

Our reference 本署檔號: (1) in EMSD/EEO/Q2754/01

Telephone 電話號碼: 2808 3396

Facsimile 圖文傳真: 2890 6081

Your reference 來函檔號:

Office of Research and Knowledge Transfer Services,
the Chinese University of Hong Kong

Room 301, Pi Chiu Building,
The Chinese University of Hong Kong,
Shatin, New Territories,
Hong Kong

By Fax (letter) and
Email (letter and document)

Fax No: 3942 0993

Email: orkts@cuhk.edu.hk

21 December 2023

Dear Sir/ Madam,

Quotation No. Q2754

Quotation for Desktop Study on Energy Efficiency of Electric Vehicles

Invitation for Quotation

You are hereby invited to submit a sealed quotation for the above contract. The scope of services and requirement of the Quotation are detailed in the Quotation Document that comprises the following,

- O. Cover – 1 page;
- A. Instructions to Bidders – 7 pages;
- B. Terms of Quotation – 24 pages;
- C. Form of Quotation – 1 page;
- D. General Conditions of Contract – 24 pages;
- E. Brief – 23 pages; and
- F. Schedule of Fees – 1 page.

The set of Quotation Document is provided in the email, please contact the undersigned if you do not receive the document.

Your Quotation must also be enclosed in two (2) separate sealed envelopes, the name of the Company shall not be shown on the envelope;

- (iii) One envelope marked "Technical Proposal - Quotation for Desktop Study on Energy Efficiency of Electric Vehicles (Quotation No.: Q2754)" with Four (4) copies of the Technical Proposal;
- (iv) One envelope marked "Fee Proposal - Quotation for Desktop Study on Energy Efficiency of Electric Vehicles (Quotation No.: Q2754)" with One (1) copy of the Fee Proposal.

Please deposit your Quotation in the "EEO Quotation Box" situated at the following address before 12:00 noon on Tuesday, 23 January 2024.

"Energy Efficiency Office on the Seventh Floor of the EMSD Headquarters,
3 Kai Shing Street, Kowloon Bay, Kowloon, Hong Kong"

In case of a rainstorm black warning or typhoon signal No. 8 or above is still hosted between 0700 hours and 1200 hours on the Quotation Closing Date, the Quotation Closing Time will be extended to 1200 hours on the next weekday (i.e. except Saturday and Sunday) other than public holiday.

You are invited to attend a Quotation Briefing which will be held on 4 January 2024 at 11:00 p.m. at Room 7131, Electrical and Mechanical Services Department, 7/F, 3 Kai Shing Street, Kowloon, Hong Kong.

Should the Bidder be interested in attending the Quotation Briefing, please return the Quotation Briefing Reply Slip on or before 2 January 2024 at 4:00 p.m., by facsimile at (852) 2890 6081 or email to kelvinfong@emsd.gov.hk.

Please notify us of the receipt of this invitation letter by returning an e-mail to kelvinfong@emsd.gov.hk.

Should you have any queries about this Quotation, please address them in writing to the undersigned (Attn.: Mr. FONG Kam Wai Kelvin, Engineer/ Energy Efficiency A1/2).

Yours faithfully,



(FONG Kam Wai Kelvin)
for Director of Electrical and Mechanical Services



GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION

**ELECTRICAL AND MECHANICAL SERVICES DEPARTMENT
3 KAI SHING STREET, KOWLOON, HONG KONG**

Booklet Containing:

- A. Instructions to Bidders;
- B. Terms of Quotation;
- C. Form of Quotation;
- D. General Conditions of Contract;
- E. Brief; and
- F. Schedule of Fees.

For the

**Desktop Study on Energy Efficiency of Electric Vehicles
Quotation No. : Q2754**

For enquiries about this Quotation, please contact Mr. FONG Kam Wai Kelvin at telephone no. 2808 3396 or email: kelvinfong@emsd.gov.hk

THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION
ELECTRICAL AND MECHANICAL SERVICES DEPARTMENT

DESKTOP STUDY ON ENERGY EFFICIENCY OF ELECTRIC VEHICLES

QUOTATION NO.: Q2754

PART A - INSTRUCTIONS TO BIDDERS

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Part A – Instructions to Bidders

1. Location of tender box and Quotation Closing Date

- 1.1. The Consultancy Proposals shall be submitted on or before **12:00 noon** on **23 January 2024 Tuesday**, Hong Kong time (“Quotation Closing Date”).
- 1.2. The submissions shall be submitted to the “**EEO Quotation Box**” before the time and date of the Quotation Closing Date with the title as mentioned in **Clause 8 of the Brief**, and to below address,

To: Director of Electrical and Mechanical Services
Energy Efficiency Office, 7/F,
Electrical and Mechanical Services Department,
3 Kai Shing Street, Kowloon Bay, Kowloon,
Hong Kong

2. Quotation Briefing

- 2.1. A briefing of this Service will be held on **4 January 2024 at 11:00 a.m.** at Room 7131, Electrical and Mechanical Services Department, 7/F, 3 Kai Shing Street, Kowloon, Hong Kong.
- 2.2. Should the Bidder be interested in attending the Quotation Briefing, please return the **Quotation Briefing Reply Slip** on or before **2 January 2024 at 4:00 p.m.**, by facsimile at (852) 2890 6081 or email to kelvinfong@emsd.gov.hk.

3. Contact Personal for Clarifications

- 3.1. Should the Bidder for any reason whatsoever be in doubt about the precise meaning of any item or figure contained in the documents he shall seek clarification from the Engineer, Mr. FONG Kam Wai Kelvin in written and submit by facsimile at (852) 2890 6081.

4. Check list

- 4.1. Before the quotation is sealed and delivered to the “EEO Quotation Box”, please check the following:
 - 4.1.1. The submission has been properly signed and the signature witnessed.
 - 4.1.2. All the documents issued with or requested in the quotation such as acknowledgements of receipt of corrigenda or addenda, are properly completed and attached to the tender.
 - 4.1.3. The envelope holding the quotation does not bear the name of the Bidder but the quotation reference or contract number and the closing date should be shown on the envelope.
 - 4.1.4. All documents to be submitted by a Bidder shall either be originals or certified true copies of the documents. If a Bidder fails to comply with this requirement, its Quotation may not be further considered.

5. Compliance of Quotation

- 5.1. The Government reserves the right to reject any quotation which does not comply with the requirements of these Instructions to Bidders.

6. Destruction of documents

- 6.1. Documents of unsuccessful bidders may be destroyed three (3) months after the date the contract has been awarded.

Part A – Instructions to Bidders

7. Change in status of qualifications

- 7.1. Bidders should inform Government in their quotation submission of any factor which might affect their status of qualifications. Government reserves the right to review the bidders' qualified status in the light of any new information relevant to their qualification.

8. Instructions Not Part of Agreement

- 8.1. These Instructions to Bidders shall not form part of the Quotation.

9. Marking Scheme

- 9.1. Bidders should note that the quotation will be evaluated in accordance with the marking scheme at Annex 1 of Instruction to Bidders.

10. Rejection of Application and Disqualification of Bidders

- 10.1. The Government reserves the right to disqualify an applicant or a prequalified consultant on the grounds that the applicant or the prequalified consultant, or if the applicant or prequalified consultant is a joint venture, any participant of the unincorporated joint venture or shareholder of the incorporated joint venture, has engaged, is engaging, or is reasonably believed to have engaged or be engaging in acts or activities that are likely to constitute or cause the occurrence of offences endangering national security, or otherwise the disqualification is necessary in the interest of national security, or is necessary to protect the public interest of Hong Kong, public morals, public order or public safety.

**THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION
ELECTRICAL AND MECHANICAL SERVICES DEPARTMENT**

**DESKTOP STUDY ON ENERGY EFFICIENCY OF ELECTRIC VEHICLES
QUOTATION NO.: Q2754**

**ANNEX 1 TO INSTRUCTIONS TO BIDDERS –
MARKING SCHEME IN QUOTATION EVALUATION**

1. Bidders should note that quotations will be evaluated in accordance with the marking scheme at Annex 1 to Instructions to Bidders – Marking Scheme in Tender Evaluation. Bidders should note DEVB TC(W) No. 4/2014 which sets out the use of marking scheme for quotation evaluation. Bidders should note that Government is not bound to accept the quotation with the highest overall score or any quotation and may cancel the quotation exercise on public interest ground. In considering the acceptance of a quotation, the Government will take account of all relevant circumstances including the following:-
 - 1.1 The overall score;
 - 1.2 The effect of incident of payments by discounting future payments to obtain the present values and use the present values to substitute the quotation prices in determining the ranking of the quotations, if the quotation prices/overall scores are very close;
 - 1.3 The effect of exceptionally high or low priced items;
 - 1.4 The Bidder's capability (financially, commercially and technically) in undertaking the contract. For the avoidance of doubt, matters such as bankruptcy, false declaration, lack of integrity, and acts of dishonesty, the latest available information and reports reflecting serious shortfall in performance and the latest available information and reports relating to serious site safety or environmental incidents may be taken into account in determining whether a Bidder is fully capable of undertaking the contract; and
 - 1.5 The effect of erratic pricing.
 - 1.6 The interest of national security.
2. The Government will use a Marking Scheme to assess the Consultancy Proposals. The technical score will carry a weighting of 70% as against a weighting of 30% for price score. Upon completion of the technical assessment, the price information will then be evaluated.
3. The Government will disqualify bidders and terminate the contract in the interest of national security.
4. Evaluation Criteria
 - 4.1 Evaluation of quotations will be based on a combined technical/price score of the quotations.
 - 4.2 A technical: price weighting of 70% : 30% will be adopted in the evaluation. The

Annex 1 to Instructions to Bidders – Marking Scheme in Quotation Evaluation

following method will be adopted for calculating the technical and price scores:

4.2.1 Technical Score ----- (i)

$$= 70 \times \frac{\text{Score achieved by the Bidder in technical assessment}}{\text{The highest score achieved amongst those conforming quotations}}$$

4.2.2 Price Score ----- (ii)

$$= 30 \times \frac{\text{The lowest quotation price amongst those conforming quotations}}{\text{The quotation price}}$$

4.3 The combined technical/ price score = (i) + (ii). Normally, the quotation with the highest combined score would be recommended for acceptance subject to the usual requirement that the Employer is satisfied that the recommended Bidder is fully capable of undertaking the contract.

5. The quotation assessment panel will consist of one chairman (non-marking) and three members (marking). The marks given by each Assessment Panel member shall bear equal weighting. The weighted marks of each member shall be accumulated to give the final marks under the above assessment criteria. The summation of the score of the sub-sections will derive the total score of the technical assessment.

Technical Proposal

- 6. The returned Technical Proposal should within twelve pages (on six double-side A4 sheets) with a minimum font size of 11 points, excluding appendices. It should be inexpensively bound and should be in A4 size.
- 7. The Technical Proposal shall be divided into sections under the main headings given below.
- 8. Technical Assessment

Item	Assessment Criteria	Max. Score
A1	Execution Plan	65
A1.1	Management Plan	25
A1.2	Organisation and Resources Plan	20
A1.3	Risk Management Plan	10
A1.4	Quality Assurance Plan	10
A2	Innovative Suggestions	20
A2.1	Pro-innovation Proposals	15
A2.2	Environmental, Social, and Corporate Governance (ESG) Proposals	5
B	Experience, Qualification or Certification	15
B1	Relevant experience of the Bidder	6
B2	Qualification and experience of key personnel	6

Annex 1 to Instructions to Bidders – Marking Scheme in Quotation Evaluation

B3	Valid and relevant ISO and OHSAS certifications	3
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9. The passing marks for Section A1 on Execution Plan is 16, such that any proposal which achieves a total of less than 16 marks for the Execution Plan listed above will be disqualified. The marks of individual qualified proposals will then be rescaled to a maximum technical score of 70.
10. Scoring arrangement of technical assessment:

Assessment Criteria	Max. Score
<p>A1 Execution Plan The Execution Plan refers to the submission of item A1.1-A1.4 of a bidder that contains detailed proposals (including solutions) of how the bidder will carry out the Services and perform the Contract and shall form part of the Contract. It may include one or more of the following components or their variances as assessment criteria.</p> <p>A 5-grade scale will be employed for marking. 100% - The proposed plan is practical with detailed information for all required items. 75% - The proposed plan is practical with detailed information for more than three fourth of the required items and brief information for the remaining required items. 50% - The proposed plan is practical with detailed information for more than half of the required items and brief information for the remaining required items. 25% - The proposed plan is practical with brief information covering all required items. 0% - The proposed plan is impractical or fails to provide information on any of the required items.</p>	65
<p>A1.1 Management Plan</p> <ul style="list-style-type: none"> - shows the understanding of objectives and scope of this Service; - identifies and provides solution of key issues, service constraints and special requirements; and - work programme with all activities for this Service 	(25)
<p>A1.2 Organisation and Resources Plan</p> <ul style="list-style-type: none"> - organisation structure (with organisation chart) with highlights on the capacity, efficiency and effectiveness of the Bidder, and identifies the duties of each key staff; and - sets out equipment, software, technique, etc., to implement this Services. 	(20)
<p>A1.3 Risk Management Plan</p> <ul style="list-style-type: none"> - caters for the handling of emergency situations, sudden outbreak of incidents, accidents, complaints, risks, etc.; and - provides contingency plan - 	(10)
<p>A1.4 Quality Assurance Plan</p> <ul style="list-style-type: none"> - sets out the approach and mechanism to ensure service quality and remedy defects in performing the Services. 	(10)

Annex 1 to Instructions to Bidders – Marking Scheme in Quotation Evaluation

A2 Innovative Suggestions	20
<p>A2.1 Pro-innovation proposals Bidders are encouraged to make pro-innovation proposals under relevant components of the proposed Execution Plan.</p> <p>Marks may be given to effective and practicable pro-innovation proposals with value-added elements and no preceding application of a bidder’s proposal in terms of:</p> <ul style="list-style-type: none"> - saving manpower and resources for taking the survey and online interviews, and assessment of examination results; - higher operational efficiency and productivity; - shortening gearing-up period; - improving service quality; - improving or greater flexibility to adapt to operational changes; - boosting user satisfaction/ service utilization; - economic use of resources, e.g. electricity, water, paper, etc.; - any other benefits which are considered relevant to the quotation requirements. <p>Marks may be given to pro-innovation proposals as follows: 100% – The proposed plan contains 5 or more effective and practicable pro-innovation proposals 66% – The proposed plan contains 3 to 4 effective and practicable pro-innovation proposals 33% – The proposed plan contains 1 to 2 effective and practicable pro-innovation proposals 0% – The proposed plan does not contain any effective and practicable pro-innovation proposals</p>	<p>(15)</p>
<p>A2.2 Environmental, Social, and Corporate Governance (ESG) Proposal Bidders are encouraged to propose measures/arrangements that will improve ESG</p> <p>Examples of such positive values or benefits may include the following and one ESG proposal may cover all or any one of them –</p> <ul style="list-style-type: none"> - Environmental protection (e.g. use of green materials/products, reduction in energy consumption or promotes waste reduction in the execution of the contract) - Social responsibility (e.g. employment of people with disabilities and/or rehabilitated persons for the contract) - Governance <p>For the assessment of ESG proposals, marks may be given as follows: 100% – The proposed plan contains 3 or more practicable and effective ESG proposals 66% – The proposed plan contains 2 practicable and effective ESG proposals 33% – The proposed plan contains 1 practicable and effective ESG proposal 0% – The proposed plan does not contain any effective and practicable ESG proposal</p>	<p>(5)</p>
B Experience, Qualification or Certification	15
<p>B1 Relevant experience of Bidder Marks may be given according to the bidder experience in conducting electric vehicle technologies or electric vehicle policies studies within five years immediately before</p>	<p>(6)</p>

Annex 1 to Instructions to Bidders – Marking Scheme in Quotation Evaluation

<p>Quotation Closing Date, as follows: 100% - 9 or above projects 80% - 7 to 8 projects 60% - 5 to 6 projects 40% - 3 to 4 projects 20% - 1 to 2 projects 0% - 0 project</p>	
<p>B2 Qualification and Experience of Key Personnel Marks may be given according to the duration of key personnel's (Team Leader) experience in conducting electric vehicle technologies or electric vehicle policies studies, as follows: 100% - ≥ 10 years 80% - ≥ 8 to < 10 years 60% - ≥ 6 to < 8 years 40% - ≥ 4 to < 6 years 20% - ≥ 2 to < 4 years 0% - < 2 year</p>	(6)
<p>B3 Valid and relevant ISO and OHSAS certifications Marks may be given as follows: 100% - Accredited to ISO [9001], ISO [14001] and OHSAS [45001] and supported with documentary proof of all certificates which are valid as at the quotation closing date. 66% - Accredited to any two of ISO [9001], ISO [14001] and OHSAS [45001] and supported with documentary proof of all certificates which are valid as at the quotation closing date. 33% - Accredited to any one of ISO [9001], ISO [14001] and OHSAS [45001] and supported with documentary proof of all certificates which are valid as at the quotation closing date. 0% - Not accredited to any of ISO [9001], ISO [14001] and OHSAS [45001] as at the quotation closing date or failed to provide valid documentary proof.</p>	(3)

THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION
ELECTRICAL AND MECHANICAL SERVICES DEPARTMENT

DESKTOP STUDY ON ENERGY EFFICIENCY OF ELECTRIC VEHICLES
QUOTATION NO.: Q2754

PART B - TERMS OF QUOTATION

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Part B – Terms of Quotation

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Part B – Terms of Quotation

1. Invitation to Quotation

- 1.1 Unless otherwise specified in the Quotation Form, Quotations are invited for the provision of all of the Services subject to and in accordance with the Quotation Document.
- 1.2 *[Not Used]*
- 1.3 Each Bidder should read the Quotation Document carefully prior to submitting a Quotation and ensure that it understands all requirements of the Quotation Document.
- 1.4 Each Bidder should obtain such independent advice from its own advisers as it considers appropriate.
- 1.5 Each Bidder should check the numbers of pages of the Quotation Document. If it finds any missing or indistinct pages, it should inform the Government Representative immediately so that the same can be rectified.
- 1.6 Each Bidder will be regarded to be thoroughly conversant with all aspects of the Quotation Document (including the Contract) and in general to have obtained all necessary information of any circumstances which may influence or affect its Quotation or its performance of the Contract. The Government does not assume any liability in respect of any errors or mistakes made by a Bidder or any neglect or failure of a Bidder to obtain any information or clarification relating to the provision of the Services to the Government in accordance with the Contract.
- 1.7 No error, mistake, neglect or failure by a Bidder shall affect any provision of the Quotation Document (including the Contract) or relieve the Bidder from any of its obligations or liabilities under the Quotation Document (including the Contract). For the avoidance of doubt, a successful Bidder shall not be entitled to any additional payment, compensation, exemption from compliance or observance, or allowance by reason of any such error, mistake, neglect or failure. If a Bidder is awarded the Contract, it shall not be excused from any obligation or liability under the Contract as a consequence of any misinterpretation by it of any provision in the Quotation Document or the Contract.
- 1.8 Information, statistics and forecasts set out in the Quotation Document are provided for a Bidder'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.
- 1.9 Without prejudice to Clause 1.8 above, the estimated requirement of the Services specified in the Schedule of Fees or Service Specifications (if any) is/are estimate(s) of the quantity of the Services that may be required by the Government. They are given for a Bidder'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 Procuring Department and the successful Bidder must accept any increase or decrease of the stated estimates.

