of such credit facilities on or after a specified date (shortly before the Tender Submission Date or a date fixed by the Government) and stipulating the expiry date of the facilities;
- (g) Copies (certified by the sole proprietor, partners, directors or company secretary of the Tenderer) of letters of undertaking, minutes of board meetings or returns of allotment of shares to support injection of capital, where applicable;
- (h) Description and amount of all existing contracts (both public and private) on hand; and
- (i) Description and amount of all tenders that have been submitted to the Government.

26.2 Tenderers shall upon the request in writing by the Government provide the documents mentioned in Paragraph 26.1 above and any other financial and corporate information as required by the Government for assessment of the financial capability of the Tenderer to undertake the Contract within the time stipulated in the written request by the Government.

26.3 If the successful Tenderer has passed the financial assessment, it shall submit to the Government a Contract Deposit either in cash or in the form of a banker's guarantee in Hong Kong Dollars in an amount equivalent to 2% of the Estimated Contract Price in accordance with Paragraph 30.3 hereof.

26.4 If the successful Tenderer fails in the financial assessment, or it is a newly established company, or it is unable to submit adequate information for conducting a meaningful financial assessment, the Tenderer shall submit to the Government a Contract Deposit either in cash or in the form of a banker's guarantee in Hong Kong Dollars in an amount equivalent to 5% of the Estimated Contract Price in accordance with Paragraph 30.3 hereof.

## **27. Award of Contract**

27.1 Subject to the other provisions of the Tender Documents, the Government will normally award the Contract to the Tenderer which the Government

has determined to be capable of fulfilling the terms of the Contract and whose Tender conforms with all the Essential Requirements stipulated in the Tender Documents and submits the lowest Estimated Contract Price among the conforming offers.

- 27.2 Each Tenderer acknowledges that the Government may elect at its sole option to accept all or any part of the Tenderer's Tender.
- 27.3 The Government is not bound to accept the Tender with the lowest price offer or any Tender and reserves the right to accept all or any part of any Tender at any time within the Tender Validity Period. The Government is not bound to give any reasons for the acceptance or non-acceptance of any Tenders.

## 28. Acceptance

- 28.1 A Tender shall not be regarded to have been accepted by the Government unless the Government issues to the successful Tenderer an acceptance in writing ("Tender Acceptance") and send it by either post or facsimile transmission to the successful Tenderer's address or facsimile number (as the case may be) specified in **Section 6 of Schedule B**. A binding Contract between the Government and the successful Tenderer is only constituted:
- (a) if the Tender Acceptance is sent by post, at the time of posting; or
  - (b) if the Tender Acceptance is transmitted by facsimile, at the time when a transmission report is generated by the Government's facsimile machine, confirming that the Tender Acceptance has been transmitted to the aforementioned facsimile number.
- 28.2 A duplicate hard copy of the Contract, including the "Memorandum of Acceptance" duly completed by the Government, will subsequently be delivered to the successful Tenderer evidencing the earlier acceptance by post or facsimile transmission, as the case may be.
- 28.3 Tenderers who do not receive any notification within the Tender Validity Period should assume that their Tenders have not been accepted.
- 28.4 Where an Electronic Record is used in the formation of the Contract (whether with or without any electronic or digital signature), the Contract shall not be denied validity or enforceability on the sole ground that an Electronic Record was used for that purpose.

## **29. Contractors' Performance Monitoring**

If a Tenderer is awarded the Contract, its subsequent performance will be monitored and may be taken into account when its future offers for other tenders / quotations exercises are evaluated.

## **30. Contract Deposit**

30.1 Based on the rate/unit price quoted by a Tenderer in Section 1 of Schedule A, the Estimated Contract Price that may be payable by the Government under the Contract(s) will be determined by the Government.

30.2 If the Estimated Contract Price payable by the Government to the successful Tenderer exceeds HK\$1.4 million but is less than or equals to HK\$15 million, as security for the due and faithful performance of the Contract by the successful Tenderer, the successful Tenderer shall deposit with the Government via the Commissioner of Police, within twenty-one (21) days from the date of the Tender Acceptance, an amount equivalent to two percent (2%) of the Estimated Contract Price ("Contract Deposit").

30.3 If the Estimated Contract Price payable by the Government to the successful Tenderer exceeds HK\$15 million, as security for the due and faithful performance of the Contract by the successful Tenderer, the successful Tenderer shall deposit with the Government via the Commissioner of Police, within twenty-one (21) days from the date of the Tender Acceptance, an amount equivalent to two percent (2%) (if it passes the financial vetting) or five percent (5%) (if it fails the financial vetting or in cases where the financial information available is inadequate for a meaningful assessment of the Tenderer's financial capability to fulfill the Contract requirements to be conducted) as the case may be of the Estimated Contract Price.

30.4 The successful Tenderer shall pay the Contract Deposit either in cash or in the form of a banker's guarantee. Each Tenderer should state clearly in Section 4 of Schedule A 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.

30.5 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 (Chapter 155 of the Laws of Hong Kong) and acceptable to the Government;

- (b) unless otherwise agreed by the Government, it must be on the terms set out at Part 3C; 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 Tender Acceptance 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.

30.6 The Contract Deposit, whether paid by way of cash or banker's guarantee shall be returned to the Contractor or released in accordance with the Contract.

### **31. Complaints about Tendering Process or Contract Award**

The tendering process is subject to internal monitoring to ensure that the relevant contract is awarded properly and fairly. Any Tenderer who feels that its Tender has not been fairly evaluated may write to the Commissioner of Police who will personally examine the complaint and refer it to the approving authority/relevant tender boards for consideration if the complaint relates to the tendering system or procedures. The Tenderer should lodge the complaint within three (3) months after the award of Contract.

### **32. Documents of Unsuccessful Tenderers**

The Government may destroy all documents submitted by unsuccessful Tenderers three (3) months after the Contract has been constituted under Paragraph 28.1 hereof.

### **33. Consent to Disclosure**

33.1 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 notice to or consent from the successful Tenderer or any other 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.

33.2 Nothing in Paragraph 33.1 above shall prejudice the Government's power to disclose whenever it considers appropriate information of any nature

whatsoever (whether or not specified in Paragraph 33.1 above) 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 (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;
- (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 Paragraph 33.1 hereof, to the extent the information relates to a Tenderer, with the prior written consent of that Tenderer.

#### **34. Licence to use the materials submitted by Tenderers**

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

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

**Provision of COVID-19 Combined Nasal and Throat Swab Testing Services  
for the Hong Kong Police Force**

**PART 2  
GENERAL CONDITIONS OF CONTRACT**

**1. Total Services and Variation**

- 1.1 The Services to be performed under the Contract shall be as laid down in the Service Specifications, Special Conditions of Contract and Schedules and shall be carried out, as and when required, to the satisfaction of the Inspecting Officer or the Government Representative. 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.
- 1.2 The Contractor shall not extend the Services beyond the requirements specified in the Service Specifications, Special Conditions of Contract and Schedules except as directed in writing by the Government Representative; but the Government Representative may, subject to the proviso hereinafter contained, at any time during the Contract Period by notice in writing direct the Contractor to alter, amend, omit, add to, or otherwise vary any of the Services and/or the Contract Period, and the Contractor shall carry out such variations, and be bound by the same conditions, so far as are applicable, as though the said variations were stated in the Service Specifications, Special Conditions of Contract and Schedules.
- 1.3 Where a variation has been made to the Contract, the amount to be added to or deducted from the Estimated Contract Price in accordance with that variation shall be determined in accordance with the rates specified in the Price Schedule so far as the same may be applicable and where rates are not contained in the Price Schedule, or are not applicable, such amount shall be such sum as is reasonable in the circumstances.

**2. Contractor's Acknowledgement, Obligations and Contract Performance**

- 2.1 The Contractor acknowledges and agrees that it has been supplied with sufficient information to enable it to provide to the Government the Services, which shall comply fully with the requirements set out in the Service Specifications and other provisions of the Contract. The Contractor shall not be entitled to any additional payment nor be excused from any liability under the Contract as a consequence of any



misinterpretation by the Contractor of any matter or fact relating to the Service Specifications or any other provisions of the Contract.

- 2.2 The Contractor further acknowledges that the Government relies on the skill and judgment of the Contractor in the provision of the Services and the performance of its obligations under the Contract.
- 2.3 The Contractor shall perform its obligations under the Contract:
  - (a) with appropriately experienced, qualified and trained Personnel and with all due care, skill and diligence; and
  - (b) in accordance with Good Industry Practice.
- 2.4 The Contractor shall comply with all applicable laws and regulations. In particular, the Contractor shall:
  - (a) comply with the Employment Ordinance (Chapter 57 of the Laws of Hong Kong) and the Immigration Ordinance (Chapter 115 of the Laws of Hong Kong). The Contractor shall not employ any persons who are forbidden by the laws of Hong Kong or are not entitled for whatever reasons to undertake any employment in Hong Kong;
  - (b) make its own arrangements to provide Mandatory Provident Fund Schemes to its employees in accordance with the provisions of the Mandatory Provident Fund Schemes Ordinance (Chapter 485 of the Laws of Hong Kong); and
  - (c) comply with the requirements of the Occupational Safety and Health Ordinance (Chapter 509 of the Laws of Hong Kong) and any other legal provisions pertaining to the health and safety of the personnel, Government staff and others who may be affected by its performance of Services.
- 2.5 The Contractor shall secure, obtain and maintain throughout the Contract Period all and any governmental authorisations, approvals, permits or licences which may be required or necessary in connection with the performance of the Contract and to bear all costs, charges and expenses that may be incurred in obtaining and maintaining the permits and licences.
- 2.6 The Contractor shall pay all taxes, duties, fees, charges, assessments of any nature levied by relevant governmental authorities and to pay the fines and penalties imposed for any offence or infringement by the Contractor under any laws or regulations in connection with the performance of the Contract.
- 2.7 The Contractor shall be responsible for the accuracy of all drawings, documents and information supplied by the Contractor to the Government

in connection with the Services. Without prejudice to any other provisions of the Contract, the Contractor shall indemnify the Government against all losses and damages arising from, and costs and expenses incurred in connection with, any discrepancies, errors or omissions therein.