2. Supplementary Information/Quotation Addenda

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

3. Quotation Preparation and Submission

- 3.1 Unless otherwise specified in the Brief, the Bidder must bid for all Items specified in the Schedule of Fees by submitting the Unit Price for each such Item. Where a Bidder fails to do so, its Quotation will not be considered further.

Part B – Terms of Quotation

- 3.2 A complete list of all proposals, documents and information which are required to be submitted is set out in the Brief. These proposals, documents and information to be submitted by the Bidder shall include the signed Form of Quotation, the Schedule of Fees, and such other proposals, documents and information as specified in the Brief.
- 3.3 The Bidder must submit all of the following in its Quotation before the Quotation Closing Time, otherwise its Quotation will not be considered further:
- (a) a duly signed "Form of Quotation" in English or Chinese containing an original signature by or on behalf of the Bidder. Other than printing from a softcopy of the Form obtained from the Government or photocopying of the Form, other means of reproduction by the Bidder (e.g. by retyping) of the Form for Quotation is not acceptable;
 - (b) the Unit Price quotations for all Items in the Schedule of Fees. Other than printing from a softcopy of the Form obtained from the Government or photocopying of the Form, other means of reproduction by the Bidder (e.g. by retyping) of the Schedule of Fees is not acceptable; and
 - (c) such other items and documents as specified in the Brief whereby it is provided that failure to submit any of them before the Quotation Closing Time will immediately lead to the Quotation not being considered further.
- 3.4 In these Terms of Quotation, and, where applicable, in the Brief, there are also requirements for the submission of documents and/or information, whereby it is provided that if not supplied by the Quotation Closing Time, or upon subsequent request of the Government after the Quotation Closing Time, the Quotation will not be considered further. Even so, for this type of documents and/or information, the Government is not obliged to make any request for resubmission after the Quotation Closing Time. If the Government chooses not to do so, or even if the Government chooses to do so but the Bidder fails to supply the missing document or information, the Quotation will also not be considered further.
- 3.5 For all other proposals, documents and information which do not fall within Clause 3.3 or 3.4 above, the Government reserves the right to seek submission under Clause 12.1 of the Terms of Quotation or evaluate the Quotation on an "as is" basis.
- 3.6 The Bidder shall complete and submit all Schedules in English and in accordance with other requirements of the Quotation Document. Where a supporting document in its original form is in a language other than English or Chinese, the Bidder shall provide translation of that supporting document from the language into English.
- 3.7 A Bidder shall submit, in one of the following manners, its completed Quotation together with all proposals, documents and information required under the Quotation Document or relevant to its Quotation in accordance with the terms of the Quotation Document. A Quotation submitted through a method other than Paper-based Tendering will not be considered.
- 3.8 The Government may not consider a Quotation (or will not consider a Quotation where it is expressly so stated) if:
- (a) false, inaccurate or incorrect information is given in the Quotation; or
 - (b) any proposal, document or information requested in the Quotation Document is not furnished in full in the Quotation.
- 3.9 When completing the Quotation Document (including the Form of Quotation), each Bidder shall ensure that the name of the Bidder is the same as the name shown in:
- (a) if the Bidder is a company incorporated in Hong Kong:
 - (i) the Certificate of Incorporation of the Bidder; or
 - (ii) if there is a change of name of the Bidder since the date of its Certificate of Incorporation, the latest Certificate of Change of Name of the Bidder; or
 - (iii) its business name as shown in the current business registration certificate of the Bidder;

Part B – Terms of Quotation

- (b) if the Bidder is a sole proprietorship or a partnership, the current business registration certificate of the Bidder issued under the Business Registration Ordinance (Chapter 310 of the Laws of Hong Kong); or
- (c) if the Bidder is incorporated, formed or established outside Hong Kong, a document equivalent to that described in Clause 3.9(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 Bidder is incorporated, formed or established.

3.10 Execution and Submission of Quotations

(a) Paper-based Tendering

A Quotation submitted through Paper-based Tendering will be regarded to have been submitted by a Bidder or authorised to have been submitted by a Bidder (as the case may be) if the submitted "Form of Quotation" of the Quotation Form is signed in the following applicable manner:

- (i) if the Bidder is a sole proprietorship, the Bidder signing the Quotation in the name of the Bidder (or of the sole proprietorship), or a person authorised by the Bidder signing the Quotation for and on behalf of the Bidder;
- (ii) if the Bidder is a partnership, one or more partner(s) of the Bidder 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 Quotation for and on behalf of the Bidder; or
- (iii) if the Bidder is a company, a director of the Bidder or one or more persons who are duly authorised by the Bidder signing the Quotation for and on behalf of the Bidder.

(b) Electronic Tendering [Not Used]

3.11 Quotation Closing Time

(a) (i) Paper-based Tendering

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

(ii) Electronic Tendering [*Not used*]

(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 Quotation" section of the Quotation Form, the latest date and time before which Quotations are to be deposited in the Specified Quotation Box and at the e-Quotation 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 Quotation Box at any time between 0900 and 1200 hours on the Quotation Closing Date, the Government will announce extension of the Quotation Closing Time until further notice. Following removal of the blockage, the Government will announce the extended Quotation closing time as soon as practicable. The above announcements will be made via press releases on the website of Information Services Department (<http://www.info.gov.hk/gia/general/today.htm>).

3.12 The Government shall not have or accept any liability, obligation or responsibility whatsoever for any loss of, destruction of or damage to the Quotation submission submitted and/or deposited by Bidders in the Specified Quotation 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

Part B – Terms of Quotation

Quotation submission as soon as practicable. The above announcements will be made via press releases on the website of Information Services Department (<http://www.info.gov.hk/gia/general/today.htm>).

3.13 [Not Used]

3.14 Modification of Quotation

(a) Before the Quotation Closing Time, a Bidder who has lodged a Quotation may modify its Quotation as considered necessary.

(b) Paper-based Tendering

Any modification to the submitted Quotation considered necessary by the Bidder shall be the subject of a separate letter accompanying the Quotation. 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 Bidder in ink.

(c) Electronic Tendering *[Not Used]*

3.15 Apart from "Form of Quotation", wherever there is any provision in the Quotation Document requiring that the original of any document or the document as mentioned in Clause 3.15.1(b) below to be submitted as part of the Quotation,

3.15.1 in the case of Paper-based Tendering, (a) the Bidder may submit a photocopy certified to be true and complete by the person(s) specified in Clause 3.10(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 practice in Hong Kong or the laws of the place of incorporation, formation or establishment of the Bidder; 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 Quotation Closing Date. The Quotation may not be considered further if the certified true copy is not provided; and

3.15.2 [Not Used]

4. Quotations to Remain Open

4.1 A Quotation once submitted by a Bidder will be binding on the Bidder. By submitting a Quotation, the Bidder shall be deemed to have represented to the Government that it has done so as the principal but not as an agent of any other person. If the Bidder submits a Quotation as an agent on behalf of another person, full disclosure must be made in the Quotation.

4.2 It is an essential requirement of this Invitation to Quotation that a Quotation shall remain valid and open for a period of ninety (90) days after the Quotation Closing Date (or such other period as specified in the relevant provisions of the Brief which supplement this Clause 4.2).

4.3 If a Bidder offers in its Quotation a period that is shorter than the applicable Quotation Validity Period specified in Clause 4.2 above, or if it rejects the Quotation Validity Period prescribed in Clause 4.2 above, its Quotation will not be further considered.

5. Prices

- 5.1 Unless otherwise provided for in the Quotation Document, the Bidder shall quote the Unit Price for each Item in the Schedule of Fees in Hong Kong dollars or the Permissible Currency. The Unit Price quoted by the Bidder for an Item shall be all-inclusive of all amounts chargeable for the performance by the Bidder of all obligations as stated in the Contract for or concerning or in relation to such Item. Under no circumstances will the Government compensate the Consultant for any loss incurred in the fluctuation of the currency in which the Unit Prices are quoted.
- 5.2 Prices quoted by a Bidder shall only be shown in the Schedule of Fees.
- 5.3 A Bidder must quote fixed Unit Prices for all Items and the same Unit Price for the same Item regardless of the quantity (or those Items which it intends to bid in the case partial Quotation is allowed). A Quotation with any price variation clause, including one based on foreign exchange market fluctuation, will not be considered further.
- 5.4 Each Bidder shall make sure that all prices and other proposals offered in its Quotation are accurate and complete before it submits the Quotation. The Bidder shall be bound by all prices and other proposals offered in its Quotation if the Quotation is accepted by the Government. The Bidder may not initiate any request for amendment of its Quotation after the Quotation Closing Time on any ground (including any mistake made in the Quotation). On the other hand, in the event of any apparent arithmetical or typo mistake or inconsistency in a Quotation, pursuant to Clause 12 of the Terms of Quotation, the Government may, but is not obliged to, ask the Bidder to clarify, or to confirm another figure to replace the original figure. Where the Bidder's clarification is not provided or not satisfactory, or the Bidder refuses to confirm such other figure, or where the Government does not elect to seek clarification or confirmation from the Bidder, the Government reserves the power to proceed to evaluate the Quotation on an as is basis (i.e., in the form as originally submitted prior to the Quotation Closing Time) or disqualify the Bidder on ground that it has provided erratic or inconsistent proposals or quotations for proper evaluation.
- 5.5 Payment to the successful Bidder shall be made in accordance with the payment timetable in Part B of the Schedule of Fees.
- 5.6 [Not Used]
- 5.7 [Not Used]
- 5.8 If the prices are quoted in US dollars or another Permissible Currency (where applicable), unless otherwise specified by the Bidder and agreed by the head of the Procuring Department, payment to the successful Bidder will be made either in Hong Kong dollars or in such Permissible Currency, depending on the stipulation in the Brief. In the case of the former, the conversion rate applicable for determining the amount of Hong Kong dollars payable shall be as stated in the Brief.
- 5.9 Without prejudice to the generality of the Terms of Quotation, the Government may require a Bidder who in the opinion of the Government has submitted an unreasonably low price to justify and demonstrate that such a Bidder is capable of carrying out and completing the Contract. The Government may reject the Quotation if the Bidder fails to so justify and demonstrate to the Government's satisfaction.

6. Compliance with Essential Requirements

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

7. Company/Business Organisation Status

7.1 The Bidder shall provide the following details relating to itself in the Brief:

- (a) name and principal place of business of the Bidder;
- (b) length of business experience;
- (c) shareholders/partners/proprietor of the Bidder 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 Bidder is exempted from business registration under the Business Registration Ordinance (Chapter 310 of the Laws of Hong Kong); or if the Bidder does not carry on business in Hong Kong, the equivalent document issued by the authority of the place of business of the Bidder;
- (f) if the Bidder 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 Bidder if the Bidder was not incorporated under the Companies Ordinance (Chapter 622 of the Laws of Hong Kong) (or its predecessor Ordinance);
- (g) if the Bidder 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 Bidder if the Bidder 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 Bidder including the number and location of full time/contract employees, core business strategies and strength, and industry expertise;
- (j) notwithstanding the deeming provision specified in Clauses 3.10(a)(i) and 3.10(b)(i) of the Terms of Quotation, a Bidder shall provide a certified extract board resolution or other documentary evidence acceptable to the Government demonstrating authorisation and approval for the submission of its Quotation. This requirement shall always be applicable to a Bidder which is a company regardless of the mode of submission of Quotation. In the case that a Bidder is a sole proprietorship or a partnership, documentary evidence acceptable to the Government demonstrating authorisation and approval for the submission of its Quotation shall also be required if (a) (in the case of Paper-based Tendering), the signatory of the Form of Quotation, or (b) in the case of Electronic Tendering using an Identification Code, the person submitting the Quotation, is not the sole proprietor or a partner (or a general partner in the case of a limited partnership) (as the case may be);

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- (k) where a Bidder is not a company, a partnership, or a sole proprietorship, some of the information mentioned in the foregoing Sub-Clauses of this Clause 7.1 may not apply and may not be available. Regardless of the mode of submission of its Quotation, the Government reserves the right to request such relevant information and documents in relation to the Bidder to ascertain the identity of the Bidder as well as to ensure that the submission of the Quotation 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 Bidder.

7.2 If a Bidder 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 Bidder and acceptable to the Government may be requested by the Government. The legal opinion, if required, should be made available upon request during the Quotation Validity Period. Upon such request, the Bidder shall provide such legal opinion covering the following issues and any other issues as may be required by the Government:

- (a) the Bidder is duly incorporated, formed or established and validly existing and in good standing under the laws of the place of the Bidder's incorporation, formation or establishment and that the Bidder 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 15.2(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 Bidder;
- (b) the Bidder has the full power, authority and legal capacity to:
 - (i) execute and submit its Quotation and to incur the liabilities and perform the obligations under the Quotation Document; and
 - (ii) enter into and execute the Contract and to incur the liabilities and perform the obligations thereunder;
- (c) the proposed Contract with the Government will, upon its formation pursuant to Clause 18 of the Terms of Quotation, constitute the legal, valid and binding obligations of the Bidder in the place of its incorporation, formation or establishment and is enforceable against the Bidder 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 Quotation and the performance of the Contract (if awarded to the Bidder) have been duly authorised by all necessary corporate action of the Bidder, and does not violate any provision of any applicable law, regulation or decree of the Bidder's place of incorporation, formation or establishment, or the Memorandum (if any) and Articles of Association or similar constitutional documents of the Bidder;
- (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 Bidder's Quotation, or the performance by the Bidder of its obligations under the Quotation Document and the Contract;
- (f) the Bidder's Quotation and the Contract (if awarded to the Bidder) need not be registered or filed in the place of incorporation, formation or establishment in order to secure their validity and/or priority;

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- (g) there is no restriction under the laws of the place of the Bidder's incorporation, formation or establishment affecting the Bidder's obligations under the Quotation Document and the Contract;
- (h) the choice of the laws of Hong Kong to govern the Quotation Document 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 Bidder; and
- (j) it is not necessary under the laws of the place of incorporation, formation or establishment of the Bidder 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 Quotation Document and the Contract.

7.3 The Government may require a Bidder to provide, at its own expense, additional legal opinion satisfactory to the Government in all respects issued by a lawyer duly qualified to practice the laws of the place of incorporation, formation or establishment of the Bidder and acceptable to the Government on any other matters arising from its Quotation. Where the opinion on the question specified in Clause 7.2(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 Clause 7.4 below will be recognised and given effect to by the courts of the place of incorporation, formation or establishment of the Bidder ("additional opinion on arbitration"). Together with the additional opinion on arbitration to be provided, the Bidder shall also be required to provide a confirmation in writing that in consideration of the award of the Contract, it agrees that Clause 39.2 of the General Conditions of Contract shall be replaced by the arbitration clause in Clause 7.4 below.

7.4 Where the opinion on the question specified in Clause 7.2(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 Clause 7.3 above, Clause 39.2 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 Clause 26.2 of the Terms of Quotation".