- 2.8 Any drawings and specifications reasonably required for the Contractor's guidance in the execution of the Contract shall be provided by the Government free of charge but shall be returned to the Government on completion of the Contract.
- 2.9 If at the request of the Contractor assistance of any Government staff is provided after normal business hours, the Contractor will be responsible for the overtime remuneration, subsistence allowances and travelling expenses of such Government staff directly engaged in such assistance.

### **3. Warranties and Representations**

- 3.1 The Contractor warrants, represents and undertakes that:
- (a) the Contractor and its sub-contractors, their employees and agents shall have the necessary training, skill, experience, qualifications and expertise to provide the Services on the terms and conditions set out in the Contract;
  - (b) the Contractor shall carry out the Services with all due diligence and in a timely, safe, proper, skilful and workmanlike manner;
  - (c) the Services shall conform in all respects to the Service Specifications and conditions under the Contract;
  - (d) it shall not employ any illegal workers to carry out its obligations under the Contract;
  - (e) the Contractor has full power, capacity and authority to enter into the Contract and to perform its obligations under the Contract;
  - (f) the Contract constitutes valid, legally binding obligations of the Contractor enforceable in accordance with its terms;
  - (g) all authorisations, approvals, consents, licences, exemptions and other requirements of any governmental, administrative or other authority or body in any relevant jurisdiction which are required to authorise the Contractor to execute, deliver and perform the Contractor's obligations under the Contract (including where its procedures so require, the consent of its parent company) have been duly and unconditionally obtained and are in full force and effect

and the use of the Services by the Government will not contravene any applicable laws;

- (h) all information supplied, and statements and representations made by or on behalf of the Contractor in or in relation to its Tender and the Contract are true, accurate and complete;
  - (i) no claim is being made and no litigation, arbitration or administrative proceeding is presently in progress, or to the best of the Contractor's knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;
  - (j) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
  - (k) no proceedings or other steps have been taken and not discharged (nor to the best of its knowledge, are threatened) for the winding up or bankruptcy of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar office in relation to any of the Contractor's assets or revenue;
  - (l) it owns, has obtained and is able to obtain, valid licences or necessary consent for all Intellectual Property Rights or any other rights that are necessary for the performance of its obligations under the Contract; and
  - (m) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or on its ability to fulfil its obligations under the Contract.
- 3.2 The warranties, representations and undertakings, expressed or implied, contained in Clause 3.1 and other provisions of the Contract (collectively, "Warranties" and each, a "Warranty") shall be true without limitation in time, save that in case of any Warranty expressed to be effective during the Contract Period, it shall be true on each day of the Contract Period as if it is repeated on each such day.
- 3.3 Each of the Warranties shall be separate and independent and without prejudice to any other Warranty, and shall not be limited by reference to or inference from any other Warranty or any other provision of the Contract.

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

#### **4. Costs and Expenses**

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

#### **5. Inspection**

5.1 The Services performed shall be subject to inspection and certification by the Inspecting Officer and/or the Government Representative. Upon breach of any term or condition of the Contract by the Contractor, including but not limited to failure to comply with the performance requirements in accordance with the Service Specifications, the Government shall be entitled to reject unsatisfactory performance of the Services and withhold payment of the Contract Price until the deficiencies or defects have been rectified by the Contractor.

5.2 In the event that the Contractor, its sub-contractors or any of the Services performed shall fail to comply with any of the requirements of the Contract, or in the event that there is a breach of or non-compliance with any warranty, undertaking or obligation on the part of the Contractor to observe and perform which is capable of remedy, the Government may by notice in writing to the Contractor at any time require the Contractor to make good the defect, deficiency or remedy the breach at its sole costs and expenses within such time as may be stipulated by the Government in the notice.

#### **6. Non-exclusive Contract**

Nothing in the Contract shall preclude the Government from procuring any Services from any other person.

## **7. Government Property**

When Government property is issued to the Contractor under the Contract, the Contractor shall be responsible for the due return of all such property. Should any such property be lost or damaged from any cause whatsoever while in the possession or control of the Contractor or his servants, workmen or agents, the Contractor shall pay an amount equal to its replacement costs plus all administrative costs incurred by the Government for replacing such lost or damaged property. A count of the articles or material in the possession of the Contractor may be made at any time by the Government Representative and the Contractor shall render such assistance as is necessary for this purpose.

## **8. Government Premises/Contractor's Premises**

- 8.1 The Contractor, shall ensure that all persons engaged by him 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.
- 8.2 Where the Services are carried out on the Contractor's premises, such premises shall be open to inspection by the Government Representative or Inspecting Officer at all reasonable times.
- 8.3 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.

## **9. Contract Deposit**

- 9.1 If the total Estimated Contract Price exceeds HK\$1.4 million, as security for the due and faithful performance of the Contract by the Contractor, the Contractor shall deposit with the Government via the Commissioner of Police within twenty-one (21) days from the date of Tender Acceptance, an amount specified in Paragraph 30.2 or 30.3 of the Terms of Tender ("Contract Deposit").
- 9.2 If the Contractor fails to comply with Clause 9.1 above, the Government may terminate the Contract immediately.
- 9.3 Without prejudice to Clause 9.2 above, if the Contractor fails to comply with Clause 9.1 above, the Government may withhold from any sum due or payable by the Government to the Contractor from time to time, such amount which in aggregate does not exceed the amount of Contract Deposit

payable to the Government under Clause 9.1 above. The Government may apply the amount so withheld to satisfy the Contractor's obligation under Clause 9.1 above in full or in part, and to the extent that the amount is so applied, the latter amount shall be treated as Contract Deposit paid in cash pursuant to Clause 9.1 above.

- 9.4 If:
- (a) the Contractor fails to comply with any provision of the Contract, the Government may deduct from the Contract Deposit paid in cash, or call on the banker's guarantee, to recover the amount of costs, losses, damages or expenses suffered or incurred by the Government arising from or relating to such failure; or
  - (b) any amount is due or payable by the Contractor to the Government under the Contract, the Government may deduct from the Contract Deposit paid in cash, or call on the banker's guarantee, to recover the amount due or payable, in each case irrespective of whether or not a demand for payment has been made against the Contractor.
- 9.5 The Contract Deposit (whether paid in cash or in the form of the banker's guarantee) may be deducted or called on by the Government without the Government first having recourse to any other security or rights or taking any other steps or proceedings against the Contractor or any other person, and may be enforced for any balance due after resorting to any one or more of other means of obtaining payment or discharge of the monies, obligations and liabilities owing by the Contractor to the Government.
- 9.6 If any deduction is made by the Government from the Contract Deposit or a call is made on the banker's guarantee any time prior to the expiry or termination of the Contract, the Contractor shall, within twenty-one (21) days after the date of the written demand by the Government, deposit a further sum or provide a further banker's guarantee, in a sum equal to the amount so deducted or so called, which further sum shall be added to the residue and form part of the Contract Deposit. If the Contractor is required to provide a further banker's guarantee under this Clause, the further banker's guarantee must comply with the requirements in Paragraphs 30.5(a) and (b) of the Terms of Tender and shall come into operation on the date of its execution.
- 9.7 If the Contractor fails to comply with Clause 9.6 above, the Government may terminate the Contract immediately.
- 9.8 Upon the expiry or termination of the Contract:
- (a) if the Contract Deposit is paid in cash, the Government shall, after deducting the sums due from the Contractor to the Government,

return the balance of the Contract Deposit in cash and without interest to the Contractor three (3) months after completion of all the obligations under the Contract by the Contractor to the Government's satisfaction, or the expiry or termination of the Contract, whichever is the later;

- (b) if the Contract Deposit is paid by way of a banker's guarantee, the banker's guarantee shall be discharged and released in accordance with its terms.

## **10. Variations**

Subject to the provisions of the Contract, no waiver, cancellation, alteration or amendment of or to the provisions of the Contract shall be valid unless made by an instrument in writing and duly signed by the Contractor and the Government.