8. Sub-contractors

8.1 If any obligations of the Consultant are proposed to be performed by a sub-contractor, the Bidder shall submit in the Brief information of the sub-contractor. Details of the obligations to be performed by the proposed sub-contractor shall be submitted.

8.2 The information required in the Brief for each proposed sub-contractor shall cover the information as required in Clause 7.1(a) of the Terms of Quotation as if references to Bidder shall mean the proposed sub-contractor.

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- 8.3 The Government reserves the power to request the Bidder to withdraw any sub-contracting proposal in the Brief whereupon should the Bidder refuse to do so, its Quotation may not be considered further.
- 8.4 The Brief will specify whether or not the Government will require the submission of a legally binding sub-contractor's undertaking. If a sub-contractor's undertaking is required, and that the proposed sub-contractor was established or incorporated outside Hong Kong, and if requested by the Government, the legal opinion referred to in Clauses 7.2 and 7.3 of the Terms of Quotation shall also be provided in relation to the proposed sub-contractor.

9. Cancellation of the Invitation to Quotation Exercise

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

10. Bidder's Commitment

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

11. Counter-Proposals

- 11.1 The Bidder must not submit any proposal that has the effect of varying or modifying (a) any essential requirements specified in the Quotation Document; (b) all provisions in the Quotation Document concerning the preparation, submission and evaluation of Quotations and award of Contract; and (c) those additional provisions which are not permitted to be subject to any counter-proposal as identified in the Brief (if any).
- 11.2 The Bidder must not directly or indirectly attempt to preclude or limit the effect of any requirements or instructions set out in the Quotation Form, these Terms of Quotation or the Brief or the Schedules.
- 11.3 If a Bidder fails to comply with Clause 11.1 or 11.2 above, subject to any clarification which the Government may, but is not obliged to, seek from the Bidder, its Quotation will not be further considered.
- 11.4 Counter-proposal to other provisions of the Quotation Document not specified in Clause 11.1 or 11.2 above, whilst not strictly disallowed, is not encouraged. If the Bidder wishes to submit one or more counter-proposals to any provision in the Quotation Document not of the types specified in Clause 11.1 or 11.2 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 "Form of Quotation" of the Quotation Form; or
 - (ii) *[Not Used]*
 - (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;

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- (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 “[]”.

11.5 Unless the Government otherwise agrees, Counter-Proposals that are not submitted in accordance with Clause 11.4 above will not be considered by the Government and will not be regarded to form part of the Quotation submitted by a Bidder. In such event, the Bidder shall be deemed to have agreed to the original provisions to which the Counter-Proposals relate and the Government will continue to consider the Bidder’s Quotation on this basis.

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

12. Request for Information

12.1 In the event that the Government determines that:

- (a) clarification in relation to any part of the Quotation is necessary; or
- (b) a document or a piece of information, other than those specified in Clause 3.3 of the Terms of Quotation, is missing from any Quotation, it may, but is not obliged to, request the Bidder concerned to make the necessary clarification, or submit the required document or information. The Bidder shall within five (5) working days from the date of the request or within such other period as specified in the request submit the clarification, information or document. If the clarification or information or document is not provided by the aforesaid deadline, the Quotation may not be considered further (or will not be considered further where the missing information or document is of the type specified in Clause 3.4 of the Terms of Quotation).

12.2 Any excess proposal or information supplied by a Bidder which goes beyond what has been requested by the Government pursuant to Clause 12.1 above will be ignored for the purposes of the Quotation evaluation or will entitle (but not oblige) the Government not to consider the Quotation further.

13. Bidder’s Enquiries

13.1 Any enquiries from the Bidder concerning the Quotation Document up to the date of lodging its Quotation with the Government shall be in writing and shall be submitted to the Government no later than three (3) working days before the Quotation Closing Date. The request shall be submitted in the manner specified in Clause 14.1 of the Terms of Quotation.

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

13.3 Unless otherwise expressly stated by the Government in writing, a statement made by the Government (whether oral or written) in response to any enquiry made by a potential Bidder shall be for information only. No such statement shall constitute a representation or warranty by the

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Government of any nature whatsoever (whether express or implied), and no invitation is made by the Government to any Bidder or potential Bidder to rely on such statement. No such statement shall form part of the Quotation Document or alter, negate or constitute a waiver of any provision of the Quotation Document.

14. Communication with the Government

14.1 Without prejudice to the requirements set out in Clause 18 of the Terms of Quotation concerning notification of acceptance of Quotation, all communications given or made by the Government or a Bidder in relation to the Invitation to Quotation shall be in writing and sent or delivered to the other Party in the manner provided in Clause 29 of the General Conditions of Contract at the address, facsimile number or email address specified in the Appendix, save that in the case of lodging any enquiries under Clause 13.1 of the Terms of Quotation, the Bidder shall lodge such enquiries by facsimile or by email only.

14.2 All communications in relation to the Invitation to Quotation shall be conducted directly between the Government and the Bidder unless the Government elects to contact any proposed sub-contractor or customer or client of the Bidder directly.

15. Negotiations

The Government reserves the right to negotiate with any Bidder in relation to the Bidder's Quotation and/or the Contract.

16. Government Discretion

16.1 Notwithstanding anything to the contrary in this Quotation Document, the Government reserves the right to disqualify a Bidder on grounds including any one of the following:

- (a) a petition is presented or a proceeding is commenced which has not been withdrawn any time prior to the Contract award or an order is made or a resolution is passed for the winding up or bankruptcy of the Bidder or a related person of the Bidder;
- (b) the Bidder has made or submitted a false, inaccurate or incomplete statement or representation or a forged document in the Quotation or in any subsequent submission by the Bidder or communication between the Government and the Bidder since submission of that Quotation;
- (c) in the event of (i) a claim or an allegation by any person, or a ruling or judgment by a court, or decision by a competent tribunal or arbitration body that any thing(s), service(s) or material(s) to be supplied or recommended by the Bidder in its Quotation infringes any Intellectual Property Rights or any other rights of any person ("IPR infringement") (and in the case of any claim or allegation, it was made any time during a period of seven (7) years preceding the Quotation Closing Date and up to the time of Contract award); or (ii) the Government having grounds to believe there is or will be such IPR infringement; or (iii) an agreement has been entered into whether by the Bidder or any other person to settle or compromise any claim or allegation about IPR Infringement (regardless of whether on an admission basis or non-admission basis) which agreement is still valid and subsisting at any time during a period of seven (7) years preceding the Quotation Closing Date and up to the time of Contract award;
- (d) any time during the twenty-four (24) months prior to the Quotation Closing Date or between the Quotation Closing Date and the award of the Contract, the Bidder or a related person of the Bidder (as defined in Clauses 16.6 and 16.7 below and including

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those who were in such capacity any time within the same period, i.e., twenty-four (24) months prior to the Quotation Closing Date or between the Quotation Closing Date and the award of the Contract) has committed significant or persistent default(s) or deficiency(ies) in the performance of any requirement or obligation under any other Government contract awarded by the head of the Procuring Department regardless of whether the default(s) or deficiency(ies) led to the actual termination of the relevant Government contract and regardless of whether such default(s) or deficiency(ies) occurs before or after the termination or expiry of the relevant Government contract, and in the case of the latter, provided that the default(s) or deficiency(ies) relates to any provisions which survive such termination or expiry, and regardless of whether such default(s) or deficiency(ies) has been remedied ("Contract Default(s)"); and the Government Representative in its sole judgment is satisfied that such Contract Default(s) casts a reasonable doubt on the capability of the Bidder to perform the Contract to be awarded in this Invitation to Quotation;

- (e) (i) the Bidder; or (ii) a related person of the Bidder; or (iii) a director or management staff of the Bidder or those of the related person of the Bidder, has been convicted by the final judgment (i.e. judgment not subject to any appeal to a higher court prior to the Contract award) in respect of one or more serious offences including conviction of offences involving bribery, false accounting, corruption, dishonesty or employment handed down any time during a period of five (5) years preceding the Quotation Closing Date and thereafter up to the time of Contract award;
- (f) in the event of the professional misconduct or acts or omissions having been committed during a period of five (5) years preceding the Quotation Closing Date and up to the time of Contract award that adversely reflect on the commercial integrity of the Bidder or a related person of the Bidder or a director or management staff of the Bidder or those of the related person of the Bidder; professional misconduct includes any breach of the Good Industry Practice; or
- (g) any failure of the Bidder to pay taxes to the Government during a period of five (5) years preceding the Quotation Closing Date and up to the time of Contract award.
The grounds specified in Clauses 16.1(a) to 16.1(g) above are separate and independent, and shall not be limited by reference to or inference from the other of them.

16.2 For the purposes of Clause 16.1 above, each Bidder shall provide at the time of submission of its Quotation (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 and those information in relation to its related person or its director or management staff (which it has knowledge and is reasonably relevant to facilitate the Government's determination as to whether to exercise its right of disqualification), including but not limited to the following:

- (a) details of any petition or proceeding mentioned in Clause 16.1(a) above;
- (b) details of all infringement claims, allegations, rulings, judgments, decisions or settlement agreements as mentioned in Clause 16.1(c) above;
- (c) details of all Contract Defaults as mentioned in Clause 16.1(d) above;
- (d) details of conviction as mentioned in Clause 16.1(e) above in Hong Kong or any overseas jurisdiction;
- (e) details of any professional misconduct or act or omission as mentioned in Clause 16.1(f) above; and
- (f) details of any failure to pay taxes as mentioned in Clause 16.1(g) above.

If none of the events as mentioned in Clauses 16.1(a) to 16.1(g) above has ever occurred within the applicable period as mentioned above, the Bidder shall provide a statement to that effect by completing the relevant part of the Brief at the time of submission of its Quotation. If found

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- missing, the Government reserves the right to seek clarification pursuant to Clause 16.3 below. The information provided by the Bidder is not conclusive. The Government may independently verify the veracity and completeness of any information provided. In the case of Contract Default, the Government will form an assessment as to whether or not such Contract Default has occurred.
- 16.3 In addition to the information mentioned in Clause 16.2 above, the Government reserves the right (but not obligation) to request from a Bidder or a related person of the Bidder or director or management staff of the Bidder or those of the related person of the Bidder or other independent sources, such other information that is reasonably relevant to facilitate the Government's determination as to whether to exercise its right of disqualification under Clause 16.1 above.
- 16.4 If the Bidder fails to comply with the request made by the Government pursuant to Clause 16.3 above within such time as required by the Government, the Government may disqualify the Bidder pursuant to Clause 12 of the Terms of Quotation. If the Bidder has submitted false, inaccurate or incomplete information, the Government may disqualify the Bidder pursuant to Clause 16.1(b) above.
- 16.5 In providing the information required under Clauses 16.2 and 16.3 above, the Bidder may show cause to satisfy the Government that in relation to any of the events as mentioned in Clause 16.1 above, even if it has occurred, it does not cast doubt on the fitness, propriety or capability of the Bidder to perform the Contract to be awarded in this Invitation to Quotation.
- 16.6 If the Bidder is a company, the expression "related person" of the Bidder 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 Bidder ("majority shareholder");
 - (b) a holding company or a subsidiary of the Bidder;
 - (c) a holding company or a subsidiary of a majority shareholder (being a company) of the Bidder; or
 - (d) a company in which a majority shareholder (being an individual) of the Bidder 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).
- 16.7 If the Bidder is a sole proprietor or partnership, the expression "related person" includes any one of the following:
- (a) any partner of the Bidder (if it is a partnership);
 - (b) the spouse, parent, child, brother or sister of the Bidder, and, in deducing such a relationship, an adopted child shall be deemed to be a child both of the natural parents and the adopting parent, and a step child to be a child of both the natural parent and of any step parent; or
 - (c) a company in which the Bidder or any partner of the Bidder beneficially directly or indirectly owns fifty (50) percent or more of its issued share capital or controls the composition of its board of directors.
- 16.8 References to related persons of the Bidder, directors and management staff of the Bidder or those of a related person in any of the applicable Sub-Clause of Clause 16.1 above include persons who were in such capacity at such time of the event referred to in that Sub-Clause.

17. Award of Contract

- 17.1 Subject to the other provisions of the Quotation Document, the Government will normally award the Contract to the Bidder which the Government has determined to be capable of fulfilling the terms of the Contract and complies with the following evaluation criteria:

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- (a) where the Quotation Document do not contain any marking scheme, (i) the Bidder has passed the completeness check, (ii) the Bidder and its Quotation conform with all the essential requirements stipulated in the Quotation Document, (iii) the Bidder has not been disqualified (or having its Quotation not being considered further) for failing to comply with any other requirements set out in the Quotation Document, and (iv) the Bidder has submitted the lowest Quotation price (i.e., the lowest amount which is equal to the summation of all Estimated Services Prices for all Item(s) to which the price evaluation relates, or which is derived by another calculation as may be specified in the Brief (if any)) amongst all the Quotations which fulfil the evaluation criteria as specified in (i) to (iii) above; or
 - (b) where the Quotation Document contain a marking scheme, (i) the Bidder has passed the completeness check, (ii) the Bidder and its Quotation conform with all the essential requirements stipulated in the Quotation Document, (iii) the Bidder has not been disqualified (or having its Quotation not being considered further) for failing to comply with any other requirements set out in the Quotation Document, and (iv) the Bidder has attained the highest combined score amongst all the Quotations which fulfil the evaluation criteria as specified in (i) to (iii) above based on the marking scheme.
- 17.2 The term “completeness check” referred to in Clauses 17.1(a) and (b) above shall mean the checking of (a) whether or not all proposals, documents and information which are, as per provisions in the Quotation Document, required to be submitted before the Quotation Closing Time (and failing which the Quotation will not be considered further), have been so submitted; and (b) whether or not those which are, as per the provisions in the Quotation Document, required to be submitted before the Quotation Closing Time or upon subsequent request (and failing which the Quotation will not be considered further), have been so submitted before the Quotation Closing Time, or upon such request if a subsequent request has indeed been made by the Government.
- 17.3 For determining the lowest Quotation price under Clause 17.1(a) above or the price score under Clause 17.1(b) above,
- (a) any prompt payment discount offered by the Bidder in the Schedule of Fees will not be taken into consideration in the Quotation price assessment; and
 - (b) Quotation price quoted in the Permissible Currency other than Hong Kong dollars will be converted to Hong Kong dollars based on the official opening selling rate of that Permissible Currency quoted by the Hong Kong Association of Banks on the Quotation Closing Date.
- 17.4 Unless otherwise expressly permitted in the Brief, a partial Quotation for some but not all of the Items is not permitted. Where it is not permitted, the Bidder must submit an offer for all quantities of all Item(s). All Quotations will be evaluated on an overall basis by taking into account all offered Item(s) based on the quantit(ies) specified in the Schedule of Fees in accordance with Clause 17.1 above. Where partial Quotation is allowed, the Quotations will be evaluated on an Item by Item basis (or group of Items by group of Items basis (each a “Group”), depending on the specification in the Brief) in accordance with Clause 17.1 above and separate Contracts may be awarded in respect of each Item (or each Group, as the case may be). Under such scenario, all Quotations for each Item (or Group) will be evaluated by taking into account the quantit(ies) for such Item (or Group) specified in the Schedule of Fees in accordance with Clause 17.1 above. Where a Bidder is the successful Bidder for more than one Item (or Group), only one Contract will be awarded to that Bidder covering all such Items (or Groups, as the case may be).
- 17.5 Where it is provided in the Brief that the Quotations for each Item (or Group) will be evaluated separately, and where in respect of an Item (or Group) offered by the Bidder, the Bidder or its Quotation fails to fulfil any of the evaluation criteria as specified in Clause 17.1(a) or (b) above

Part B – Terms of Quotation

(whichever is applicable) (“a non-conforming Quotation”), the Bidder’s Quotation for that Item (or Group) will not be considered further, but without affecting the validity of the Bidder’s Quotation for other Item(s) (or Group(s)) if its Quotation for those Item(s) (or Group(s)) are not non-conforming. Throughout the Quotation Document, references to “Quotation will not be considered further” (or other similar expressions) shall be construed to mean the non-conforming Quotation for the relevant Item (or Group) only.

17.6 Regardless of the applicable requirement as mentioned in Clause 17.4 above, each Bidder acknowledges and agrees that the Government may elect at its sole option to accept all or any part of the Bidder’s Quotation.

17.7 Notwithstanding anything herein to the contrary, the Government is not bound to accept the Quotation with the lowest price offer or the Quotation with the highest combined score or any Quotation and reserves the right to accept all or any part of any Quotation at any time within the Quotation Validity Period.

18. Acceptance

18.1 A Quotation shall not be regarded to have been accepted by the Government unless the Government issues to the successful Bidder an acceptance in writing (“Quotation Acceptance”) and send it either by post or facsimile transmission to the successful Bidder’s address or facsimile number (as the case may be) specified in the Appendix to the Terms of Quotation. A binding Contract between the Government and the successful Bidder is only constituted:

- (a) if the Quotation Acceptance is sent by post, at the time of posting; or
- (b) if the Quotation Acceptance is transmitted by facsimile, at the time when a transmission report is generated by the Government’s facsimile machine, confirming that the Quotation Acceptance has been transmitted to the aforementioned facsimile number.