## **11. Liability and Indemnities**

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

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

11.2 Without prejudice to any other provision of the Contract, the Contractor shall indemnify each of the Government and its employees and agents (each an "Indemnified Person") against:

- (a) any and all claims (whether or not successful, compromised, settled, withdrawn or discontinued, in whole or in part), actions, investigations, demands, proceedings or judgments, joint or several, threatened, brought or established against an Indemnified Person ("Claims"); and
- (b) any and all liabilities, losses, damages, costs, charges or expenses (including (i) all legal fees and other awards, costs, payments, charges and expenses and (ii) any loss or damage sustained by or any injury to or death of any person in consequence of any

Negligence of the Contractor or any of its employees, sub-contractors or agents) which an Indemnified Person may pay or incur as a result of or in relation to any Claims,

which in any case arise directly or indirectly in connection with, out of or in relation to:

- (i) the performance or breach of any provisions of the Contract by the Contractor, its employees, agents or sub-contractors;
  - (ii) the negligence, recklessness, tortious acts or wilful omission of the Contractor, its employees, agents or sub-contractors;
  - (iii) any default, unauthorised act or wilful misconduct of the Contractor, its employees, agents or sub-contractor(s);
  - (iv) any claim or allegation that the use or possession of the Materials or Third Party Materials infringes the Intellectual Property Rights or any other rights of any person; or
  - (v) the non-compliance by the Contractor, its employees, agents or sub-contractor(s) with any applicable law, or regulation, order or requirement of any government agency or authority.
- 11.3 The indemnity under Clause 11.2 above shall not apply to any injury or death caused by the Negligence of an Indemnified Person.
- 11.4 In the event of any person suffering any injury or death in the course of or arising out of the Contract and whether there be a claim for compensation or not, the Contractor shall verbally inform the Government Representative as early as practicable and deliver to the Government a written report within seven (7) working days after the occurrence of the injury or death, or on an earlier date specified by the Government Representative.
- 11.5 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).
- 11.6 The indemnities, payment and compensation given in pursuance of the Contract by the Contractor shall not be affected or reduced by reason of any failure or omission of the Government in enforcing any of the terms and conditions of the Contract.



## 12. Termination

### 12.1 If the Contractor:

- (a) fails to deliver all or any of the Service in accordance with the Contract to the full satisfaction of the Government;
- (b) is otherwise in breach of any other term or condition of this Contract and in respect of a breach which is capable of being remedied, the Contractor has not remedied such breach to the satisfaction of the Government Representative within 14 days (or such longer period as the Government Representative may approve) after receipt of a written notice from the Government Representative requiring that the same be remedied;
- (c) is persistently or flagrantly neglecting to carry out its duties and obligations under this Contract;
- (d) is found to have provided or supplied any incomplete, false or incorrect statement or information or document during the quotation process or from time during the continuance of the Contract;
- (e) has without the consent in writing of the Government Representative assigned or transferred any of its rights or obligations under this Contract;
- (f) has sub-contracted the whole or any part of this Contract without the consent in writing of the Government Representative; or
- (g) the Contractor, any officer (including director), employee, agent or sub-contractor of the Contractor commits an offence under the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong) or any law of a similar nature in relation to the Contract or any other contract made by the Contractor with the Government,

then the Government may by seven (7) days' written notice to the Contractor terminate the Contract immediately. The Government shall be under no further obligation to the Contractor from any of its obligations or liabilities under this Contract, or affecting the rights and powers conferred upon or accrued to the Government by this Contract (including rights and claims of the Government arising from any breach of any provision of this Contract by the Contractor) and the Government may itself complete the Service or may engage or employ any other Contractor to complete the Services and the Government or such other Contractor may use the training materials and reports, if any, prepared by the Contractor for such completion.

- 12.2 The Government may also by written notice to the Contractor terminate the Contract immediately upon the occurrence of any of the following events:
- (a) a proposal is made for a voluntary arrangement or any other composition, scheme or arrangement with, or assignment for the benefit of, the Contractor's creditors;
  - (b) if the Contractor is an incorporated body, a shareholders or members meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than voluntarily for the purpose of bona fide reconstruction or solvent amalgamation);
  - (c) a petition is presented for the winding-up or bankruptcy of the Contractor, which is not dismissed within fourteen (14) days after the petition is presented;
  - (d) the Contractor is or becomes insolvent, or any order is made for the Contractor's bankruptcy;
  - (e) an administrator, administrative receiver, receiver or similar officer is appointed over the whole or any part of the Contractor's business or assets;
  - (f) the Contractor suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
  - (g) the Government reasonably apprehends that any of the events mentioned above is about to occur; or
  - (h) a Force Majeure Event occurs in such manner entitling the Government to terminate the Contract under Clause 22.7 hereof.
- 12.3 The Government may at any time or times prior to the completion of the Services at its option and without cause terminate or suspend the Services by giving the Contractor a thirty (30) days' written notice of such termination. The termination shall be deemed to have come into effect upon the expiration of the 30 days' notice period.
- 12.4 On termination of the Contract for any reason, the Government is under no further obligation to the Contractor under the Contract without thereby releasing the Contractor from any of its liabilities under the Contract, or affecting any rights and powers conferred upon the Government by the Contract.
- 12.5 The expiry or 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 expiry or termination.

- 12.6 If the Contract is terminated under Clause 12.1 above and the Government makes other arrangements for the provision of any Services from any other source, the Government may recover from the Contractor: (a) any amount in excess of the Contract Price incurred by the Government in engaging another contractor to complete the uncompleted Services and all costs and expenses incurred in making the arrangements for the same including conducting tender for the uncompleted Services; and (b) any additional expenditure incurred by the Government in connection with a default by the Contractor referred to in Clause 12.1 above. If the Contract is so terminated, until the Government has established the final cost of making other arrangements contemplated under this Clause, no further payments shall be payable by the Government to the Contractor for the Services provided by the Contractor prior to termination and in accordance with the Contract for which payment has yet to be made by the Government.
- 12.7 On the expiry or termination of the Contract for any reason, the Contractor shall:
- (a) immediately return to the Government all documents containing Confidential Information, personal data and such other information, property and materials in the possession or under the control of the Contractor or any of its sub-contractors and agents, which was obtained or produced in the course of providing the Services;
  - (b) assist and co-operate with the Government to ensure an orderly transition of the provision of the Services to such person specified by the Government Representative and/or the completion of any work-in-progress as quickly as practicable;
  - (c) within twenty-eight (28) days of the date of termination compile and submit to the Government a report of all relevant information, facts, data, findings and conclusions in respect of the Services which have been provided up to the effective date of termination; and
  - (d) promptly provide all information concerning the provision of the Services which may reasonably be requested by the Government for the purposes of adequately understanding the manner in which the Services have been provided or the purpose of allowing the Government or a replacement contractor to conduct due diligence; and
  - (e) Notwithstanding anything herein to the contrary, and regardless of the cause (the absence thereof) or basis therefor, in the event of any

termination or early expiration of this Contract, the Contractor shall refund to the Government any amount paid in respect of such part of the Services, which have not been performed at the date of effective termination.

- 12.8 Save as otherwise expressly provided for in the Contract, no compensation whatsoever (including compensation for any loss or expense arising from any consequential loss or damage, or loss of opportunity, suffered or incurred by the Contractor) shall be payable by the Government to the Contractor as a result of any suspension or early termination of the Contract by the Government.

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

13.1 The Government shall be the exclusive owner of the Materials. Except for the Third Party Materials, all the Intellectual Property Rights in the Materials shall vest in the Government immediately upon creation. Subject to Clause 13.3 below, the Contractor warrants that such Materials shall be original works created, developed or made by or on behalf of the Contractor.

13.2 The Contractor shall not use or allow to be used directly or indirectly the Materials except for the performance of its obligations under the Contract or except with the prior written approval of the Government. "Use" includes any acts restricted by copyright (including reproduction) set out in sections 22 to 29 of the Copyright Ordinance (Chapter 528 of the Laws of Hong Kong).

13.3 If any materials of which the Intellectual Property Rights are owned by third parties and incorporated into the Materials or supplied or used by the Contractor in the performance of the Contract ("Third Party Materials"), the Contractor shall identify the Third Party Materials to the Government and keep the Government informed in writing of such Third Party Materials. The Contractor hereby grants or in case it is not empowered to do so, shall at its own costs and expenses procure that there will be granted, in favour of the Government, its authorised users, assigns and successors-in-title a royalty-free, non-exclusive, irrevocable, perpetual, worldwide and sub-licensable licence, for all purposes contemplated by the Contract, to use (including doing any of the acts restricted by copyright set out in sections 22 to 29 of the Copyright Ordinance (Chapter 528 of the Laws of Hong Kong)) the Third Party Materials.

13.4 The Contractor warrants that:

- (a) prior to the use and incorporation of the Third Party Materials into the Materials or in providing the Services, the Contractor shall have

obtained from the third party Intellectual Property Rights owners the grant of all necessary clearances and licences for itself and its authorised users and for the Government, its authorised users, assigns and successors-in-title to use the Third Party Materials in the manner and for any of the purposes contemplated by the Contract. The costs of the above clearances and licences shall be borne by the Contractor;

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

- 13.5 The Contractor hereby irrevocably waives and undertakes to procure, at its own costs and expenses, its officers, employees, agents, sub-contractors and all authors concerned to irrevocably waive all moral rights (whether past, present or future) in respect of the Materials and Third Party Materials. Such waiver shall operate in favour of the Government, its authorised users, assigns and successors-in-title and shall take effect upon creation of the Materials or upon the grant of the licence to the Government, its authorised users, assigns and successors-in-title or upon the delivery of the Third Party Materials to the Government (as the case may be).
- 13.6 The Contractor shall at its own costs execute or procure the execution of any further assignments, deeds, licences, documents and instruments and do or procure the doing of any further things as may be required by the Government to give full effect to Clauses 11.2, 13 and 31 of the General of Conditions of Contract, and shall provide all such assignments, deeds, licences, documents and instruments to the Government within fourteen (14) days from the date of the Government's written request or such longer period as may be agreed by the Government in writing.
- 13.7 The provisions of this Clause 13 shall survive the expiry or termination of the Contract and shall continue in full force and effect notwithstanding such expiry or termination.

#### **14. Conflict of Interest**

14.1 The Contractor shall during the Contract Period and for three (3) months thereafter:

- (a) ensure that it (including each and every employee of the Contractor) and each of its sub-contractors and each of their respective employees, officers and agents engaged in the discharge of the obligations hereunder, and each of their respective associates and associated persons, shall not undertake any service, task, or job or do anything whatsoever for or on behalf of any third party (other than in the proper performance of the Contract) which conflicts or which may be seen to conflict with the Contractor's duties or obligations under the Contract without the prior written approval of the Government (which approval shall not be unreasonably refused or delayed); 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, professional, commercial, personal or other interests of the Contractor or any of the Contractor's sub-contractors or any of their respective employees, officers and agents deployed for the performance of the Contractor's obligations hereunder or their respective associates or associated persons, conflict or compete, or may be seen to conflict or compete, with the Contractor's duties or obligations under the Contract.

14.2 The Contractor shall ensure that each of its associate and associated person, each of its sub-contractors and each of their respective employees, officers and agents deployed in the performance of the Contractor's obligations hereunder and their respective associates and associated persons shall keep themselves informed and inform the Contractor and keep it informed regularly of all facts which may reasonably be considered to give rise to a situation in which the financial, professional, commercial, personal or other interests of such persons, conflict or compete, or may be seen to conflict or compete, with the Contractor's obligations under the Contract.

#### **15. Probity**

15.1 The Contractor acknowledges it has been reminded that:

- (a) dishonesty, theft and corruption on its part or that of its employees, agents or sub-contractors are criminal offences and may lead to prosecution under section 9 of the Prevention of Bribery Ordinance (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);

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

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

15.3 The Government may terminate the Contract immediately if the Contractor or any of its employees, agents and sub-contractors is convicted of an offence under the Prevention of Bribery Ordinance, the Theft Ordinance or the Crimes Ordinance.

## **16. Process Agent**

Where the Contractor does not have a place of business in Hong Kong, the Contractor shall irrevocably appoint the person whose name and address are set out in the Section 6 of Schedule B as its process agent to receive on its behalf service of process of any legal action or proceedings arising out of or in connection with the Contract in Hong Kong. Service upon the process agent shall be good service upon the Contractor whether or not it is forwarded to and received by the Contractor. If, for any reason, the process agent ceases to be or ceases to be able to act as process agent, or no longer has an address in Hong Kong, the Contractor shall appoint a substitute process agent with an address in Hong Kong acceptable to the Government and to deliver to the Government a copy of the substitute process agent's acceptance of that appointment within thirty (30) days. In the event that the Contractor fails to appoint a substitute process agent, or fails to notify the Government of the name and address for service of that substitute process agent, it shall be effective service for the Government to serve the process upon the last known address in Hong Kong of the last known process agent for the Contractor notified to the Government notwithstanding that such process agent is no longer found at such address or has ceased to act or has ceased to be able to act.

## **17. Relationship of the Parties**

The Contractor enters into the Contract with the Government as an independent contractor only and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership, or a joint venture between the Government and the Contractor. Unless otherwise expressly provided for in the Contract, neither party is authorised to act in the name of, or on behalf of, or otherwise bind the other party.

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

18.1 Unless otherwise provided for in the Contract, the Contractor shall not, without the prior written consent of the Government, assign, transfer, sub-contract or otherwise dispose of any of its interests, rights, benefits or obligations under the Contract. The performance of the Contract by the Contractor shall be personal to it.

18.2 The Contractor shall not without the prior written consent of the Government Representative sub-contract the whole or any part of the Contract to any person and/or organization whatsoever. The Contractor shall 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 shall be deposited with the Government within seven (7) days after the effective date of the sub-contract.

18.3 The Contractor shall remain fully liable and shall 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 shall be responsible for the acts, defaults or neglect of any sub-contractor, its employees and agents.

## **19. Disclosure of Information**

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

- (a) the Services provided or to be provided by the Contractor;
- (b) the Estimated Contract Price and any other fees, cost and expense payable to the Contractor pursuant to the Contract;



- (c) the price proposal submitted prior to the date of the Contract by the Contractor to the Government in relation to the Services; and
- (d) the engagement by the Government of the Contractor under the Contract and the name and address of the Contractor and persons appointed or engaged by the Contractor to assist in the performance of the Contract.

## **20. Publicity**

- 20.1 Whether before, during or after the expiry or termination of the Contract Period, the Contractor shall not use the Government's name in any document, publication, advertisement or publicity material without the prior written consent of the Government.
- 20.2 Subject to Clause 20.1 above, the Contractor shall submit to the Government Representative for approval all the proposed advertising or other publicity material relating to the Contract, the Services or other services provided or other work done in connection with the Contract wherein the Government's name is mentioned or language used from which a connection with the Government can reasonably be inferred or implied.
- 20.3 Notwithstanding any consent or approval given under Clauses 20.1 or 20.2 above, whenever required by the Government, the Contractor shall remove all advertisement and publicity material relating to the Contract wherein the Government is mentioned or language used from which a connection with the Government can reasonably be inferred or implied and the Contractor must comply with such request.

## **21. Vicarious Liability**

Any act, default, neglect or omission of any officers, employees, agents or sub-contractors of the Contractor shall be deemed to be the act, default, neglect or omission of the Contractor.

## **22. Force Majeure**

- 22.1 If the Contractor becomes aware of any matter likely to constitute a Force Majeure Event, the Contractor shall forthwith notify the Government in writing of that matter and all relevant particulars.
- 22.2 Within three (3) days after the occurrence of a Force Majeure Event, the Contractor shall notify the Government in writing of the full particulars of the Force Majeure Event including its nature, extent and likely duration of

its effect on the Contractor's ability to perform its obligation under the Contract. In the event of an occurrence of a Force Majeure Event, the Government may on its own issue a notice to the Contractor noting the occurrence of the Force Majeure Event and requiring the Contractor to suspend all or any of the obligations under the Contract. A notice issued by the Contractor or the Government pursuant to this Clause is hereinafter referred to as the "Suspension Notice".

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

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

22.4 To the extent that the performance of obligations by the Contractor under the Contract is prevented by a Force Majeure Event, the Contractor's performance of such obligations will, subject to Clause 22.5 below, be suspended to that extent from the date the Contractor or the Government gives a Suspension Notice in respect of that Force Majeure Event until the Contractor ceases to be so prevented ("Cessation Date"). Notwithstanding anything in the Contract to the contrary, as soon as the Government issues a Suspension Notice to the Contractor, the Contractor shall forthwith suspend the performance of the obligations to the extent specified in the Suspension Notice.

22.5 During the suspension of any obligations under Clause 22.4 above:

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

- 22.6 As soon as the relevant Force Majeure Event has ended, the Contractor shall forthwith notify the Government of the Cessation Date, or the Government may on its own, after consultation with the Contractor, by notice in writing to the Contractor, determine the appropriate Cessation Date. The Contractor shall immediately after the Cessation Date resume performance of the suspended obligations in accordance with the terms and conditions of the Contract. In the event of any disagreement between the Government and the Contractor on the appropriate Cessation Date, the Government's decision shall be final in the absence of manifest error.
- 22.7 Should suspension of the performance by the Contractor of its obligations under the Contract persist or be likely to persist as a result of a Force Majeure Event, the Government shall be entitled to terminate the Contract pursuant to Clause 12.2 hereof.
- 22.8 The Contractor shall ensure that provisions similar to this Clause 22 are incorporated in all its contracts with sub-contractors made pursuant to the Contract.

### **23. Retention of Records**

The Contractor shall keep and maintain until six (6) years after the expiry of the Contract, or such longer period as may be agreed by the parties, full and accurate records of the Contract including the Services provided under it, all expenditure reimbursed by the Government, and all payments made by the Government. If requested by the Government, the Contractor shall afford the Government or the Government Representative access to such records as may be requested by the Government.

### **24. Notices**

- 24.1 Each notice, demand, invoice, correspondence or other communication given or made under the Contract by a party shall be in writing and delivered or sent to the other party at its postal address, facsimile number or email address set out in the Section 6 of Schedule B (or such other postal address, facsimile number or email address as the addressee has by no less than seven (7) working days' prior written notice specified to the other party).
- 24.2 Such notices, demands, invoices, correspondence or other communications shall be addressed as provided in Clause 24.1 above and, if so addressed, shall be deemed to have been duly given or made as follows:

- (a) if sent by personal delivery during normal business hours on a working day, upon delivery at the address of the relevant party;
- (b) if sent by post, four (4) days (for any place in Hong Kong) and seven (7) days (for any place outside Hong Kong) after the date of posting;
- (c) if sent by facsimile during normal business hours on a working day, when despatched with confirmed receipt as evidenced by the transmission report generated at the end of the transmission of such facsimile by the facsimile machine used for such transmission;
- (d) if sent by email, when actually received in a form readable by an individual.