18.2 A duplicate hardcopy of the Contract, including the “Letter of Acceptance” duly completed by the Government, will subsequently be delivered to the successful Bidder evidencing the earlier acceptance by post or facsimile transmission, as the case may be.

18.3 Bidders who do not receive any notification within the Quotation Validity Period should assume that their Quotations have not been accepted.

18.4 [Not Used]

19. Financial Vetting [Not Used]

20. Contract Deposit [Not Used]

21. Complaints about Tendering Process or Contract Award

- 21.1 The Tendering process is subject to internal monitoring to ensure that the relevant contract is awarded properly and fairly. Any Bidder who feels that its Quotation has not been fairly evaluated may write to the head of the Procuring Department who will personally examine the complaint and refer it to the approving authority or relevant Quotation boards for consideration if the complaint relates to the Tendering system or procedures followed. The Bidder should lodge the complaint within three (3) months after the award of Contract.
- 21.2 Where the Invitation to Quotation is covered by the WTO GPA, a Review Body on Bid Challenges under the WTO GPA has been set up by the Government to deal with challenges made against alleged breaches of the WTO GPA. The relevant procedures for handling bid challenges are set out in the Rules of Operation of the Review Body which are available for inspection at the Secretariat of the Review Body located at the Trade and Industry Department. They may also be sent to the interested Bidders upon request to the Secretariat of the Review Body. In the event that a Bidder believes that a breach of the WTO GPA has occurred, the Bidder may, within ten (10) working days after it knew or reasonably should have known the basis of the challenge, lodge a challenge to the Review Body on the alleged breaches of the WTO GPA. Nevertheless the Bidder is encouraged to approach the Procuring Department for resolution of its complaint before lodging a challenge to the Review Body. In such instances, the Procuring Department shall accord impartial and timely consideration to any such complaint, and deal with it in a manner that will not be prejudicial to the corrective measures that may be obtained by the Bidder through the Review Body. The Review Body may receive and consider a late challenge but a challenge will not be considered if it is filed later than thirty (30) working days after the basis of the challenge is known or reasonably should have been known to the Bidder.

22. Documents of Unsuccessful Bidders

The Government may destroy these documents three (3) months after the Contract has been constituted in the aforesaid manner.

23. New Information

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

24. Contractors' Performance Monitoring

If a Bidder is awarded the Contract, its subsequent performance will be monitored and may be taken into account when its future offers for other Quotations or quotation exercises are evaluated.

25. Cost of Quotation

Each Bidder shall submit its Quotation at its own cost and expense. The Government shall not be liable for any costs and expenses whatsoever incurred by a Bidder in connection with the preparation or submission of its Quotation and the doing of all acts required for the purpose of this Invitation to Quotation, 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 Bidder, (c) presenting the Bidder's reference sites and equipment to the Government Representative during the site visits, and (d) provision of Quotation samples, whether before or after the Quotation Closing Time.

26. Consent to Disclosure

26.1 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 Bidder) without any further reference to or consent from the successful Bidder or any other Bidder,

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

26.2 Nothing in Clause 26.1 above shall prejudice the Government's power to disclose whenever it considers appropriate information of any nature whatsoever in relation to or concerning any Bidder (successful or unsuccessful) or its Quotation (whether or not the information is specified in Clause 26.1 above and including information recorded in whatever media) if the disclosure is made under any one of the following circumstances (even if disclosure may also mean the information will at the same time, or subsequently, become public information):

- (a) the disclosure of any information to any public officer or public body as defined in the Interpretation and General Clauses Ordinance (Chapter 1 of the Laws of Hong Kong) or any other person employed, used or engaged by the Government (including agents, advisers, Consultants and consultants);
- (b) the disclosure of any information already known to the recipient;
- (c) the disclosure of any information which is public knowledge (including because of any disclosure under Clause 26.2(a) above);
- (d) the disclosure of any information in circumstances where such disclosure is required pursuant to any law of Hong Kong, a request made by the Review Body mentioned in Clause 21.2 of the Terms of Quotation, or an order of a court of Hong Kong or a court or tribunal with competent jurisdiction;
- (e) the disclosure of any information regarding anti-competitive collusive conduct to the Competition Commission of Hong Kong (and other authorities as relevant); or
- (f) without prejudice to the power of the Government under Clause 26.1 above, to the extent the information relates to or concerns a Bidder, with the prior written consent of that Bidder.

27. Personal Data Provided

- 27.1 All personal data provided in a Quotation will be used by the Government for the purposes of the Invitation to Quotation and all other purposes arising from or incidental to it (including for the purposes of Quotation evaluation, the award of the Contract, resolution of any dispute arising from the Invitation to Quotation, and the disclosure pursuant to Clause 26 of the Terms of Quotation).
- 27.2 By submitting a Quotation, a Bidder is regarded to have agreed to, and to have obtained from each individual whose personal data is provided in the Quotation, his consent for the disclosure, use and further disclosure by the Government of the personal data for the purposes set out in Clause 27.1 above, or the disclosure pursuant to Clause 26 of the Terms of Quotation.
- 27.3 An individual to whom personal data belongs and a person authorised by him in writing has the right of access and correction with respect to 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 Quotation.
- 27.4 Enquiries concerning the personal data collected by means of the Invitation to Quotation, including the making of access and corrections, should be addressed to the Personal Data Privacy Officer of the Procuring Department.

28. Licence to use the materials submitted by Bidders

A Quotation once submitted will become the property of the Government. Quotations of unsuccessful Bidder may be destroyed in accordance with Clause 22 of the Terms of Quotation. In consideration of the Government considering its Quotation, without prejudice to all other rights and powers of the Government under the Quotation Document (including in particular its right to disclose information in the Quotations) and under the Contract, each Bidder hereby grants and shall upon the demand of the Government at the Bidder's cost procure that the lawful owner or authorised person of the relevant Intellectual Property Rights will grant, to the Government, its assigns, successors-in-title and authorised users, a royalty-free, non-exclusive, irrevocable, sub-licensable, transferable, world-wide, unrestricted right and licence to use or exercise all or any Intellectual Property Rights subsisting in its Quotation for the purposes of Quotation evaluation and for all other purposes incidental thereto or in connection therewith (including resolution of any dispute arising from the Invitation to Quotation). Such right and licence shall continue to subsist so long as all or any Intellectual Property Rights subsist in the Quotation (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 Bidder.

29. Warranty against Collusion

- 29.1 The Bidder must ensure that the Quotation is prepared without any agreement, arrangement, communication, understanding, promise or undertaking with any other person (except as provided in Clause 3 of the Non-collusive Tendering Certificate referred to in Clause 29.2 below), regarding, amongst other things, price, Quotation submission procedure or any terms of the Quotation. Bid-rigging is inherently anti-competitive and is considered serious anti-competitive conduct under the Competition Ordinance (Chapter 619 of the Laws of Hong Kong). Bidders

Part B – Terms of Quotation

- who engage in bid-rigging conduct may be liable for the imposition of pecuniary penalties and other sanctions under the Competition Ordinance.
- 29.2 The Bidder shall complete and submit to the Government a Non-collusive Tendering Certificate (in the form set out in one of the Schedules titled as such) as part of its Quotation.
- 29.3 In the event that a Bidder is in breach of any of the representations, warranties and/or undertakings in Clause 29.1 above or in Non-collusive Tendering Certificate submitted by it under Clause 29.2 above, the Government shall be entitled to, without compensation to any person or liability on the part of the Government:
- (a) reject the Bidder's Quotation;
 - (b) if the Government has accepted the Quotation, withdraw its acceptance of the Bidder's Quotation; and
 - (c) if the Government has entered into the Contract with the Bidder, terminate the Contract under Clause 15.1 of the General Conditions of Contract.
- 29.4 By submitting a Quotation, a Bidder is regarded to have undertaken to indemnify and keep indemnified the Government against all losses, damages, costs or expenses arising out of or in relation to any breach of any of the representations, warranties and/or undertakings in Clause 29.1 above or in Non-collusive Tendering Certificate submitted by it under Clause 29.2 above.
- 29.5 A breach by a Bidder of any of the representations, warranties and/or undertakings in Clause 29.1 above or in Non-collusive Tendering Certificate submitted by it under Clause 29.2 above may prejudice its future standing as a Government Consultant or service provider.
- 29.6 The rights of the Government under Clauses 29.3 to 29.5 above are in addition to and without prejudice to any other rights or remedies available to it against the Bidder.

30. Warning against Bribery

- 30.1 The offer of an advantage to any public 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 Bidder or any of its officers (including directors), employees or agents will render its Quotation null and void.
- 30.2 The successful Bidder shall inform its officers, employees (whether permanent or temporary), agents and sub-contractors who are connected with the provision of the Services that the soliciting or accepting of advantages, as defined in the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong) is not permitted. The successful Bidder shall also caution its officers (including directors), employees and agents and sub-contractors against soliciting or accepting any hospitality, entertainment or inducement which may impair their impartiality in relation to the selection of its sub-contractors, if any, or the supervision of the work of the sub-contractors once selected.

31. Environmental Protection

- 31.1 Bidders are encouraged to minimise the impact of their activities on the environment and to observe the general guidelines in Guidance Note GN-1 (Environmental Protection) at Annex I to the Terms of Quotation.
- 31.2 The following environment-friendly measures are recommended to be adopted in the preparation of documents relating to a Quotation and the future performance of the Contract:
- (a) all documents should be printed on both sides and on recycled paper. Paper that exceeds 80 gsm should not be used for the text;
 - (b) use of plastic laminates, glossy covers or double covers should be avoided as far as possible. If art board paper has to be used as document covers, recyclable non-glossy paper should be used; and

Part B – Terms of Quotation

- (c) single line spacing should be used and excessive space in the margins and in between Clauses should be avoided.

32. National Security and Public Interest

- 32.1 Notwithstanding anything to the contrary in the tender documents, the Employer reserves the right to disqualify a bidder on the grounds that the bidder or if the bidder is an unincorporated or incorporated joint venture, any participant of the unincorporated joint venture or shareholder of the incorporated joint venture has engaged, is engaging, or is reasonably believed to have engaged or be engaging in acts or activities that are likely to constitute or cause the occurrence of offences endangering national security, or otherwise the disqualification is necessary in the interest of national security, or is necessary to protect the public interest of Hong Kong, public morals, public order or public safety.
- 32.2 The bidder shall submit with his tender a duly signed and witnessed letter in the form set out in Annex II to these Terms of Quotation. The signatory to the letter shall be a person authorized to sign Government contracts on the bidder's behalf.

Annex I to the Terms of Quotation

**Guidance Note GN-1
(Environmental Protection)**

Contractors are encouraged to minimise the impact of their activities on the environment and to observe the following requirements in particular:

- Comply with all applicable legal and other requirements on environmental protection.
- Control the use of materials and resources (e.g. electricity, fuel, chemicals, paper, etc.) to minimise their consumption and unnecessary wastage. Use environment-friendly alternatives where possible during your daily operations.
- Store properly all materials/chemicals to prevent any spillage and leakage.
- Minimise the production of solid waste and chemical waste.
- Ensure all solid waste is properly handled, stored and disposed of in an efficient and sensitive manner to avoid any spillage and leakage. In particular, all chemical waste should be handled, stored and disposed of in accordance with the applicable legal requirements.
- Ensure proper and regular maintenance of all vehicles used for the purpose of conducting business, including controlling their noise and emissions.
- Minimise all air emissions and noise generation where practicable.
- Ensure all waste water is discharged in accordance with the applicable legal requirements.
- Reuse and recycle waste wherever possible.

Part B – Terms of Quotation

Annex II to the Terms of Quotation

To: The Government of the Hong Kong Special Administrative Region ("Government")

Date: _____

Dear Sir/Madam,

Contract No.: Q2754

Title: Services of Desktop Study on Energy Efficiency of Electric Vehicles

1. *[I/We], the bidder, [(name of the bidder) of (address of the bidder)]¹, refer to *[my/our] tender for the above Contract.
2. *[I/We] confirm that, before *[I/we] sign this letter, *[I/we] have read and fully understand this letter and the and Clause 32 of Terms of Quotation on "National Security and Public Interest".
3. *[I/We], represent and warrant that *[I/We] have not engaged, *[am/are] not engaging and will not engage in acts or activities that are likely to constitute or cause the occurrence of offences endangering national security or which would otherwise be contrary to the interest of national security.
4. *[I/We] shall indemnify and keep indemnified the Government against all losses, damages, costs or expenses arising out of or in relation to any breach of any of the representations and/or warranties above, including but not limited to damages for delay, costs and expenses of re-tendering and other costs incurred.

Signed for and on behalf of [name of the bidder] by [name and position of the signatory]²:

Name of Witness: _____

Signature of Witness: _____

Occupation: _____

* [Modify/Delete as appropriate.](#)

¹ Where the bidder comprises two or more persons or companies acting in partnership, joint venture or otherwise, this part in square brackets should be expanded to include the respective names and addresses of such persons or as the case may be companies.

² Where the bidder comprises two or more persons or companies acting in partnership, joint venture or otherwise, all such persons or as the case may be companies must sign. The signatory for each of such persons or companies shall be a person authorized to sign Government contracts on behalf of that person or as the case may be company.

Part C – Form of Quotation

FORM OF QUOTATION

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

**DESKTOP STUDY ON ENERGY EFFICIENCY OF ELECTRIC VEHICLES
QUOTATION NO.: Q2754**

To: Director of Electrical & Mechanical Services,
Electrical & Mechanical Services Department,
3 Kai Shing Street,
Kowloon,
Hong Kong.

1. Having inspected the Brief for the above named Services, I/we offer to complete and guarantee the whole of the said Services in conformity with the said Conditions of Contract, and Brief as specified in the Schedule of Fees for the sum of **Hong Kong Dollars**

_____ (HK\$ _____)

2. I/We undertake to complete, deliver and guarantee without further charge the whole of the Services within the time as stated below:

(a) Time for Completion (#) :	<u>15</u>	months
(b) Guarantee Period :	<u>Nil</u>	months
(c) Validity Period :	<u>Ninety (90)</u>	days

3. The above Services will not be commenced unless and until a written acceptance, in the form of a Service Order or Letter of Acceptance, is received for this quotation within the validity period.

4. I/We understand that Government is not bound to accept the lowest or any quotation it may receive.

Signature : _____ Name in Block Letters : _____

Official Status : _____ Date : _____

on behalf of (*) _____

Trading in Hong Kong under the style of : _____

Registered address of firm : _____

Signature of Witness : _____ Name in Block Letters : _____

Occupation of Witness : _____

Address of Witness : _____

(#) If the time of completion is not stated, the bidder is to fill it in.

(*) Insert the name of the company.

THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION
ELECTRICAL AND MECHANICAL SERVICES DEPARTMENT

QUOTATION FOR
DESKTOP STUDY ON ENERGY EFFICIENCY OF ELECTRIC VEHICLES
QUOTATION NO.: Q2754

PART D - GENERAL CONDITIONS OF CONTRACT

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Part D – General Conditions of Contract

1. Contract Period

- 1.1 Subject to the provisions in the Contract for earlier termination, and without prejudice to Clause 16.1(a) of the General Conditions of Contract, this Contract shall have a duration specified as the Contract Period in the Special Conditions of Contract. Where the Special Conditions of Contract do not specify any period as the Contract Period, the Contract Period shall be the period commencing from the Date of Quotation Acceptance and ending on the date when the Consultant has discharged all its obligations in relation to the Services.
- 1.2 Unless otherwise expressly specified in the Special Conditions of Contract, an Order for the Services may be placed by the Government any time during the Contract Period up to the last date of the Contract Period.

2. Total Services and Variation

- 2.1 The Services to be performed under the Contract shall be as laid down in the Brief, Special Conditions of Contract and Schedule (if any) and shall be carried out, as and when required, to the satisfaction of the Inspecting Officer. 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.
- 2.2 The Consultant shall not extend the Services beyond the requirements specified in the Brief, Special Conditions of Contract and Schedule (if any) 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 Consultant to alter, amend, omit, add to, or otherwise vary any of the Services and/or the Contract Period, and the Consultant 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 Brief, Special Conditions of Contract and Schedule (if any).
- 2.3 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 Unit Prices specified in the Price Schedule so far as the same may be applicable and where the Unit Price is not contained in the Price Schedule, or is not applicable, such amount shall be such sum as is reasonable in the circumstances.

3. Consultant's Acknowledgement, Obligations and Contract Performance

- 3.1 The Consultant acknowledges and agrees that when entering into the Contract, it has been supplied with sufficient information to enable it to provide to the Government the Services, which shall comply fully with the requirements set out in the Brief and other provisions of the Contract.
- 3.2 The Consultant further acknowledges that the Government relies on the skill and judgment of the Consultant in the provision of the Services and the performance of its obligations under the Contract. Save to the extent expressly set out in the Contract, the Consultant does not expect, and the Consultant agrees that it is unnecessary for, the Government to do anything to facilitate or assist the Consultant's provision of the Services and the performance of its obligations under the Contract.
- 3.3 The Consultant 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.
- 3.4 The Consultant shall comply with all applicable laws and regulations. In particular, the Consultant

Part D – General Conditions of Contract

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 Consultant 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.