## **25. Entire Agreement**

25.1 The Contract constitutes the whole agreement between the parties thereto and supersedes any previous agreements or arrangements between them relating to the subject matter hereof. The Contractor acknowledges that in entering into the Contract, it has not relied on any statements, warranties or representations given or made by the Government.

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

## **26. Governing Law**

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

## **27. Severability**

If any provision of the Contract is found by any authority or court of competent jurisdiction to be illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect the other provisions of the Contract, all of which shall remain in full force and effect.

## **28. Waiver**

- 28.1 No failure, delay, forbearance or indulgence by any party to the Contract to exercise any right, power or remedy available to it under the Contract or at law or in equity shall operate as a waiver thereof; nor shall any single or partial exercise of the same preclude any other or further exercise thereof or the exercise of any other right, power or remedy. A right or a remedy of each party under the Contract shall be cumulative and not exclusive of any other rights, power or remedies provided by the Contract, at law or in equity. Without limiting the foregoing, no waiver by any party of any breach by the other party of any provision hereof shall be deemed to be a waiver of any subsequent breach of that or any other provision hereof.
- 28.2 Without prejudice to the generality of Clause 28.1 above, any right of termination of the Contract or any other right, power or remedy of whatsoever nature conferred upon the Government under the Contract shall be exercisable by it in addition to and without prejudice to any other rights and remedies available to it under the Contract or at law (and, without prejudice to the generality of the foregoing, shall not extinguish any right to damages to which the Government may be entitled in respect of the breach of the Contract) and no exercise or failure to exercise a right of termination shall constitute a waiver by the Government of any other right, power or remedy.

## **29. 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.

## **30. Assistance in Legal Proceedings**

- 30.1 If and whenever requested to do so by the Government Representative, the Contractor shall provide to the Government all relevant information, documents (including documentation and statements from staff) and other assistance in connection with any inquiry, investigation, arbitration, tribunal hearings or court proceedings in which the Government may become involved or any internal disciplinary hearing of the Government that arises out of or in connection with the Contract or the Contractor's presence at the Government's premises. If requested by the Government,

the Contractor shall arrange for relevant staff to give evidence at such inquiries, investigations, arbitrations, hearings or proceedings.

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

### **31. Confidentiality**

- 31.1 The Contractor shall not disclose and shall treat as proprietary to the Government and confidential all Government Data, any other information, report, document, plan, record, data (including any personal particulars records and personal data (as defined in the Personal Data (Privacy) Ordinance (Chapter 486 of the Laws of Hong Kong)), database, code or particulars (a) furnished or disclosed by or on behalf of the Government or by any other person to the Contractor; or (b) otherwise is accessible by or available to the Contractor in the course of performing the Contract; or (c) any Materials, advice, recommendations, reports or any other materials containing information belonging to the Government or specifically relating to or relevant to the Services provided to the Government (collectively “Confidential Information”) in whatever form or media. The restrictions on disclosure contained in this Clause 31.1 shall not apply to the disclosure of any Confidential Information if:

- (a) such disclosure to any person employed, used or engaged by the Contractor in performing the Contract is made in circumstances where such disclosure is necessary in the reasonable opinion of the Contractor for the performance of the Contractor’s duties and obligations under the Contract, provided that the Contractor has imposed on the said person employed, used or engaged an absolute and legally binding obligation to the Contractor to refrain from disclosing the Confidential Information to a third party;
- (b) such Confidential Information is already known to the recipient other than as a result of disclosure by the Contractor or any other member of the Restricted Group;
- (c) such Confidential Information is or becomes public knowledge other than as a result of disclosure by the Contractor or any other member of the Restricted Group;

- (d) such disclosure is made in circumstances where such disclosure is required pursuant to any laws of Hong Kong or an order of a court of Hong Kong; or
  - (e) with the prior consent in writing of the Government.
- 31.2 Without prejudice to any other provision of the Contract, the Contractor shall indemnify and keep indemnified each of the Government, its assigns successors-in-title and authorised users from and against everything stated in Clauses 11.2(a) and 11.2(b) of the General Conditions of Contract which the Government (or any of its assigns or successors-in-title or authorised users) may suffer or incur directly or indirectly as a result of or arising from or in connection with or in relation to:
- (a) a breach of confidence (whether under the Contract or general law) by the Contractor or any other member of the Restricted Group;
  - (b) any actions or claims made in respect of information subject to the Personal Data (Privacy) Ordinance (Chapter 486 of the Laws of Hong Kong), which action and/or claim would not have arisen but for the act, negligence or omission of the Contractor or any of its employees, agents or sub-contractors in connection with the performance of the Contract; and
  - (c) any act done or omission in the performance of the Contract that contravenes the Unsolicited Electronic Messages Ordinance (Chapter 593 of the Laws of Hong Kong).
- 31.3 The Contractor shall use the Confidential Information solely for the purposes of the Contract. The Contractor shall not, at any time whether during the Contract Period or after the expiry or termination (howsoever occasioned) of the Contract, use, disclose, publish or reproduce, and shall procure and ensure each person who may be imparted with any Confidential Information in accordance with Clause 31.1 above shall not use, disclose, publish or reproduce, the Confidential Information for any other purposes without the Government's prior written consent.
- 31.4 When requested by the Government, the Contractor shall forthwith require any of its officers or employees or agents or sub-contractors as the Government may stipulate, and such other persons to whom disclosure is made pursuant to Clause 31.1 above, to execute a written undertaking in favour of the Contractor and the Government in a form to be determined by the Government agreeing to the restrictions attached to the Confidential Information set out in this Clause 31 and the Contractor agrees to provide certified true copies of any such undertakings to the Government within fourteen (14) days from the date of request by the Government. The Contractor further agrees that, if so required by the Government, it will, at

its own cost and expense, take such actions and steps as are lawful and necessary to enforce such undertaking in the event of any breach thereof by anyone who has executed such undertaking.

- 31.5 The Contractor shall establish and maintain all necessary security measures and procedures for the safe custody of the Confidential Information in the Contractor's possession or under its control and to prevent unauthorised access thereto or use thereof.
- 31.6 The Contractor shall not, and shall ensure that no other member of the Restricted Group will, save to the extent necessary for performing the Contract, peruse, retain possession or control of, or duplicate, any Confidential Information or any copy thereof (in whatsoever media or format).
- 31.7 The Contractor shall ensure that each of its employees, agents, sub-contractors, and any other persons involved in the performance of the Contract are aware of and comply with the provisions of this Clause 31 and the Official Secrets Ordinance (Chapter 521 of the Laws of Hong Kong).
- 31.8 The Contractor shall promptly notify the Government of, and give the Government all reasonable assistance in connection with, any proceedings which the Government may institute against any person pursuant to any of the provisions in this Clause 31.
- 31.9 The Contractor acknowledges that any unauthorised disclosure or use of the Confidential Information can cause irreparable harm and significant injury to the Government, the degree of which may be difficult to ascertain or that damages may not be an adequate remedy. Accordingly, the Contractor agrees that the Government shall have the right to obtain and be immediately granted an injunction prohibiting any breach of this Clause 31 and/or specific performance ensuring the compliance of this Clause 31 in light of any threatened or actual breach of this Clause 31, without prejudice to its other rights and claims including those available under the Contract or at law arising from such breach.
- 31.10 Without prejudice to the generality of the foregoing provisions, the Contractor further undertakes that it will not at any time itself or through any associate or associated person or employee, sub-contractor or agent use, sell, license, sub-license, create, develop or otherwise deal in any Confidential Information.
- 31.11 The Government may request the Contractor in writing at any time that any Confidential Information disclosed pursuant to the terms of this Clause 31 and any copies, analyses, compilations and extracts thereof whether in hardcopies, electronic format or other media be returned, destroyed and/or deleted with a written statement to the effect that upon such return,



destruction and/or deletion it has not retained in its possession or under its control, either directly or indirectly, any Confidential Information in whatever form and medium. The Contractor shall comply with any such request from the Government within seven (7) days of receipt of such request.

### **32. Contracts (Rights of Third Parties) Ordinance**

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

### **33. Order of Precedence**

In the event of, and only to the extent of, any conflict or inconsistency between the Clauses of the Contract, any document referred to in those Clauses and the Schedules, 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;
- (c) Schedules;
- (d) General Conditions of Contract; and
- (e) any other materials which were submitted by the Contractor as part of its Tender and attached to the Contract.

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

**Provision of COVID-19 Combined Nasal and Throat Swab Testing Services  
for the Hong Kong Police Force**

**PART 3  
SPECIAL CONDITIONS OF CONTRACT**

**1. Contract Period**

- 1.1 The Contractor shall provide the Services to the Government commencing on the date of Tender Acceptance to the fulfilment of the contractual obligations to the full satisfaction of the Government; or the end of twenty-four (24) months from the date of Tender Acceptance, whichever is the later.
- 1.2 Except in circumstances as provided in Clause 12 of the General Conditions of Contract, the Contractor shall during the Contract Period provide the Services in accordance with the terms and provisions stipulated in the Service Specifications.

**2. Illegal Workers**

- 2.1 The Contractor undertakes not to employ any person who is not lawfully employable under the Immigration Ordinance or under the provisions of any enactment for the time being in force or under any other law enforceable in Hong Kong in the execution of any Government contracts. Should the Contractor be found to have employed illegal workers in breach of this undertaking, the Government may by notice in writing, terminate the Contract and the Contractor is not entitled to claim any compensation.
- 2.2 The Contractor shall be liable for all the costs and expenses reasonably incurred by the Government as a result of the termination of the Contract under Clause 12 of the General Conditions of Contract.

**3. Total Services and Variation**

- 3.1 The Services to be performed under the Contract shall be as laid down in the Services Specifications for the Services, and other parts of the Contract and shall be carried out, as and when required, to the satisfaction of the Government. 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 Services Specifications for the Services 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 Schedule.
- 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 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.
- 3.4 The HKPF is not obliged to order more than the estimated quantity specified in respect of Item Code A of the service in the Price Schedule but may require the Contractor to provide more than the estimated quantity of any item specified in the Price Schedule within the limit of Contract Price at HK\$10 million. Within such limits, the Contractor shall provide the services requested by the Government Representative in accordance with the requirements of the Contract at the same unit rates specified in the Price Schedule.
- 3.5 Where the Government Representative requests the Contractor to provide the services for the estimated quantity below or in excess of those specified in the Price Schedule and within the limits referred to in sub-clause (4) above, the quantities specified in the Price Schedule shall be deemed to be amended by the revised quantities and the same unit rates specified in the Schedule shall apply to the revised quantities of Service.

#### **4. Payment for Services**

- 4.1 The Contract Price shall be inclusive of all costs, charges and disbursements incurred by the Contractor in the performance of the Services including but not limited to the costs and expenses for the provision of specimen collection kits that meet the requirements in the Service Specifications, all out-of-pocket expenses, such as charges for the hiring of staff members, traveling expenses, production, broadcasting and any other out-of-pocket expenses

incurred by the Contractor in carrying out the Services. The Contract Price shall also include any fees, costs and disbursements incurred to perform any part or parts of the Services, or to advise or assist in relation thereto.

4.2 Apart from the Contract Price, under no circumstances whatsoever will the Government be liable to pay any other money or compensation to the Contractor or to reimburse any fee, cost, charge or disbursement whatsoever incurred by the Contractor, whether in respect of the subcontracting or otherwise, and whether mentioned in Clause 4.1 above or otherwise, in the discharge of the Services.

4.3 Always subject to the completion of the Services to the full satisfaction of the Government, the Government will pay to the Contractor monthly in arrears after the end of each calendar month based on the following formula:-

[Actual total no. of tests specified in Item Code (A) performed by the Contractor and accepted by the Government in a calendar month] x [Unit Rate quoted in Section 1(a) of the Price Schedule]

+ [Actual total no. of tests specified in Item Code (B) performed by the Contractor and accepted by the Government in a calendar month] x [Unit Rate quoted in Section 1(a) of the Price Schedule]

+ [Actual total no. of on-site collection services specified in Item Code (C) performed by the Contractor and accepted by the Government in a calendar month] x [Unit Rate quoted in Section 1(a) of the Price Schedule]

+ [Actual total no. of on-site collection services specified in Item Code (D) performed by the Contractor and accepted by the Government in a calendar month] x [Unit Rate quoted in Section 1(a) of the Price Schedule]

4.4 The Contractor shall submit a monthly invoice to the Government Representative within seven (7) working days after the end of each calendar month upon the Government's confirmation of satisfactory completion of the Services.

4.5 All payments relating to this Contract will be made in Hong Kong Dollars. Each invoice shall be submitted by the Contractor to the Government under the Contract and shall state the tender reference number, contract number, particulars of the Services completed, unit rate as stipulated in the Price Schedule, and the total value of that payment.

4.6 Unless otherwise agreed by the Government Representative, the Contractor shall be paid within thirty (30) days from the date of receipt of a correct invoice or from the date of acceptance of the Services, whichever is the later.

- 4.7 Payment in respect of the Services provided thereof shall be made by the Government. All correspondence concerning payment shall be forwarded to:

Hong Kong Police Force,  
41/F, Arsenal House, Police Headquarters,  
No.1, Arsenal Street,  
Wan Chai, Hong Kong  
(Attn.: SIP OS&OSH 2 SUPPORT)  
Facsimile: (852) 2200 4329

The Government shall not be held responsible for any delay in payment if the above documents are not properly addressed.

- 4.8 Notwithstanding any provision of the Contract, the Government is entitled to withhold payment of all or any part of the Contract Price and any other sum payable by the Government to the Contractor under the Contract if:
- (a) the Contractor fails to observe or perform any provision of the Contract;
  - (b) the Government disputes on any reasonable ground its obligation to pay the amount in question;
  - (c) the Government has reasonable grounds to believe that the Contractor is or will be liable to the Government under any provision of the Contract for the loss or damage suffered by the Government; or
  - (d) withholding of payment is required by any applicable law.
- 4.9 No payment made by the Government under the Contract shall prejudice or carry any implication whatsoever on any rights or cause of action which has accrued or may accrue, or any remedy available, to the Government in respect of any breach of the Contract by the Contractor.

## **5. Admission to Government Premises**

The Government shall be entitled to refuse admission of any Personnel to any Government premises or any part thereof, whose admission will be undesirable, in the opinion of the Inspecting Officer. The Contractor shall immediately provide substitute Personnel to continue the performance of the Services.

## 6. Insurance

- 6.1 Without prejudice to other rights of the Government under the Contract, the Contractor shall acquire and maintain throughout the Contract Period solely at its own costs the following insurance policies with a reputable insurance company acceptable to the Government and authorized under the Insurance Ordinance (Chapter 41 of the Laws of Hong Kong). The terms and conditions of the insurance policies shall be subject to the approval of the Government. Where the insured amount is not specified below, it shall not be less than the minimum amount required under the applicable law.
- (a) Employer's liability and workers compensation insurance as required by the Employees' Compensation Ordinance (Chapter 282 of the Laws of Hong Kong) in respect of Contractor's employees (including the Personnel and employees of any permitted sub-contractors) engaged in the performance of and in connection with the Contract;
  - (b) Public liability insurance against any and all damages, losses, liabilities, claims, demands, proceedings, costs and expenses whatsoever in respect of any personal injury to or the death of any person and in respect of any loss, destruction, injury and damage to any property, real or personal, arising out of or in connection with the Contract of an insured amount of not less than Hong Kong Dollars Ten Million (HK\$10,000,000) for any one occurrence with unlimited number of claims for the Contract Period; and
- 6.2 If required by the Government, the Contractor shall deliver to the Government copies of all insurance policies required under the Contract together with receipts or other evidence of payment of the latest premium due under the policies.
- 6.3 If the Contractor fails to effect and keep in force the insurance policies referred to above, the Government may effect and keep in force any such insurance policies and pay such premium or premiums as may be necessary for this purpose and from time to time deduct the amounts so paid by the Government as aforesaid from any moneys due or which may become due from the Government to the Contractor or recover the same as a debt due from the Contractor.
- 6.4 If deductibles are provided in the public liability insurance or the property insurance policy which are to be borne by the insured, the Contractor shall be solely responsible for payment of the amount of the deductibles and shall reimburse the Government such sum if the Government is required to make such payment.

- 6.5 The Contractor shall be responsible for lodging claims with the insurance company and shall notify the insurance company within the time period specified in the policy of the occurrence of any event liable to give rise to a claim.
- 6.6 In the event of any of the Personnel or Contractor's agents suffering any injury or death in the course of performing or arising out of the Contract and whether there be a claim for compensation or not, the Contractor shall within twenty-four (24) hours give notice in writing of such injury or death to the Inspecting Officer.
- 6.7 No provision in any insurance and no amount of insurance covered shall 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.

## **7. Defects in the Service**

In the event that any of the Services referred to in the Service Specifications fail to achieve the requirements or to comply with the specifications specified in Service Specifications or any other relevant provisions of this Contract, the Contractor shall, if requested by the Government Representative, within 14 days or such later date as may be specified by the Government Representative, perform all such services necessary to correct the same at the Contractor's sole cost and expense to the Government's satisfaction.

## **8. Acceptance**

Acceptance by the Government of the satisfactory completion of all or any part of the Services provided shall occur on a date on which the Government Representative gives written notice to the Contractor to this effect.

## **9. Prohibition of Assignments**

Neither the Government nor the Contractor shall assign or transfer the whole or a part of either the rights or the obligations under the Contract to a third party (other than a subsidiary or associate of the Contractor) without the prior written consent of the other.

## **10. Staff Provided Not Government Employee**

The staff supplied by the Contractor in the execution of this Contract shall at no time be regarded as employees, servant, agents or partners of the Government. The Government shall not have any obligation whatsoever to pay any such persons for providing the Services and the Government shall not be under any duty whatsoever towards them save that owed by an occupier of the premises to his visitors. All of the Contractor's employees and agents shall not represent themselves, as employee, servant, agent or partner of the Government.

## **11. Services to be Provided**

11.1 The Contractor shall provide the Services in accordance with the terms and conditions of the Contract at such time and in such manner as the Government Representative may specify from time to time and to the satisfaction of the Government Representative.

11.2 The Contractor shall provide the Services on an **“as-and-when-required”** basis during the Contract Period in accordance with the terms and conditions of the Contract.