3.5 The Consultant shall:

- (a) duly and unconditionally secure, obtain and maintain throughout the Contract Period all and any authorisations, approvals, consents, licences, permits, exemptions and other requirements of any governmental, administrative or other authority or body in any relevant jurisdiction which are or may be required or necessary to authorise the Consultant to execute, deliver and perform the Consultant's obligations under the Contract (including where the Consultant's procedures so require, the consent of its parent company) ("Consents");
- (b) ensure that the Consents are in full force and effect, and the use of the Services by the Government will not contravene any applicable laws, throughout the Contract Period; and
- (c) bear all costs, charges and expenses that may be incurred in obtaining and maintaining the Consents throughout the Contract Period.

3.6 The Consultant shall, through the Government Representative, keep the Government informed of all matters related to the Contract within the actual or constructive knowledge of the Consultant and shall answer all enquiries received from the Government Representative.

3.7 The Consultant 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 Consultant under any laws or regulations in connection with the performance of the Contract.

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

3.9 The Consultant shall be responsible for the completeness and accuracy of all drawings, documents and information supplied by the Consultant to the Government in connection with the Services. Without prejudice to any other provisions of the Contract, the Consultant shall indemnify the Government in accordance with Clause 14.2 of the General Conditions of Contract in connection with, any discrepancies, errors or omissions therein.

3.10 Any drawings and specifications reasonably required for the Consultant'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.

3.11 The Consultant acknowledges that it does not have the right to provide the Services to the Government on an exclusive basis and nothing in this Contract confers any such exclusive right.

Part D – General Conditions of Contract

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

4. Warranties and Representations

4.1 The Consultant warrants, represents and undertakes that:

- (a) the Consultant 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 Consultant shall carry out the Services with all due diligence and in a timely, safe, proper, skillful and workmanlike manner;
- (c) the Services shall conform in all respects to the Brief and conditions under the Contract;
- (d) it shall not employ any illegal workers to carry out its obligations under the Contract;
- (e) the Consultant has full power, capacity and authority to enter into the Contract and to perform all its obligations under the Contract including without limitation the vesting of the Intellectual Property Rights in the Government, and the granting and/or procuring the grant of the licences to the Government, its authorised users, assigns and successors-in-title in accordance with Clause 17 of the General Conditions of Contract;
- (f) the Contract constitutes valid, legally binding obligations of the Consultant enforceable in accordance with its terms;
- (g) all information and documents supplied, and statements and representations from time to time made by or on behalf of the Consultant in or in relation to its Quotation and the Contract are genuine, true, accurate and complete;
- (h) throughout the Contract Period, no claim is being made and no litigation, arbitration or administrative proceeding is presently in progress, or to the best of the Consultant'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;
- (i) throughout the Contract Period, it is not subject to any contractual obligation, or court judgment or ruling order or arbitration decision, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- (j) throughout the Contract Period, 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 Consultant 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 Consultant's assets or revenue; and
- (k) throughout the Contract Period, 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.

4.2 The warranties, representations and undertakings, expressed or implied, contained in Clause 4.1 above and in Clause 17.1 of the General Conditions of Contract and in other provisions of the Contract (including without limitation the Special Conditions of Contract and Clause 29.1 of the Terms of Quotation), and those made by the Consultant in its Quotation for the Contract including all Schedules, during the evaluation of the Quotation, and those from time to time made in the course of performance of the Contract, are collectively referred to as "Warranties", and each, a "Warranty".

4.3 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

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provision of the Contract.

- 4.4 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 Consultant and the Government respectively.

5. Costs and Expenses

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

6. Price Variation

The prices quoted for the Services in the Price Schedule shall remain valid throughout the Contract Period and only subject to adjustment in accordance with the provisions set out in the Special Conditions of Contract (if any).

7. Order and Provision of Services

- 7.1 Subject to the ordering and arrangement of provision of Services specified in the Special Conditions of Contract for the Services, whenever required by the Government by a written order signed by the Government Representative and issued to the Consultant during the Order Period specifying:
- (a) the Services to be provided to the Government;
 - (b) the date and time for provision of the Services referred to in (a) above; and
 - (c) the conditions, if any, applicable to the provision of the Services referred to in (a) above, the Consultant shall provide to the Government the Services so specified in the Order in accordance with the Order and the provisions of the Contract.
- 7.2 If no date and time for provision of the Services is specified in an Order, the Consultant shall provide the Services specified in the Order within fourteen (14) working days from the date of the Order.
- 7.3 Where the Services and/or the date(s) for provision of the Services are specified in the Terms of Quotation (Supplement) and/or the Special Conditions of Contract (as the case may be), Clauses 7.1 and 7.2 above shall not apply.
- 7.4 Time shall be of the essence of the Contract as regards each provision of the Services specified in an Order.
- 7.5 Notwithstanding any provision of the Contract, due provision of any Services to the Government shall not be regarded to have taken place unless and until such Services are accepted by the Government in writing.

8. Inspection

- 8.1 The Services performed shall be subject to inspection and certification by the Inspecting Officer, and/or the Government Representative, and/or by an Independent Accredited Laboratory (whereupon the passing of any such tests shall be evidenced by a test certificate or laboratory test report certified by the Independent Accredited Laboratory) as specified in the Special Conditions of Contract. All costs incurred by the Consultant (including those for the appointment of the Independent Accredited Laboratory) shall be borne by the Consultant and shall not be chargeable to the Government unless and to the extent otherwise expressly specified in the Price Schedule. Upon breach of any term or condition of the Contract by the Consultant, including but not limited

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to failure to comply with the performance requirements in accordance with the Brief, 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 Consultant.

- 8.2 In the event that the Consultant, 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 Consultant to observe and perform which is capable of remedy, the Government may by notice in writing to the Consultant at any time require the Consultant 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.

9. Government Property

When Government property is issued to the Consultant under the Contract, the Consultant 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 Consultant or his servants, workmen or agents, the Consultant 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 Consultant may be made at any time by the Government Representative and the Consultant shall render such assistance as is necessary for this purpose.

10. Government Premises/Consultant's Premises

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

11. Payment of the Contract Price

- 11.1 In consideration of the Consultant's due and proper performance of all its obligations in accordance with all terms and conditions of the Contract and subject always to all and any set-off, deductions or withholding, the Government shall pay the Consultant the Contract Price in accordance with the payment timetable set out in the Price Schedule.
- 11.2 Where the payment timetable stated in the Price Schedule provides that the Contract Price shall be payable in one lump sum, unless otherwise agreed in writing by the Government, in respect of any Services provided to the Government, the Government shall not have any obligation to pay the Consultant the Contract Price for such Services unless and until the Services have been accepted by the Government in writing. The Government shall pay the Consultant the Contract Price for the Services within thirty (30) days after the date of receipt of the invoice or written acceptance of the Services, whichever is later.
- 11.3 Where the payment timetable stated in the Price Schedule provides that the Contract Price for the

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Services shall be payable in instalments, the Government shall pay each instalment of the Contract Price for the relevant milestone or part of the Services:

- (a) within thirty (30) days after the due date of the instalment as stated in the payment timetable; or
- (b) within thirty (30) days after the receipt of the invoice from the Consultant (which has included all necessary deductions, set-off and withholding),

whichever is the later and after the receipt of an advance payment bond of the equivalent amount as required in the Special Conditions of Contract, if any.

- 11.4 Unless specifically stated in the Contract, apart from the Contract Price, no other money shall be payable by the Government to the Consultant or any other person under the Contract. Save as otherwise expressly provided for in the Contract, the Consultant shall perform, comply with and observe all provisions of the Contract and its obligations under the Contract at its own costs and expenses.
- 11.5 Without prejudice to Clause 11.4 above, the Contract Price is inclusive of all charges for provision of the Services (including all costs and charges for the Consents). Save as otherwise expressly provided for in the Contract, the Consultant shall not be entitled to any adjustment in the Contract Price for any reason (including foreign exchange fluctuations).
- 11.6 Where and to the extent this Contract constitutes a standing offer to provide the Services to the Government if and when demanded during the Order Period, the Consultant and the Government hereby acknowledge and agree that the consideration for the standing offer shall be one (1) Hong Kong dollar, payable by the Government to the Consultant, if and when demanded, and that the Consultant irrevocably undertakes to keep the standing offer open throughout the Order Period.
- 11.7 The Consultant shall invoice the Government for any payment of the Contract Price. In respect of the provision of the Services which has been accepted and that the Contract Price is payable in the manner specified in Clause 11.2 above, the Consultant shall deliver to the Government an invoice setting out the particulars of the Services provided (including the Unit Price), the Order number (where an Order has been issued), the amount of Contract Price payable for the Services after taking into account all applicable deductions, set-off and withholding, and such other information as the Government Representative may require from time to time.
- 11.8 In the case where the Contract Price is payable in the manner specified in Clause 11.3 above, an invoice for an instalment of the Contract Price shall not be issued unless (a) the milestone as specified in the payment timetable in the Price Schedule has been achieved and accepted by the Government as confirmed by it in writing; and (b) the invoice must have taken into account all applicable deductions, set-off and withholding.
- 11.9 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 Consultant under the Contract if:
 - (a) the Consultant 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 Consultant is or will be liable to the Government under any provision of the Contract for the loss or damage suffered by the Government; or
 - (d) withholding of payment is required by any applicable law or regulation for tax or otherwise.
- 11.10 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 Consultant.

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- 11.11 The Government shall not be held responsible or liable for any delay in payment and no interest or other surcharge or any other payment howsoever described shall be charged to the Government due to (a) invoices not having been issued in accordance with this Clause 11, or (b) the amount billed in the invoices not having been duly calculated in accordance with the provisions of the Contract (including without limitation not having taken into account all applicable deductions, set-off or withholding), or (c) the Consultant disputing any deductions or set-off or withholding made by the Government pursuant to the Contract, or (d) any invoice or correspondence being improperly addressed contrary to the requirements stipulated in the Contract. Each invoice shall include all deductions, set-off and withholding which may be made pursuant to the terms of the Contract and shall show the net amount payable. If the Consultant does not render an invoice charging a correctly stated net amount due to its failure to take into account all appropriate deductions, set-off or withholding or otherwise, the Government may, but is not obliged to, pay the net amount which duly takes into account all appropriate deductions, set-off and withholding.
- 11.12 In the event that the Consultant fails to pay any sum of money on the date it falls due or upon demand by the Government under the Contract, it shall pay interest on such sum to accrue from the due date up to the date of actual payment in full at the rate of 1% above the rate per annum which shall be a simple average of the rates per annum announced by the note-issuing banks of Hong Kong from time to time to be its prime lending rate for Hong Kong dollars. Such interest shall accrue on a daily basis and shall be computed on the basis of a 365-day year ("default interest rate"). For the applicable interest rate when a court judgment or an award from the arbitrator is obtained (if any), the interest rate to accrue on such judgment sum or awarded sum shall be the aforesaid default interest rate, or such rate as may be determined from time to time by the Chief Justice of Hong Kong by order for judgment debt interest (whichever rate is the higher rate).
- 11.13 Where the Contractor is outside Hong Kong [Not Used]

12. Contract Deposit [Not Used]

13. Recovery of Sums Due

Where the Consultant 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 Consultant under the Contract or any other contract made between the Government and the Consultant.

14. Liability and Indemnities

- 14.1 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 Consultant'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 Consultant (in the case where the Consultant is a natural person) or any of its employees or agents, save and except any such injury or death caused by the Negligence of the Government or any of its employees (in the course of employment).
- 14.2 Without prejudice to any other provision of the Contract, the Consultant shall indemnify each of the Government, its assigns, successors-in-title, and authorised users (including the employees and

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agents of the Government) (each an “Indemnified Party”) from and against:

- (a) all and any liabilities and indebtedness (including liabilities to pay damages or compensation), losses, damage, costs, charges and expenses incurred or suffered by an Indemnified Party of whatsoever nature (including all legal and expert costs, charges and expenses on a full indemnity basis); and
- (b) all and any demands, claims, actions, arbitrations, proceedings, threatened, brought or instituted by any person against an Indemnified Party or by an Indemnified Party against any person (regardless of whether or not they have been settled or compromised) (collectively, “Claims” and each a “Claim”) and everything stated in Sub-clause (a) above incurred or suffered by an Indemnified Party in all and any such Claims,

which arise directly or indirectly as a result of or in connection with, or which relate in any way to, all or any of the following:

- (i) the breach of any provisions of the Contract by the Consultant;
- (ii) the negligence, recklessness, tortious acts or wilful act or omission of the Consultant, its employees, agents or sub-contractors;
- (iii) any Warranty which is incorrect, inaccurate, incomplete or misleading;
- (iv) any claim or allegation that the use or possession of the Materials or Third Party Materials infringes the Intellectual Property Rights or any other rights of any person; or
- (v) the non-compliance by the Consultant, its employees, agents or sub-contractor(s) with any applicable law, or regulation, order or requirement of any government agency or authority;
- (vi) any act or omission of the Consultant, or its employees, agents or sub-contractors, in the performance of the Contract notwithstanding that the Consultant is authorised or obliged to do or commit any such act or omission under this Contract;
- (vii) any loss, damage, injury or death referred to in Clause 14.1 above save and except injury or death caused by the Negligence of the Government or any of its employees (in the course of employment); or
- (viii) any injury or death of any third party, or any loss or damage to property sustained by any third party, in consequence of any act, omission, default, or negligence of the Consultant or any of its employees, agents and sub-contractors.

Each of the above is separate and shall be construed independently and shall not prejudice or be limited by reference to or inference from the other of them or other provisions of this Contract.

14.3 In the event of any person suffering any injury or death in the course of or arising out of the Contract and whether there be a claim for compensation or not, the Consultant 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.

14.4 For the purposes of this Clause 14, “Negligence” (appearing in upper case) shall have the same meaning as that assigned to it in section 2(1) of the Control of Exemption Clauses Ordinance (Chapter 71 of the Laws of Hong Kong).

14.5 The indemnities, payment and compensation given in pursuance of the Contract by the Consultant 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.

15. Termination

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15.1 In the event that:

- (a) the Consultant fails to provide to the Government any Services specified in an Order within the time as specified in the Order or in accordance with Clause 7.2 or 7.3 of the General Conditions of Contract;
- (b) any Services are rejected pursuant to the Contract;
- (c) the Consultant is in breach of any provision of the Contract which in the opinion of the Government is not capable of remedy;
- (d) the Consultant commits a breach of any provision of the Contract which is capable of remedy and fails to remedy the same within fourteen (14) days from the date of service of notice by the Government (or such longer period as specified in the notice) requiring such remedy;
- (e) any Warranty is incorrect, inaccurate, incomplete or misleading;
- (f) the Consultant has made a material misrepresentation (including submission of false statement or inaccurate information) during the Tendering process of the Contract;
- (g) the Consultant, any officer (including director), employee, agent or sub-Consultant of the Consultant 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 Consultant with the Government;
- (h) the Consultant abandons the Contract in whole or in part;
- (i) the Consultant assigns or transfers or purports to assign or transfer all or any part of the Contract or all or any of its rights or obligations thereunder without the prior written consent of the Government; or
- (j) any event or circumstance occurs which enables the Government to terminate the Contract under any one of the following provision of the General Conditions of Contract:
 - (i) Clause 12.2 or 12.9 (Contract Deposit);
 - (ii) Clause 20.3 (Probity);
 - (iii) Clause 27.3 (Force Majeure);
 - (iv) Clause 28 (Illegal Workers);
 - (v) Clause 35.4 (Admission of Consultant Personnel to Government Premises); or
 - (vi) Clause 29.3(c) of the Terms of Quotation (Warranty against Collusion),

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

15.2 The Government may immediately terminate the Contract upon the occurrence of any of the following events:

- (a) a proposal is made for a voluntary arrangement or any other composition, scheme or arrangement with, or assignment for the benefit of, the Consultant's creditors;
- (b) if the Consultant is an incorporated body, a shareholders' or members' resolution has been passed that it be wound up or dissolved (other than voluntarily for the purpose of bona fide reconstruction or solvent amalgamation the terms of which have been approved by the Government in advance);
- (c) a petition is presented for the winding up or dissolution or bankruptcy of the Consultant, which is not dismissed within fourteen (14) days after the petition is presented;
- (d) the Consultant is or becomes insolvent, or any order is made for the Consultant's bankruptcy or winding up or dissolution;
- (e) an administrator, administrative receiver, receiver or similar officer is appointed over the whole or any part of the Consultant's business or assets;
- (f) the Consultant suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or

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- (g) the Government reasonably believes that any of the events mentioned above is about to occur.
- 15.3 Separate from the event mentioned in Clause 15.1(j)(iii) above and Clause 27.3 of the General Conditions of Contract, where there is a Force Majeure Event, the Government may terminate the Contract in part or in whole pursuant to Clause 27.7 of the General Conditions of Contract.
- 15.4 Instead of terminating the Contract in relation to all Services pursuant to Clause 15.1, 15.2 or 15.3 above, the Government may elect, but is not obliged, to terminate the Contract in relation to any part or parts of the Services only ("Partial Termination"). The part(s) of the Services to which the Partial Termination relates are referred to as "Terminated Services". The Terminated Services may cover all or any part(s) of the Services which have not been accepted up to the time of termination.
- 15.5 Each of the grounds entitling the Government to terminate the Contract as specified in Clauses 15.1 to 15.3 above and in each Sub-clause of Clauses 15.1 and 15.2 shall be construed independently and shall not be limited or restricted by reference to or inference from any other ground or any other provision of this Contract.

16. Termination Consequences

- 16.1 Upon expiry or early termination of the Contract (howsoever occasioned) ("Termination"):
 - (a) the Contract shall be of no further force and effect, but without prejudice to:
 - (i) the Government's rights and claims under the Contract or otherwise at law against the Consultant arising from antecedent breaches of the Contract by the Consultant (including any breach(es) which entitle the Government to terminate the Contract);
 - (ii) the rights and claims which have accrued to a Party prior to the Termination; and
 - (iii) the continued existence and validity of those provisions which are expressed to or which in their context by implication survive the Termination (however occasioned) (including Clauses 3, 4, 11.9 to 11.12, 12 to 41 of the General Conditions of Contract, the Interpretation, the Interpretation (Supplement) and such other provisions as specified in the Special Conditions of Contract);
 - (b) the Government shall not be responsible for any claim, legal proceeding, liability, loss (including any direct or indirect loss, any loss of revenue, profit, business, contract or anticipated saving), damages (including any direct, special, indirect or consequential damages of whatsoever nature) or any cost or expense, suffered or incurred by the Consultant arising out of or in relation to the Termination;
 - (c) without prejudice to the other rights and claims of the Government including the right to seek indemnity under Clause 14.2 of the General Conditions of Contract, in the event of the Termination under Clause 15.1 or 15.2 of the General Conditions of Contract, the Consultant shall be liable for all losses, damage, costs and expenses incurred by the Government arising from the Termination including without limitation (i) any amount in excess of the Contract Price incurred by the Government in engaging another Consultant to complete the uncompleted Services and all costs and expenses incurred in making the arrangements for the same including conducting Quotation for the uncompleted Services; and (ii) any additional expenditure incurred by the Government in connection with a default by the Consultant referred to in Clause 15.1 of the General Conditions of Contract. If the Contract is so terminated, until the Government has established the final cost of making other arrangements contemplated under this Clause, no further payments shall be payable by the Government to the Consultant for the Services provided by the Consultant prior to Termination and in accordance with the Contract for which payment has yet to be made by the Government;

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- (d) the Consultant shall immediately return to the Government all Government Property which is supplied or in respect of which access is granted to the Consultant by the Government for the purposes of or in relation to the Contract;
- (e) the Consultant shall provide all such assistance as the Government may request from time to time after the Termination to ensure an orderly and effective transition of the provision of the Services to the Government or another Consultant to be appointed by the Government Representative and/or completion of any work-in-progress;
- (f) the Consultant shall within twenty-eight (28) days of the date of Termination compile and submit to the Government a report of all relevant information, facts, data, findings and conclusions in respect of the Services which have been provided up to the effective date of Termination; and
- (g) at the request of the Government, the Consultant shall enter into and perform all deeds of assignment, transfer or novation in favour of the Government or in favour of any person whom the Government may designate, for the assignment, transfer or novation of any contract, arrangement or other subject matter whatsoever (including without limitation licences in relation to any Intellectual Property Rights) on such terms and conditions as the Government may stipulate; and procure any other third party whom the Government considers necessary for effecting or perfecting such assignment, transfer or novation to enter into and perform any such deeds of assignment, transfer or novation.

Further, upon request by the Government and/or in the event of the expiry or termination (howsoever occurred) of the Contract, the Consultant shall at its sole costs and expenses promptly deliver to the Government the Materials (including any drafts and copies thereof) then in the Consultant's custody, control or possession, whether in their completed forms or not.

16.2 Upon a Partial Termination pursuant to Clause 15.4 of the General Conditions of Contract:

- (a) the provisions in the Contract to the extent they apply or concern or relate to the Terminated Services shall be of no further force and effect, but without prejudice to:
 - (i) the Government's rights and claims under the Contract or otherwise at law against the Consultant arising from antecedent breaches of the Contract by the Consultant;
 - (ii) the rights and claims which have accrued to a Party prior to the Partial Termination; and
 - (iii) the continued existence and validity of all remaining provisions of the Contract; and
- (b) all of the consequences specified in Clause 16.1 above (apart from Clause 16.1(a) above, and in the case of Partial Termination under the circumstances mentioned in Clause 15.4 of the General Conditions of Contract, also apart from Clause 16.1(c) above) shall apply save that references to "Termination" shall mean "Partial Termination"; references to "Services" shall mean the "Terminated Services".

17. Intellectual Property Rights

17.1 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 17.3 below, the Consultant warrants that such Materials shall be original works created, developed or made by or on behalf of the Consultant.

17.2 The Consultant 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

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sections 22 to 29 of the Copyright Ordinance (Chapter 528 of the Laws of Hong Kong).

- 17.3 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 Consultant in the performance of the Contract (“Third Party Materials”), the Consultant shall identify the Third Party Materials to the Government and keep the Government informed in writing of such Third Party Materials. The Consultant 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.
- 17.4 The Consultant warrants that:
- (a) prior to the use and incorporation of the Third Party Materials into the Materials or in providing the Services, the Consultant 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 Consultant;
 - (b) the provision of the Materials, Services and Third Party Materials by the Consultant 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.
- 17.5 The Consultant 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).
- 17.6 The Consultant 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 14.2, 17 and 19 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.
- 17.7 The provisions of this Clause 17 shall survive the expiry or termination of the Contract and shall continue in full force and effect notwithstanding such expiry or termination.

18. Conflict of Interest

- 18.1 The Consultant shall during the Contract Period and for six (6) months thereafter:
- (a) ensure that it (including each and every officer, employee and agent of the Consultant) and each of its sub-contractors and each of their respective employees, officers and agents

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engaged in the discharge of the obligations hereunder, and each of their respective associates and associated persons (collectively "Restricted Group") shall not undertake any business, activity, service, task, or job or do anything whatsoever for its own account (whether on its own or in conjunction with another person(s) in a joint venture or partnership or other business entity) or for or on behalf of another person (other than in the proper performance of the Contract) which conflicts or which may be seen to conflict with the Consultant's duties or obligations under the Contract without the prior written approval of the Government; and

- (b) forthwith notify the Government in writing of all or any facts which may reasonably be considered to give rise to a situation where the interests (of whatsoever nature) of the Consultant or any other member of the Restricted Group, conflict or compete, or may be seen to conflict or compete, with the Consultant's duties or obligations under the Contract.

18.2 The Consultant shall ensure that itself and each other member of the Restricted Group shall keep themselves informed and that each other member of the Restricted Group shall inform the Consultant and keep it informed regularly of all facts which may reasonably be considered to give rise to a situation in which its and/or their interests conflict or compete, or may be seen to conflict or compete, with the Consultant's obligations under this Contract.

18.3 In the Contract:

- (a) "associate" of a person means:
- (i) a relative or partner of that person; or
 - (ii) a company one or more of whose directors is in common with one or more of the directors of that person;
- (b) "associated person" of a person means:
- (i) any person who has control, directly or indirectly, over the second-mentioned person;
 - (ii) any person who is controlled, directly or indirectly, by the second-mentioned person; or
 - (iii) any person who is controlled by, or has control over, the person mentioned in (i) or (ii) above;
- (c) "control" over another person ("person under control") means the power of a person to secure:
- (i) by means of the holding of shares or interests or the possession of voting power in or in relation to that person under control or any other person;
 - (ii) by virtue of powers conferred by any constitution, memorandum or articles of association, partnership, agreement or arrangement (whether legally enforceable or not) affecting that person under control or any other person; or
 - (iii) by virtue of holding office as a director in that person under control or any other person; that the affairs of the person under control are conducted in accordance with the wishes of that person exercising control;
- (d) "director" means any person occupying the position of a director by whatever name called and includes a de facto or shadow director;
- (e) "relative" means the spouse, parent, child, brother or sister of the relevant person, and, in deducing such a relationship, an adopted child shall be deemed to be a child both of the natural parents and the adopting parent and a step child to be a child of both the natural parents and the step parent; and
- (f) "Restricted Group" has the meaning given to it in Clause 18.1 above.

19. Confidentiality

Part D – General Conditions of Contract

- 19.1 The Consultant 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 Consultant; or (b) otherwise is accessible by or available to the Consultant 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 19.1 shall not apply to the disclosure of any Confidential Information if:
- (a) such disclosure to any person employed, used or engaged by the Consultant in performing the Contract is made in circumstances where such disclosure is necessary in the reasonable opinion of the Consultant for the performance of the Consultant's duties and obligations under the Contract, provided that the Consultant has imposed on the said person employed, used or engaged an absolute and legally binding obligation to the Consultant 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 Consultant or any other member of the Restricted Group; or
 - (c) such Confidential Information is or becomes public knowledge other than as a result of disclosure by the Consultant 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.
- 19.2 Without prejudice to any other provision of the Contract, the Consultant shall indemnify and keep indemnified each of the Government, its assigns successors-in-title and authorised users from and against everything stated in Clauses 14.2(a) and 14.2(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 Consultant 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 Consultant 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).
- 19.3 The Consultant shall use the Confidential Information solely for the purposes of the Contract. The Consultant 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 19.1 above shall not use, disclose, publish or reproduce, the Confidential Information for any other purposes without the Government's prior written consent.
- 19.4 When requested by the Government, the Consultant 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 19.1 above, to execute a written undertaking in favour of the Consultant and the Government in a form to be determined by the Government

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agreeing to the restrictions attached to the Confidential Information set out in this Clause 19 and the Consultant 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 Consultant 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.

- 19.5 The Consultant shall establish and maintain all necessary security measures and procedures for the safe custody of the Confidential Information in the Consultant's possession or under its control and to prevent unauthorised access thereto or use thereof.
- 19.6 The Consultant 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).
- 19.7 The Consultant 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 19 and the Official Secrets Ordinance (Chapter 521 of the Laws of Hong Kong).
- 19.8 The Consultant 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 19.
- 19.9 The Consultant 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 Consultant agrees that the Government shall have the right to obtain and be immediately granted an injunction prohibiting any breach of this Clause 19 and/or specific performance ensuring the compliance of this Clause 19 in light of any threatened or actual breach of this Clause 19, without prejudice to its other rights and claims including those available under the Contract or at law arising from such breach.
- 19.10 Without prejudice to the generality of the foregoing provisions, the Consultant further undertakes that it will not at any time itself or through any associate or associated person or employee, sub-Consultant or agent use, sell, license, sub-license, create, develop or otherwise deal in any Confidential Information.
- 19.11 The Government may request the Consultant in writing at any time that any Confidential Information disclosed pursuant to the terms of this Clause 19 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 Consultant shall comply with any such request from the Government within seven (7) days of receipt of such request.

20. Probity

- 20.1 The Consultant acknowledges it has been reminded that:
- (a) dishonesty, theft and corruption on its part or that of its officers, employees, agents or sub-contractors are criminal offences and may lead to prosecution under section 9 of the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong), sections 17, 18D and 19 of the Theft Ordinance (Chapter 210 of the Laws of Hong Kong) and section 161 of the Crimes Ordinance (Chapter 200 of the Laws of Hong Kong); and
 - (b) the soliciting or accepting of advantages, as defined in the Prevention of Bribery Ordinance is not permitted.

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- 20.2 The Consultant shall inform its officers, employees (whether permanent or temporary), agents and sub-contractors that the soliciting or accepting of advantages (as defined in the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong)) is not permitted. The Consultant shall also caution its officers (including directors), employees and agents and sub-contractors against soliciting or accepting any hospitality, entertainment or inducement which may impair their impartiality in relation to the selection of its sub-contractors, if any, or the supervision of the work of the sub-contractors.
- 20.3 The Government shall have the right to terminate the entire Contract pursuant to Clause 15.1 of the General Conditions of Contract or partially terminate the Contract pursuant to Clause 15.4 of the General Conditions of Contract in the event that the Consultant or any of its officers, employees, agents and sub-contractors is convicted of an offence under the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong), the Theft Ordinance (Chapter 210 of the Laws of Hong Kong) or the Crimes Ordinance (Chapter 200 of the Laws of Hong Kong).
- 20.4 The Consultant shall within two (2) weeks after the commencement of the Contract draw up and submit a staff code of conduct to the Government Representative including, among other probity issues, a statement explicitly prohibiting its sub-Consultant (if any), or any person employed by it to provide the Services from soliciting or accepting any form of advantages in discharging his duties under the Contract. It shall ensure that its sub-Consultant (if any), or any person employed by it to provide the Services is well aware of the prohibited acts explicitly stated in Clause 20.2 above and of the staff code of conduct. The code of conduct should form part of the employment contract to ensure acknowledgement and compliance by the employees.

21. Insurance [Not Used]

22. Process Agent

Where the Consultant does not have a place of business in Hong Kong, the Consultant shall irrevocably appoint the person whose name and address are set out in the Appendix to the Terms of Quotation 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 Consultant whether or not it is forwarded to and received by the Consultant. 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 Consultant 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 Consultant 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 Consultant 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.

23. Relationship of the Parties

The Consultant enters into the Contract with the Government as an independent Consultant 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 Consultant. Unless otherwise expressly provided for in the Contract, neither Party is authorised to act in the name of, or on behalf

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of, or otherwise bind the other Party.

24. Assignment and Sub-contracting

- 24.1 Unless otherwise provided for in the Contract, the Consultant 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 Consultant shall be personal to it. Any person purportedly appointed by the Consultant as agent shall be treated as sub-contractors for the purpose of this Clause 24 and for the whole of the Contract.
- 24.2 Acceptance of the Quotation does not signify the Government's acceptance of any sub-contracting proposal set out in the Quotation.
- 24.3 The Government may impose conditions either to be complied with by the Consultant and/or any proposed sub-contractors before giving any approval under Clause 24.1 above including without limitation the execution of a sub-Consultant's undertaking by the proposed sub-Consultant in favour of the Government in such form and substance to be prescribed by the Government. Where the Government requests the same, 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.
- 24.4 The Consultant 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. The Consultant shall be responsible for all acts, defaults, omissions and neglect of any of its officers, employees, agents, sub-contractors (at whatever level), and employees and agents of any such sub-Consultant as if they were its own.

25. Disclosure of Information

- 25.1 The Consultant 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 Consultant, disclose to any person in such form and manner as the Government considers fit:
- (a) a brief description of the Services provided or to be provided by the Consultant;
 - (b) the Total Estimated Services Price and any other fees, cost and expense payable to the Consultant pursuant to the Contract;
 - (c) the engagement by the Government of the Consultant under the Contract and the name and address of the Consultant; and
 - (d) the date of award of the Contract.
- 25.2 Disclosure may also be made by the Government under any of the circumstances specified in Clause 26.2 of the Terms of Quotation in relation to any information concerning or relating to the Consultant or the Contract or the Services or the Materials, recorded in whatever media.
- 25.3 Nothing in this Clause 25 or in Clause 26.2 of the Terms of Quotation shall imply or be construed that the Government owes any duty of confidentiality to the Consultant including without limitation in relation to any information of or concerning this Contract or the Consultant or the Services or the Materials.

26. Publicity

- 26.1 Whether before, during or after the expiry or termination of the Contract Period, the Consultant shall not use the Government's name in any document, publication, advertisement or publicity

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material without the prior written consent of the Government.

26.2 Subject to Clause 26.1 above, the Consultant 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.

26.3 Notwithstanding any consent or approval given under Clause 26.1 or 26.2 above, whenever required by the Government, the Consultant 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 Consultant must comply with such request.

27. Force Majeure

27.1 If the Consultant becomes aware of any matter likely to constitute a Force Majeure Event, the Consultant shall forthwith notify the Government in writing concerning such matter and provide the Government with all relevant information as the Government may request.

27.2 Within seven (7) days after the occurrence of a Force Majeure Event or earlier, the Consultant shall notify the Government in writing of the full particulars of the Force Majeure Event including its nature, extent, how the Force Majeure Event has and/or will materially prevent it from performing the Contract or such part thereof, and likely duration of such material prevention.

27.3 Provided the Government is satisfied with the Consultant's claim of a Force Majeure Event which has materially prevented and/or will continue to materially prevent it from performing its obligations under the Contract or such part thereof, the Contract or such part thereof strictly to the extent of such prevention shall be suspended during the subsistence of such Force Majeure Event commencing from a date to be agreed between the Parties ("Suspension due to Force Majeure"). Where the Government is not so satisfied about any alleged claim of a Force Majeure Event, there shall be no Suspension due to Force Majeure. The Consultant may not allege or claim any event as a Force Majeure Event. Any failure by the Consultant to perform any obligation under the Contract shall be treated as default and entitles the Government to terminate the Contract under any applicable Sub-clause of Clause 15.1 or Clause 15.2 of the General Conditions of Contract or partially terminate the Contract under Clause 15.4 of the General Conditions of Contract.