11.3 This Contract does not entitle the Contractor to provide the Services or any part thereof to the Government on a sole and exclusive basis. The Government shall have the absolute right not to obtain the Services or any part of thereof from the Contractor and shall have the right to obtain the Services or any part thereof from other service providers. The Government shall not be liable to the Contractor for any loss, damage or compensation whatsoever arising out of the exercise of the Government's rights hereof.

## **12. Delivery Requirement**

12.1 Time shall be of the essence of the Contract. The Contractor is required to complete the laboratory testing service for Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2) by 'Reverse Transcription Polymerase Chain Reaction (RT-PCR)' and shall deliver to the HKPF the test results using the agreed format within twenty-four (24) hours from the time that the Combined Nasal and Throat Swab (CNTS) specimens have been collected by the Contractor, including Saturday, Sunday and public holidays.

12.2 The Contractor shall ensure that adequately trained staff and suitable equipment are available for providing the Services.



- 12.3 Under exceptional circumstances, such as machine breakdown, equipment out of calibration, the Contractor shall immediately notify the Government Representative in writing for further instructions.

### **13. Secrecy**

- 13.1 The Contractor shall allow the Government Representative access to all files and documents pertaining to the testing during the term of this Contract or at any time thereafter.
- 13.2 The Contractor shall not at any time during or after the term of this Contract to divulge or allow to be divulged to any person any information relating to the testing other than with the prior written consent of the Government Representative.
- 13.3 The Contractor shall not make any statement to the press/ news media concerning any information relating to the testing without the prior approval of the Government Representative.

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

**Provision of COVID-19 Combined Nasal and Throat Swab Testing Services  
for the Hong Kong Police Force**

**PART 3A  
SERVICE SPECIFICATIONS**

1. The Contractor shall be a holder of valid certificate of Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2) Quality Assurance Programme (QAP) issued by the Centre for Health Protection (CHP) of the Department of Health.
2. The Contractor shall be accredited by the Hong Kong Laboratory Accreditation Scheme (HOKLAS), or HOKLAS's Mutual Recognition Arrangement partners based on ISO 15189:2012. The accreditation for the laboratory used by the Contractor for the purpose of this Contract shall be valid throughout the Contract Period.
3. The Contractor shall provide laboratory testing service for SARS-CoV-2 by 'Reverse Transcription Polymerase Chain Reaction (RT-PCR)' for the HKPF. The specimen type is Combined Nasal and Throat Swab (CNTS) and the specimen shall be collected by the Contractor using the specimen collection kits provided by the Contractor.
4. The Contractor shall provide trained personnel (at least two registered nurses and two assistants) with all equipment and material required to specified collection points for taking specimens from 0700 hours to 1900 hours each day at the collection points as specified by the HKPF.
5. The Contractor shall provide the required amount of CNTS specimen collection kits and deliver the collection kits to the specified collection points according to the schedule provided by the HKPF. Each CNTS specimen collection kit (with two (2) swabs in each kit) should have three (3) identification / barcode labels.
6. The Contractor shall perform RT-PCR testing for SARS-CoV-2 on the CNTS specimens provided by the HKPF without pooling and shall issue reports on the following day after samples have been collected.
7. The Contractor shall deliver to the HKPF the test results using the agreed format within twenty-four (24) hours from the time that the CNTS specimens have been collected by the Contractor, including Saturday, Sunday and public holidays.
8. The Contractor shall achieve the daily specimen collection capacity of not less than 600 number of specimens at each collection point.
9. The Contractor shall achieve the daily testing capacity of not less than 5 000 number of tests by completing **Section 3 of Schedule B of Part 3B**.

10. The Contractor shall handle all personal data in full compliance of The Personal Data (Privacy) Ordinance (PDPO) and relevant government guidelines/ requirements applicable to the service. The Tenderer shall be able to observe strict confidentiality of all information.
11. The Contractor shall handle all clinical waste generated in accordance with the Waste Disposal (Clinical Waste) (General) Regulation. The Tenderer must provide (i) the estimated amount of clinical waste to be disposed of (on daily basis); and (ii) the location of laboratory that the clinical waste would be collected.
12. The Contractor shall handle all services within the shortest time practicable. The Tenderer shall notify the HKPF of any related incident that might affect the quality of the provision of Services within twenty-four (24) hours of when the Tenderer knows or should have known about the incident.
13. The Contractor shall conform in all respects with the provisions of any enactment and the regulations or by-laws of Hong Kong which may be applicable to this Contract and with such rules and regulations of public bodies and companies as aforesaid and shall keep the Government indemnified against all penalties and liability of every kind for breach of any such enactment, regulations, by-laws or rules.
14. The Contractor shall check all specimens and correct labelling, packaging, date of specimen collection, integrity of the specimen container, quality of specimen collection, etc. upon specimen collection. If in doubt, the Contractor shall communicate with the HKPF for clarification.
15. All data relating to patients with a positive result would be passed onto the CHP by the Contractor and other relevant government organisations for appropriate follow-up action. Their specimens will be provided to the CHP for further analysis (confirmatory test), in line with current protocol or its updated protocol with the CHP.
16. In case there is a need to amend an issued report, the Contractor shall, as soon as practicable, notify the HKPF by telephone, email or facsimile.
17. The Contractor shall retain the remaining specimen for at least two (2) days after the Government has received the report.
18. The Contractor shall comply with all requirements under this Contract and shall treat all specimens and related information collected for providing the Services under this Contract strictly confidential. No examination results shall be released to any third party or published without the testing object or HKPF's prior consent in writing.
19. The Contractor shall procure or secure provision of all necessary consumables and related materials including but not limited to training, troubleshooting, equipment maintenance failover backup, spare parts and support services to enable provision and continuation of high quality service to the satisfaction of the HKPF.

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

**Provision of COVID-19 Combined Nasal and Throat Swab Testing Services  
for the Hong Kong Police Force**

**PART 3B  
SCHEDULES**

**Schedule A – Price Schedule**

(Please refer to Paragraphs 3.3 and 3.8(b) of the Terms of Tender.)

**Section 1**

**(a) Unit Rate and Estimated Contract Price**

<b>Item Code</b>	<b>Item</b>	<b>(a) Estimated No.</b>	<b>(b) Unit Rate (Service Charges Inclusive) (HK\$)</b>	<b>(c) = (a) x (b) Estimated Contract Price (Service Charges Inclusive) (HK\$)</b>
A	Laboratory Service on SARS- CoV-2 RT-PCR test (CNTS collection kits inclusive) ( <i>without</i> pooling)	9 600	(Each 1 specimen)	(9 600 specimens)
B	Additional Laboratory Service on SARS- CoV-2 RT-PCR test (CNTS collection kits inclusive) ( <i>without</i> pooling)	<i>As and when required</i>	(Each 1 specimen) <i>*This rate shall not be more than the rate quoted in Item Code (A)(b), or the Tender will not be considered further</i>	N/A
C	On-site Collection Service (inclusive of trained personnel (at least two registered nurses and two assistants) and all required materials and logistics)	16	(Each 1 on-site collection service)	(16 on-site collection services)

D	Additional On-site Collection Service (inclusive of trained personnel (at least two registered nurses and two assistants) and all required materials and logistics)	<i>As and when required</i>	(Each 1 on-site collection service) <i>*This rate shall not be more than the rate quoted in Item Code (C)(b), or the Tender will not be considered further</i>	N/A
<b>Estimated Contract Price: i.e. Item Code (A) + (C) ONLY (HK\$)</b>				

**(b) Calculation of Contract Price**

Contract Price =

[Actual total no. of tests specified in Item Code (A) performed by the Contractor and accepted by the Government during the Contract Period ] x [Unit Rate quoted in Section 1(a) above]

+ [Actual total no. of tests specified in Item Code (B) performed by the Contractor and accepted by the Government during the Contract Period] x [Unit Rate quoted in Section 1(a) above]

+ [Actual total no. of on-site collection services specified in Item Code (C) performed by the Contractor and accepted by the Government during the Contract Period] x [Unit Rate quoted in Section 1(a) above]

+ [Actual total no. of on-site collection services specified in Item Code (D) performed by the Contractor and accepted by the Government during the Contract Period] x [Unit Rate quoted in Section 1(a) above]

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

**Section 2 - Payment Timetable**

Subject to other provisions of the Contract, the Government shall pay the Contract Price at the charging rates as specified in the table in Section 1(a) above after completion of the Services in accordance with Clause 4 of Special Conditions of Contract.

**Section 3 - Payment Discounts**

Discount allowed on the tendered prices if payment for the Services is made in full within:

- (a) 7 clear working days from the date of receipt of an invoice or from the date of acceptance of Services, whichever is the later : \_\_\_\_\_ % discount.
- (b) 8 to 14 clear working days from the date of receipt of an invoice or from date of acceptance of Services, whichever is the later : \_\_\_\_\_ % discount.

Notes for Section 3 of Schedule A - Payment Discounts

- 1) Please insert the word 'NIL' in the spaces provided above if you do not offer any payment discount.
- 2) Any prompt payment discount offered by Tenderers will **not** be taken into consideration in the tender price assessment.

**Section 4 - Contract Deposit**

If the Contract is awarded to us, we shall pay the Government the Contract Deposit *in cash/ by way of a banker's guarantee\** in accordance with Paragraph 30 of the Terms of Tender.