27.4 Without prejudice to the generality of Clause 27.3 above, whilst the Suspension due to Force Majeure subsists:

- (a) the Consultant shall not be required to perform any part of its obligations under the Contract strictly to the extent it is materially prevented from doing so by the Force Majeure Event ("Affected Obligations") but it shall use its best endeavours to remove or mitigate the effect of the Force Majeure Event on the Affected Obligations;
- (b) the Government may make alternative arrangements for the performance of the Affected Obligations, whether by another person or otherwise, without compensation to the Consultant;
- (c) the Consultant shall not be entitled to any payment of money in respect of the Affected Obligations (if any money would have been payable in the first place);
- (d) notwithstanding anything in the Contract to the contrary, no compensation shall be payable by either Party to the other due to any losses or damage arising from the Suspension due to Force Majeure; and
- (e) the Consultant shall continue to fully and punctually perform and observe all of its other obligations which are not affected by the Force Majeure Event in full accordance with the

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requirements of the Contract including those obligations which are not Affected Obligations, and to that extent, all terms and conditions of the Contract shall continue to apply and be in full force and effect.

- 27.5 Following the issue of a notice by the Consultant under Clause 27.1 above which has led to Suspension due to Force Majeure under Clause 27.3 above, the Consultant shall keep the Government informed once every week or at such longer frequency as may be allowed by the Government, and in any event from time to time upon the request of the Government, of:
- (a) the likely duration of the relevant Force Majeure Event and of its effect of materially preventing the Consultant from performing the Affected Obligations;
 - (b) the actions taken or proposed to be taken by the Consultant to mitigate or minimise the effects of that Force Majeure Event (“Mitigation Actions”); and
 - (c) any other matters relevant to that Force Majeure Event or the Consultant’s performance affected by that Force Majeure Event.
- 27.6 As soon as the relevant Force Majeure Event has terminated or otherwise that the Government considers that the Mitigation Actions have minimised the effect of the Force Majeure Event on the ability of the Consultant to perform the Affected Obligations, the Consultant shall forthwith notify the Government, or the Government may on its own, after consultation with the Consultant, by notice in writing to the Consultant, determine the appropriate date for resuming the performance of the Affected Obligations (“Resumption Date”). The Consultant shall immediately after the termination of the Force Majeure Event or with effect from Resumption Date as determined by the Government in the aforesaid manner, resume performance of the Affected Obligations in accordance with the terms and conditions of the Contract. In the event of any disagreement between the Government and the Consultant on the appropriate Resumption Date, the Government’s decision shall be final in the absence of manifest error.
- 27.7 Should a Suspension due to Force Majeure subsists for more than thirty (30) days, the Government shall be entitled to, but is not obliged to, terminate the Contract pursuant to Clause 15.3 of the General Conditions of Contract or partially terminate the Contract pursuant to Clause 15.4 of the General Conditions of Contract.

28. Illegal Workers

The Consultant undertakes not to employ illegal workers in the execution of this Contract or any other Government contracts. Should the Consultant be found to have employed illegal workers in breach of this undertaking, the Government Representative may, on behalf of the Government, by notice, terminate this Contract pursuant to Clause 15.1 of the General Conditions of Contract or partially terminate this Contract pursuant to Clause 15.4 of the General Conditions of Contract.

29. Notices

- 29.1 Each notice, demand, invoice, correspondence or other communication given or made under the Contract by a Party shall be in writing and delivered or sent to the other Party at the applicable postal address, facsimile number or email address mentioned in the Appendix (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).
- 29.2 Such notices, demands, invoice, correspondence or other communications shall be addressed as provided in Clause 29.1 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

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- the address of the relevant Party;
- (b) if sent by post (regardless of whether during or outside normal business hours), two (2) working days (for any place in Hong Kong) and seven (7) working days (for any place outside Hong Kong) after the date of posting which is a working day;
 - (c) if sent by facsimile during normal business hours on a working day, when despatched with confirmed receipt as evidenced by the transmission report generated at the end of the transmission of such facsimile by the facsimile machine used for such transmission; or
 - (d) if sent by email during normal business hours on a working day, upon despatch unless the sender has received a non-delivery notification from his own computer system.

29.3 Notice, demand, invoice, correspondence or other communication to the Consultant from the Government in the prescribed manner specified in Clause 29.2 above (whether from a Government Representative of the department specified in (1) or specified in (2) of the Appendix) shall be deemed to have been served provided that the notice, demand, invoice, correspondence or other communication has been sent to the correct applicable contact of the Consultant as specified in the Appendix.

29.4 Notice, demand, correspondence or other communication to the Government shall be to the applicable contact(s) as specified in the Appendix (as the same may from time to time be revised) depending on the subject matter to which it relates.

29.5 Nothing in this Clause 29 shall affect the validity of any notice, demand, invoice or communication dispatched by personal delivery or by fax or by email outside normal business hours whether on a working day or a non-working day. Any such notice, demand, invoice, correspondence or other communication fulfilling the conditions specified in Clause 29.2 above shall be deemed to have been duly given or made on the next working day following from the date of personal delivery or fax or email. Where posting is not done on a working day, it shall be deemed to have been done on the next working day after such day.

30. Entire Agreement

30.1 The Contract constitutes the whole agreement between the Parties and supersedes any previous agreements or arrangements between them relating to the subject matter hereof. The Consultant acknowledges that in entering into the Contract, it has not relied on any statements, warranties or representations given or made by the Government. On the other hand, the Government has relied on the Warranties when entering into the Contract.

30.2 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).

31. Execution of Further Documents

The Consultant shall at its own cost and expense do and execute any further things and document(s) (or procure that the same be done or executed) as may be required by the Government to give full effect to the provisions in this Contract and shall provide all such documents and materials to the Government within fourteen (14) days of the date of the Government's written request or such longer period as may be agreed by the Government in writing.

32. Variations

Subject to other provisions of the Contract which provide for the power of the Government to make changes, no waiver, cancellation, alteration or amendment of or to the provisions of the Contract

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shall be valid unless made by an agreement in writing and duly signed by the Consultant and the Government and in which agreement, the Parties expressly agree to the relevant waiver, cancellation, alteration or amendment of or to the provisions of the Contract as specified therein.

33. 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.

34. Waiver

34.1 Time shall be of the essence of the Contract but no failure, delay, forbearance or indulgence by any Party to the Contract to exercise any right, power or remedy available to it under the Contract or at law or in equity shall operate as a waiver thereof; nor shall any single or partial exercise of the same preclude any other or further exercise thereof or the exercise of any other right, power or remedy. A right or a remedy of each Party under the Contract shall be cumulative and not exclusive of any other rights, power or remedies provided by the Contract, at law or in equity. Without limiting the foregoing, no waiver by any Party of any breach by the other Party of any provision hereof shall be deemed to be a waiver of any subsequent breach of that or any other provision hereof.

34.2 Without prejudice to the generality of Clause 34.1 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.

35. Admission of Consultant Personnel to Government Premises

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

35.2 The Consultant shall ensure that while any of the Consultant's employees, agents and sub-contractors is on the Government's premises they will conform to the Government's normal codes of staff and security practice.

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

35.4 In the event that the Consultant fails to comply with this Clause 35 and it is determined that such failure is prejudicial to the interests of the Government, the Government Representative may thereupon terminate the Contract forthwith pursuant to Clause 15.1 of the General Conditions of Contract or partially terminate the Contract pursuant to Clause 15.4 of the General Conditions of Contract.

36. Assistance in Legal Proceedings

- 36.1 If and whenever requested to do so by the Government Representative, the Consultant 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 Consultant's presence at the Government's premises. If requested by the Government, the Consultant shall arrange for relevant staff to give evidence at such inquiries, investigations, arbitrations, hearings or proceedings.
- 36.2 Where the Consultant or any employees, agents or contractors of the Consultant 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 Consultant 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.

37. Retention of Records

The Consultant shall keep and maintain until seven (7) years after the expiry of the Contract, or such longer period as may be agreed by the Parties, full and accurate records in relation to 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 Consultant shall afford the Government or its representative or authorised person access to the records and to make and retain copies thereof as may be requested by the Government or its representative or authorised person.

38. Joint and Several Obligations

- 38.1 Where the Consultant comprises more than one person, each such person assumes all obligations of the Consultant under or arising from or in connection with or in relation to the Contract on a joint and several basis.
- 38.2 A reference to the Consultant in this Contract is a reference to each of the persons constituting the Consultant.

39. Governing Law and Jurisdiction

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

40. Contracts (Rights of Third Parties) Ordinance

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

41. Order of Precedence

- 41.1 In the event of, and only to the extent of, any conflict or inconsistency amongst or between any provisions of the Contract, the following order of precedence shall be applied, but only in so far as is necessary to resolve that conflict or inconsistency:
- (a) the Special Conditions of Contract *(if any)*;
 - (b) the Brief;
 - (c) the Terms of Quotation (Supplement) *(if any)*;
 - (d) the Schedule of Fee;
 - (e) the General Conditions of Contract;
 - (f) the Terms of Quotation;
 - (g) the Instruction to Bidders;
 - (h) other Quotation Document which forms part of the Contract; and
 - (i) any other materials which were submitted by the Consultant as part of its Quotation and attached to the Contract.
- 41.2 The Materials are items to be prepared and/or supplied by the Consultant pursuant to requirements of the Contract. They shall form part of the Contract. Notwithstanding, unless the Parties agree in writing in the manner specified in Clause 32 of the General Conditions of Contract, no Materials shall seek to waive, alter, cancel or amend any provisions of any documents listed in Clause 41.1 above. No general approval of, or signature by, the Government of any such Material shall be taken as agreement or approval of any such waiver, cancellation, alteration or amendment, unless the Government expressly acknowledges and agrees on a case-by-case basis to this effect. This shall apply even if any such Material is signed or given approval after the Date of Quotation Acceptance.

THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION
ELECTRICAL AND MECHANICAL SERVICES DEPARTMENT

DESKTOP STUDY ON ENERGY EFFICIENCY OF ELECTRIC VEHICLES
QUOTATION NO.: Q2754

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1. Purpose

1.1 The Government of the Hong Kong Special Administrative Region (the “**Government**”) acting through the Electrical and Mechanical Services Department wishes to appoint a consulting firm (the selected consulting firm, “**Consultant**”) to carry out a desktop study (the “**Study**”) on “Energy Efficiency of Electric Vehicles” (the Services to be carried out by the Consultant, the “**Services**”).

2. Background

2.1 Electrical and Mechanical Services Department (EMSD) shall conduct a desktop study on global policies on Energy Efficiency of Electric Vehicles (EVs). The study shall cover both light-duty and heavy-duty EVs.

3. Objectives of the Services

3.1 The objective of the Services is to conduct a feasibility study for Hong Kong to implement minimum energy efficiency requirement or energy efficiency labelling scheme for EVs by assessing the global development in energy consumption/efficiency, relevant test standards, and global trend of policies for implementing minimum energy efficiency requirement or energy efficiency labelling scheme for EVs.

4. Scope of the Services

4.1 The scope of this Services covers conducting a feasibility study for providing the outputs as mentioned in Clauses 4.3 to 4.9.

4.2 The Consultant shall perform the scope of services to meet the objectives as mentioned in Clause 3.

4.3 The Consultant shall conduct a **desktop study** with, but not limited to, collecting the following details:

4.3.1 The desktop study shall cover global countries/economies, especially for all 21 nos. of APEC member economies.

4.3.2 Covers various major types of Electric vehicles, including but not limited to fully battery-powered electric vehicle (BEV), Hybrid electric vehicles (HEVs), Plug-in hybrid electric vehicles (PHEVs), and Fuel Cell Electric Vehicles (FCEVs).

4.3.3 Conduct a comprehensive assessment of the latest developments in energy consumption/efficiency of various types of EVs.

4.3.4 Evaluate international and national test standards for measuring energy consumption and efficiency of EVs.

4.3.5 Analyse global trends in policies and regulations for minimum energy efficiency requirement or energy efficiency labelling scheme for EVs.

4.3.6 Study at least 7 countries’ trends of policies for requirements on energy consumption and energy efficiency of EV.

4.3.7 Shortlist at least 10 outperformed countries/economies and compare their energy consumption/efficiency labelling scheme of EVs.

4.4 Further to clause 4.3, the Consultant shall prepare a **Preliminary Report** of at least 20 pages, excluding diagrams and tables in the appendix, with the following items (but not limited to),

4.4.1 Summary of planned or launched initiatives related to the implementation of EVs.

4.4.2 Summary of both voluntary and mandatory requirements for the maximum energy consumption of EVs.

4.4.3 Summary of both voluntary and mandatory requirements for the energy efficiency

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- performance of EVs.
- 4.4.4 Summary of both voluntary and mandatory energy consumption/efficiency labelling scheme of EVs.
- 4.4.5 Summary of related international standards.
- 4.4.6 Comparison of the components of the energy consumption/efficiency labels of EVs.
- 4.5 Further to clause 4.4, the Consultant shall prepare a **Final Report** of at least 40 pages, excluding references, diagrams and tables in the appendix, with the following items (but not limited to),
 - 4.5.1 Detail comparison of the standards and formulas adopted in the energy consumption/efficiency labels of EVs.
 - 4.5.2 Feasibility study of adopting energy consumption/efficiency labels of EVs in Hong Kong.
 - 4.5.3 Summary of recommendations for implementing energy consumption/efficiency labelling scheme for EVs in Hong Kong.
- 4.6 The Consultant shall provide project sharing presentation (max. three) with powerpoint presentation materials to summarised all findings upon requested by the Government Representative.
- 4.7 The Consultant shall prepare himself / herself / themselves for the Services by obtaining and understanding any necessary background information or material related to the Brief so that the related services can be carried out professionally, smoothly, efficiently and effectively.
- 4.8 The Consultant shall carry out or have carried out all necessary data searching, study and make necessary liaison with relevant parties and authorities and inquiries as are required for the satisfactory completion of the Services.
- 4.9 The Government Representative may call in-person monthly progress meetings and ad-hoc meetings in his or her office or other suitable locations, as deemed necessary, to control the Services. The Consultant shall arrange his or her key representatives to attend such meetings, prepare presentation materials and take notes.
- 5. Control of the Services**
 - 5.1 The Senior Engineer of the Electrical and Mechanical Services Department or any person designated by such person in writing ("Government Representative") will act as the liaison officer between the Consultant and the Government in relation to the Services.
 - 5.2 The Consultant and the members of the Consulting Team (defined in Clause 7.1) shall take instructions only from the Government Representative.
 - 5.3 The Government Representative and the Consultant shall hold regular meetings to discuss the Services status and any problems. All Consulting Team members must be ready in contact throughout the Study by ordinary means of communication, including telephone, meeting in person and email. The Consulting Team will be required to consult and attend meetings with government departments and organisations, agencies, committees and parties in Hong Kong as may be directed by the Government.
 - 5.4 (Not Used for PSC.)
 - 5.5 (Not Used for PAT.)
 - 5.6 The Consultant shall provide professional advice and responses to any questions or requests made by the Government Representative in connection with the Services.

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- 5.7 The Consultant shall comply with all reasonable instructions as given by the Government Representative in relation to the Services. The Consultant will be required to maintain an office in Hong Kong for the duration of the Service Agreement.
- 5.8 The Consultant, when necessary, shall communicate and correspond directly with all relevant authorities, Government Departments and parties, maintenance agents and utility undertakers, including but not limited to EMSD, to obtain information in connection with the scope of Services. The communication for such information collection shall be copied to the Government Representative.

6. Deliverables and Timeframe

- 6.1 The Services are expected to commence in February 2023. The Consultant must complete the Services within four (4) months from the commencement date of the Service Agreement.
- 6.2 The Consultant shall submit deliverables as required by the Government including those mentioned below ("**Deliverables**") to the satisfaction of the Government in accordance with the following timetable: -

Item	Actions/Deliverables	Submission Deadline	No. of Copies Required
6.2.1	Preliminary Report – details please refer to Clause 4.4	1 months after the contract commencement	One softcopy in Microsoft Word
6.2.2	Final Report - details please refer to Clause 4.5	3 months after the contract commencement	One softcopy in Microsoft Word
6.2.3	Powerpoint Presentation - details please refer to Clause 4.6	3 months after the contract commencement	One softcopy in Microsoft Powerpoint
6.2.4	Progress meetings for the desktop study	Throughout the Assignment Period	As determined by the Government Representative
6.2.5	Written or oral advice to the Government in response to any requests of the Government under Clause 5.6.	Throughout the Assignment Period	As determined by the Government Representative

- 6.3 All Deliverables shall be written in English with lively content in the form of charts, comics, graphics, photos, etc.
- 6.4 None of the Deliverables shall be deemed to have been completed until and unless the Government Representative has confirmed acceptance of the same in writing. The digital copy of the Deliverable shall include both editable file Format(s) and image file format. The data formats for digital copies are stipulated as follows:-

Editable File Format	Image File Format	Editable Presentation Material Format
Word 2016	Adobe Acrobat	Powerpoint 2016

- 6.5 The Consultant shall draw to the attention of the Government Representative any Deliverables that are under license, pre-existing copyright, patent and any other restriction whatsoever

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affecting the Government use of the Deliverables and if required by the Government Representative, to establish the existence of any license, copyright for patent.

- 6.6 The Consultant shall submit a programme which shall detail the activities to be carried out, target dates for particular tasks and any decision dates that may be required for the uninterrupted progress of the scope of Services. The Consultant shall discuss with the Government Representative during the above periods to agree on the timing of submission of reports, other documents and plans for each of the main elements of the scope of Services, for inclusion in the draft programme and revised draft programme.