\*Delete whichever is not applicable.

Name of Tenderer :

---

**PART 3B  
SCHEDULES**

**Schedule B – Other Information**

**Section 1 - Tenderer's Information**

[Please refer to Paragraph 8 of the Terms of Tender.]

Tenderer shall provide the information listed below. If space is insufficient, please use supplementary sheet:

- (a) name and address of the company/business organisation;
- (b) length of business experience;
- (c) shareholders/partners/proprietor of the company/business organisation and their respective percentages of ownership;
- (d) names and correspondence addresses of the following:
  - (i) managing director/partners;
  - (ii) other directors; and
  - (iii) sole proprietor;
- (e) a copy of valid Business Registration Certificate obtained from the Commissioner of Inland Revenue and other documents evidencing the Tenderer's business status;
- (f) if the Tenderer is a company or body corporate, a copy of its Articles of Association, a copy of the agreement made between its shareholders (if any), Certificate of Incorporation, Certificate of Change of Name (if any), and other corporate documents;
- (g) if the Tenderer is a company incorporated in Hong Kong or is a registered non-Hong Kong company under the Companies Ordinance (Chapter 622 of the Laws of Hong Kong), a copy of the latest annual return filed with the Companies Registry and all subsequent filings since the latest annual return; or the equivalent documents issued by the authority of the place of incorporation of the Tenderer if the Tenderer was not incorporated or registered under the Companies Ordinance (Chapter 622 of the Laws of Hong Kong) (or its predecessor Ordinance);
- (h) place and date of its incorporation or formation;
- (i) company profile information of the Tenderer including the number and location of full time/contract employees, core business strategies and strength, and industry expertise;
- (j) a certified extract board resolution or other documentary evidence acceptable to the Government demonstrating authorisation and approval for the submission of its Tender. This requirement shall always be applicable to a Tenderer which is a company regardless of the mode of submission of Tender. In the case that a Tenderer is a sole proprietorship or a partnership, documentary evidence acceptable to the Government demonstrating authorisation and approval for the submission of its Tender shall also be



Tender Ref.: (19) in SF (3) in CP/SUP 141/10 Pt.2

required if (a) (in the case of Paper-based Tendering), the signatory of the Offer to be Bound, or (b) in the case of Electronic Tendering using an Identification Code, the person submitting the Tender, is not the sole proprietor or a partner (or a general partner in the case of a limited partnership) (as the case may be); and

- (k) names and addresses of bankers which are prepared to provide references or other relevant financial data which indicate the financial viability of the Tenderer.
- (l) where a Tenderer is not a company, a partnership, or a sole proprietorship, some of the information mentioned in the Sub-paragraph (a) to (j) of Paragraph 8.1 of the Terms of Tender may not apply and may not be available. Regardless of the mode of submission of its Tender, the Government reserves the right to request such relevant information and documents in relation to the Tenderer to ascertain the identity of the Tenderer as well as to ensure that the submission of the Tender has been duly authorised and approved.

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

**Section 2 – Statement of Compliance**

[Please refer to Paragraph 9 of the Terms of Tender.]

\*(i) I / We confirm that the Services proposed by me/us fully comply with the essential requirements stipulated in Paragraph 6 of the Terms of Tender and will fully comply with the Service Specifications.

\*(ii) I / We confirm that the Services proposed by me/us **do not** comply with the essential requirements stipulated in Paragraph 6 of the Terms of Tender and/or will not comply with the Service Specifications in the following aspects:

---

---

---

---

---

N.B.: (1) \* Please delete whichever is not applicable.

(2) If a Tenderer does not complete this Section, it shall be deemed that the Tenderer confirms its compliance with all the essential requirements as stipulated in Paragraph 6 of the Terms of Tender and will fully comply with the Service Specifications.

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

Tender Ref.: (19) in SF (3) in CP/SUP 141/10 Pt.2

**Section 3 – Testing Capacity**

[Please refer to Paragraph 6 of the Terms of Tender.]

- \* (i) I / We confirm that our daily testing capacity for the Services is **not less than 5 000** numbers of test.
  
- \* (ii) I / We confirm that our daily testing capacity for the Services is **less than 5 000** number of tests.

\* Please delete whichever is not applicable.

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

**Section 4 – Information on Exercise of Government Discretion**

**Information required under Paragraph 24.2 (Government Discretion) of the Terms of Tender**

\* (a) I / We confirm that none of the events as mentioned in Paragraphs 24.1(a) to 24.1(h) or 24.2(a) to 24.2(d) of the Terms of Tender has ever occurred.

\* (b) I / We confirm that the following event(s) as mentioned in Paragraphs 24.1(a) to 24.1(h) and/or 24.2(a) to 24.2(d) of the Terms of Tender has occurred:

Date	Details of the Event

Note: \* Please delete whichever is not applicable.

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

## Section 5 – Non-Collusive Tendering Certificate

To: the Government

Dear Sir/ Madam,

### Non-collusive Tendering Certificate

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

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

Non-collusion

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

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

Tender Ref.: (19) in SF (3) in CP/SUP 141/10 Pt.2

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

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

#### Disclosure of subcontracting

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

#### Consequences of breach or non-compliance

5. I/We understand that in the event of any breach or non-compliance with any representations, warranties and/or undertakings in this certificate or in Paragraph 13.1 of the Terms of Tender, the Government may exercise any of the rights under Paragraphs 13.3 to 13.5 of the Terms of Tender in addition to and without prejudice to any other rights or remedies available to it against me/us.

Tender Ref.: (19) in SF (3) in CP/SUP 141/10 Pt.2

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

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

Name of the authorised signatory (where :  
applicable)

Title of the authorised signatory (where :  
applicable)

Date :

## Section 6 – Contact Details

Contact details of:

- (1) The Government Representative : Operations Support and Occupational Safety and Health Division
- Procuring Department : Hong Kong Police Force
- Address : 41/F, Arsenal House, Police Headquarters,  
No. 1 Arsenal Street, Wan Chai, Hong Kong
- Attn.: SIP OS&OSH 2 SUPPORT
- Facsimile Number : (852) 2200 4329

- (2) The Tenderer :
- Address :
- Attn.:
- Telephone Number :
- Facsimile Number :
- Email Address :

- (3) Process Agent (for a Tenderer incorporated, formed or established outside Hong Kong) :
- Address :
- Attn.:
- Telephone Number :
- Facsimile Number :
- Email Address :



**PART 3C**

**Form of  
Banker's Guarantee**

THIS GUARANTEE is made on the ..... day of .....  
By.....  
of ....., a bank within the meaning of the Banking Ordinance  
(Chapter 155 of the Laws of Hong Kong) (hereinafter called the "Guarantor")

In favour of

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

**WHEREAS**

(A) By a contract (hereinafter called the "Contract") dated the [day] of [month year] made between «SERVICE PROVIDER\_NAME» of «SERVICE PROVIDER\_ADDRESS» (hereinafter called the "Contractor") of the one part and the Government of the other part (designated as Customs and Excise Department Contract No. «CONTRACT\_NUMBER»), the Contractor agreed and undertook to provide COVID-19 Combined Nasal and Throat Swab Testing Services for the Hong Kong Police Force upon the terms and conditions of the Contract.

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

Now this Guarantee executed as a deed witnesses as follows:

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

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

- (a) The Guarantor hereby irrevocably and unconditionally guarantees, as a continuing obligation, the due and punctual performance and discharge by the Contractor of all of his, her and their obligations and liabilities under the Contract and the Guarantor shall pay to the Government on demand and without cavil or argument all monies and discharge all liabilities which are now or at any time hereafter shall become due or owing by the Contractor to or in favour of the Government under or in connection with the Contract together with all costs, charges and expenses on a full indemnity basis which may be incurred by the Government by reason or in consequence of any default on the part of the Contractor in performing or observing any of the obligations terms conditions stipulations or provisions of the Contract, notwithstanding any dispute between the Contractor and the Government or any other person.
- (b) The Guarantor, as a primary obligor and as a separate, continuing and independent obligation and liability from its obligations and liabilities under sub-clause (a) above, irrevocably and unconditionally agrees to indemnify and keep indemnified the Government against and shall pay to the Government on demand and without cavil or argument all losses, damages, costs, charges and expenses on a full indemnity basis suffered or incurred by the Government arising from or in connection with the failure of the Contractor to perform fully or promptly any of his, her or their obligations terms conditions stipulations or provisions of the Contract.
- (c) The Government may place and keep any monies received by virtue of this Guarantee (whether before or after the insolvency or liquidation of the Guarantor or the Contractor) to the credit of a suspense account for so long as the Government may think fit in order to preserve the rights of the Government to sue or prove for the whole amount of its claims against the Guarantor, the Contractor or any other person.

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

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

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

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

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

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

- (a) the end of three (3) months from the date of early termination or expiry of the Contract Period; or

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

whichever is the applicable.

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

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

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

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

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

(a) upon the Government, at the Hong Kong Police Force of 41/F, Arsenal House, Police Headquarters, No. 1 Arsenal Street, Wan Chai, Hong Kong, marked for the attention of SIP OS&OSH 2 SUPPORT, facsimile number 2200 4329;

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

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

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

Name of witness:  
Title of witness:  
Signature of witness:

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

Name of witness:  
Title of witness:  
Signature of witness:

\* Please delete as appropriate

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

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