7. Requirements for Consulting Firm and the Consulting Team

- 7.1 The Consultant shall deploy personnel with relevant expertise ("**Consulting Team**") to perform the Services. The Consulting Team shall be headed by a person ("**Team Leader**") who shall assume the role of liaison officer for communicating with the Government. The Team Leader must be stationed in Hong Kong for the provision of the Services. Members of the Consulting Team must be acceptable to the Government. The Government reserves the right to require the replacement of the members of the Consulting Team. The Consultant shall obtain the Government Representative's prior written approval for any proposed addition or change of members of the Consulting Team. The Consultant shall ensure a substitute or replacement of any member of the Consulting Team is no less qualified in terms of relevant experience and qualifications than the outgoing individual. It is available at the time pertinent to act as a replacement or substitute.

Essential Requirements

- 7.2 Technical Proposals must meet all of the essential requirements as stipulated in Clauses 7.3 and 7.4. Technical Proposals which fail to meet any of such essential requirements shall be disqualified and not considered further.
- 7.3 Consulting Firm experience (Not Used).
- 7.4 Proposed Consulting Team (Not Used)

Other Requirements (i.e. non-essential)

- 7.5 (Not Used)

8. Consultancy Proposals

- 8.1 Submissions by a Consulting Firm in response to this Consultancy Brief ("**Consultancy Proposals**") shall be prepared in English.
- 8.2 The Consultancy Proposals shall be submitted on or before the date and time as specified in Clause 1.1 of the Instructions to Bidders.
- 8.3 The submissions shall be submitted to the "EEO Quotation Box" before the time and date of the Quotation Closing Date.
- 8.4 If tropical cyclone warning signal No.8 or above is hoisted or a black rainstorm warning or "extreme conditions after super typhoons" announced by the Government is/are in force between 9:00 am and 12:00 noon on the Quotation Closing Date, the deadline for submission will be extended to the same time on the following Working Day. In case of blockage of the public access to the above location at any time between 9:00 am and 12:00 noon on Quotation Closing Date, EMSD will inform the Consulting Firm, which has been invited to submit a proposal, the extension of the closing time until further notice. Following the removal of the blockage, the EMSD will inform the consulting firm of the extended closing time as

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soon as practicable. "Working Day" means any day other than a Saturday, public holiday, gale-warning day or black rainstorm warning day. **Late submissions will not be considered.**

- 8.5 All submissions in electronic format will not be considered.
- 8.6 Failure to comply with Clauses 8.1 to 8.9 by the Bidder shall render his/her Quotation invalid and not be further considered.
- 8.7 The proposals shall be enclosed in **two separate sealed envelopes** as specified below and addressed, endorsed and deposited as required by the Letter of Invitation to Quotation:

Technical Proposal

- 8.8 The Technical Proposal shall include the following information:
 - 8.8.1 In an envelope clearly marked with the Quotation reference and the words **"Technical Proposal – Quotation for Desktop Study on Energy Efficiency of Electric Vehicles (Quotation No.: Q2754)"**
 - 8.8.1.1 Submissions on technical resources and technical proposals which are the subject of evaluation in accordance with the marking scheme at Annex 1 to Instructions to Bidders – Marking Scheme in Quotation Evaluation in hard copy format; and
 - 8.8.1.2 Five copies for each of the documents to be submitted under Clause 8.8.1.

Fee Proposal

- 8.9 The Fee Proposal shall include the following information:
 - 8.9.1 In another envelope clearly marked with the Quotation reference and the words **"Fee Proposal - Quotation for Desktop Study on Energy Efficiency of Electric Vehicles (Quotation No.: Q2754)"**
 - 8.9.1.1 One copy for each of the documents to be submitted under Clause 8.9.1.
 - 8.9.1.2 a completed and signed Schedule of Fees;
 - 8.9.1.3 a completed and signed Form of Quotation;
 - 8.9.1.4 a completed "Consent to Disclosure" form (see Clause 10.2 below);
 - 8.9.1.5 a declaration as required under "Conflict of Interest" (see Clause 15.1 below);
 - 8.9.1.6 a statement as to the Consulting Firm's business structure as required under Clause 11.1;
 - 8.9.1.7 a completed Non-collusion Certificate (see Clause 27.2 below) ; and
 - 8.9.1.8 a duly signed and witnessed letter in the form set out in Annex II to the Terms of Quotation.

9. Disclosure of Information for Consulting Firms Bidding in Different Capacities for the Same Consultancy

- 9.1 The Government has no objection:
 - 9.1.1 to any consulting firm or its Associate or Associated Person lodging one Technical

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Proposal to act as a consultant and also proposing to act as a sub-contractor to another consulting firm in this exercise; or

- 9.1.2 to different and unconnected consulting firms proposing to engage the same sub-contractors or their Associates or Associated Persons in this exercise,

PROVIDED that:

- 9.1.3 all the relevant circumstances are disclosed in the Consultancy Proposals; and
- 9.1.4 where any consulting firm or its Associate or Associated Person lodges one Consultancy Proposals to act as a consultant and proposes to act as a sub-contractor to another consulting firm in the Consultancy Proposals of that other consulting firm, the first-mentioned consulting firm or its Associate or Associated Person shall confirm in its Consultancy Proposals that no confidential information, confidentiality restrictions or restraints of trade or business have been contravened in lodging the Consultancy Proposals; and
- 9.1.5 where any consulting firm proposes to act as a sub-contractor to different and unconnected consulting firms in their Consultancy Proposals, it shall confirm in the Consultancy Proposals of those consulting firms that no confidential information, confidentiality restrictions or restraints of trade or business have been contravened in lodging the Consultancy Proposals.

10. Disclosure of Fees Payable to the Consultant and Other Matters

- 10.1 The Government shall have the right to disclose to any person, whenever it considers appropriate or upon request by any third party (written or otherwise), and in such form and manner as it deems fit:
- 10.1.1 the Consultancy Fee and any other fees, costs and expenses payable by the Government for engaging the Consultant;
- 10.1.2 the Fee Proposal submitted by the Consultant;
- 10.1.3 the engagement by the Government of the Consultant under the Consultancy Agreement; and
- 10.1.4 the names of the Consultant and its sub-contractors appointed or engaged by the Consultant to perform any part or parts of the Services in accordance with the Consultancy Agreement, or to advise or assist in relation thereto; and description of the Services.
- 10.2 For the purposes of Clause 10.1, each Consulting Firm shall complete, execute and deliver to the Government a "Consent To Disclosure" in the form set out in Annex I of this Brief.

11. Business Structure of the Consulting Firm

- 11.1 Each consulting firm submitting the Consultancy Proposals shall submit together with its Consultancy Proposals a statement indicating the capacity in which the consulting firm proposes to enter into the Consultancy Agreement with the Government which should be one of the following:
- 11.1.1 one contractual party who shall be held responsible for the due and faithful performance of the Services, in which case the party may, subject to the prior written approval of the Government, nominate, as the main contractor, one or more sub-contractors to perform part of the Services;

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- 11.1.2 a joint venture consisting of two or more contractual parties, in which case each of the parties shall be jointly and severally liable for the due performance of the consultancy; or
- 11.1.3 an incorporated joint venture (“JV”) effected through the medium of a company incorporated under the old Companies Ordinance (Cap. 32) or the new Companies Ordinance (Cap. 622), with each participating party as a shareholder of the company.

11.2 If the consulting firm enters into the Consultancy Agreement with the Government in the capacity of an incorporated JV as mentioned in (c) above, each shareholder of the JV shall be required to execute in favour of the Government a guarantee to guarantee the due and faithful performance of the Consultant’s obligations under the Consultancy Agreement. The guarantee shall be on terms prepared and approved by the Department of Justice and it shall remain in force from the date of the commencement of the Consultancy Agreement until the date upon which all of the Consultant’s obligations shall have been performed and discharged to the satisfaction of the Government Representative. Depending on the circumstances, e.g. the details of the shareholding, the Government may require other parties to provide guarantee or impose other conditions on the JV. Compliance with all the conditions mentioned in this sub-Clause shall be a condition precedent to the appointment of the Consultant.

12. Method of Assessment

- 12.1 Consultancy Proposals which meet all the essential requirements set out in Clauses 7.3 and 7.4 and are not submitted late will be further assessed as mentioned below.
- 12.2 The Fee Proposal will be assessed on the basis of the Consultancy Fee.
- 12.3 The Government will not be bound to select any consulting firm on the basis of the lowest fee quoted. The consulting firm which scores the highest total combined technical and fee score will normally be considered for the appointment.

13. Consultancy Fee and Payment

- 13.1 The Government shall pay the Consultant a fixed lump sum (“**Consultancy Fee**”) in Hong Kong dollars in consideration of and subject to the Consultant performing the Services to the satisfaction of the Government.
- 13.2 The Consultant shall be paid the Consultancy Fee by instalments in accordance with the following payment schedule. Invoice of each payment shall only be issued by the Consultant to the Government after the written acceptance by the Government of all the Deliverables submitted by the Consulting Team corresponding to that instalment:

Item	Deliverables Required	Percentage of the Consultancy Fee
13.2.1	Submission and Acceptance of Preliminary Report	70%
13.2.2	Submission and Acceptance of Final Report and Powerpoint Presentation	30%
Total		100%

- 13.3 For the avoidance of doubt, the Consultancy Fee shall be inclusive of all fees, costs, charges and disbursements incurred by the Consultant in the performance of the Services, including

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but without limitation, the costs and expenses incidental to the attendance of meetings, the giving of presentations and briefings, the licence fees and/or royalties payable by the Consultant in connection with the permitted use of any third party intellectual property rights in the performance of the Services and preparation of the Deliverables, other out-of-pocket expenses such as travelling expenses, air passages, local subsistence allowances for expatriates and others, postage, international telephone calls, facsimile and internet connection expenses, office and hotel accommodation, secretarial support, copying and printing charges and computer facilities that may be incurred by the Consultant in the carrying out of the Services. The Consultancy Fee shall also include any fees, costs and disbursements that may be incurred by the Consultant in appointing or engaging any sub-contractors, advisers, experts or others to provide any part or parts of the Services or to advise or assist in relation thereto. For the avoidance of doubt, no fee, cost, charge or disbursement whatsoever in addition to the Consultancy Fee shall be charged by the Consultant or payable by the Government in respect of the Services (whether in respect of sub-contracting or otherwise) without the prior written agreement of the Government.

- 13.4 The Consultant shall invoice the Government for each instalment payment of the Consultancy Fee after acceptance to the satisfaction of the Government of the Deliverable concerned. Each instalment of the Consultancy Fee will normally be paid within thirty (30) working days after the receipt of the invoice from the Consultant.

14. Sub-contracting

- 14.1 The Consultant shall not, without the prior written consent of the Government, subcontract, assign or otherwise dispose of the whole or any part or parts of the Services to any person whatsoever, or purport to do so. If any part of the Services is sub-contracted to any person, the Consultant shall remain liable for any act or omission of such person as if such act or omission were its own.

15. Conflict of Interest

- 15.1 Each consulting firm shall submit as part of its Technical Proposal a declaration of any interest (whether financial, commercial, personal or otherwise) that the consulting firm, its sub-contractors and members of the proposed Consulting Team may have which conflicts or competes, or may conflict or compete, directly or indirectly, with any interest of the Government and/or with any of the duties of the Consultant under the consultancy (or a declaration that it has no such interest). Any involvement or interest declared would be carefully considered but would not necessarily debar the consulting firm from being further considered in the selection process.
- 15.2 The Consultant shall during the term of the Consultancy Agreement and for six (6) months thereafter:
- 15.2.1 ensure that it (including its Associates and Associated Persons, each member of the Consulting Team and each of its sub-contractors and their 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 Consultancy Agreement) which conflicts or competes, or which may be seen to conflict or compete, with the Consultant's duties to the Government under the Consultancy Agreement; and
- 15.2.2 forthwith notify in writing the Government 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 Consultant or its Associates or

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Associated Persons, or any of its permitted sub-contractors or any member of the Consulting Team or their Associates or Associated Persons, conflict or compete, or may conflict or compete, with the Consultant's duties to the Government under the Consultancy Agreement.

- 15.3 The Consultant shall provide the Services to the Government on an impartial basis without giving favour to any particular product, service or equipment in which the Consultant, any of its sub-contractors, members of the Consulting Team or their respective Associates or Associated Persons has or may have any financial, professional, commercial, personal or other interests. The Consultant shall notify the Government in writing immediately upon knowing of any actual or potential, direct or indirect, financial, professional, commercial, personal or other interests, which such persons have or may have with, any of the products, services or equipment proposed or recommended by the Consultant under the Consultancy Agreement.
- 15.4 The Consultant shall procure its sub-contractors, each member of the Consulting Team and its professional advisers, directors, officers, employees and agents who are involved in the provision of the services to execute a legally binding written undertaking in favour of the Consultant and the Government jointly and severally in a form prescribed by the Government agreeing to observe Clauses 15.2 and 15.3 and the Consultant shall provide the original or certified true copies of all such undertakings to the Government as may be required by the Government. The Consultant further agrees that, if so required by the Government, it shall take all such steps as are lawful and necessary to enforce such undertakings or to co-operate with the Government in their enforcement.
- 15.5 The Consultant shall ensure that its Associates and Associated Persons, each of its sub-contractors and each member of the Consulting Team and their Associates and Associated Persons shall keep themselves informed and shall inform the Consultant and keep it informed regularly of all facts which may reasonably be considered to give rise to a situation where the financial, professional, commercial, personal or other interests of such persons, conflict or compete, or may conflict or compete, with the Consultant's duties to the Government under the Consultancy Agreement.
- 15.6 From the commencement of the Consultancy Agreement, notwithstanding the expiry or earlier termination of the Consultancy Agreement, the Consultant (including its Associates and Associated Persons, each member of the Consulting Team and each of its sub-contractors and their Associates and Associated Persons who are involved in the performance of the Consultant's obligations pursuant to the Consultancy Agreement) **shall not** (whether on its own or in joint venture with others) submit any bid in any competitive bidding process or accept any appointment as consultant for, or otherwise be interested in or involved in any manner in any subsequent exercise for procurement arising out of or which was the very subject of the consultancy.
- 15.7 In this Consultancy Brief:
- 15.7.1 **"Associate"** in relation to any person means:
- 15.7.1.1 a relative or partner of that person; or
 - 15.7.1.2 a company one or more of whose directors is in common with one or more of the directors of that person.
- 15.7.2 **"Associated Person"** in relation to another person means:
- 15.7.2.1 any person who has control, directly or indirectly over the other; or
 - 15.7.2.2 any person who is controlled, directly or indirectly, by the other; or
 - 15.7.2.3 any person who is controlled by, or has control over, a person at Clauses 15.7.1 and 15.7.2.

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- 15.7.3 “**control**” in relation to another person means holding office as a director or the power of a person to secure
- 15.7.3.1 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
 - 15.7.3.2 by virtue of powers conferred by any constitution, memorandum or articles of association, partnership, agreement or arrangement (whether legally enforceable or not) affecting that or any other person that the affairs of the first-mentioned person are conducted in accordance with the wishes of that other person,
- 15.7.4 “**director**” means any person occupying the position of director by whatever name called and includes without limitation a de facto or shadow director.
- 15.7.5 “**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 parent and of any step parent.

16. Confidentiality

- 16.1 All materials and data furnished by or on behalf of the Government in connection with the Consultancy Agreement, Materials (defined in Clause 23.10), and the terms and conditions of the Consultancy Agreement shall be treated as confidential information. The Consultant shall not, during the continuance of the Consultancy Agreement or at any time thereafter, disclose to any person (including without limitation any Associates or Associated Persons, directors, officers, employees or agents of the Consultant who are not members of the Consulting Team, except to the senior management, legal and compliance personnel and auditors of the Consultant and then only on a need-to-know basis) any confidential information, provided that the restrictions on disclosure contained in this Clause shall not apply:
- 16.1.1 to the disclosure of any information to any members of the Consulting Team in circumstances where such disclosure is necessary for the performance of the Consultant’s duties and obligations under the Consultancy Agreement;
 - 16.1.2 to the disclosure of any information already known to the recipient other than as a result of disclosure by a breach of the confidentiality obligation of the Consultant, its Associates or Associated Persons, directors, officers, employees, agents or any member of the Consulting Team or its sub-contractors including without limitation professional advisers;
 - 16.1.3 to the disclosure of any information which is or becomes public knowledge other than as a result of disclosure by a breach of the confidentiality obligation of the Consultant, its Associates or Associated Persons, directors, officers, employees, agents or any member of the Consulting Team or its sub-contractors including without limitation professional advisers;
 - 16.1.4 to the disclosure of any information in circumstances where such disclosure is required pursuant to any law, regulation, rule of any relevant stock exchange, or order of a court or arbitral authority of competent jurisdiction;
 - 16.1.5 to the disclosure of any information to the Consultant’s sub-contractors, professional advisers, directors, officers, employees or agents where such disclosure is necessary for the performance of the Consultant’s duties and obligations under the Consultancy Agreement; or

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16.1.6 to the disclosure of any information with the prior written consent of the Government.

The Government shall have the right to determine in good faith at any time whether any information is within that described in (b), (c) or (e) above and the Consultant shall comply with that determination. For the purpose of (e), if at the time the Government discloses the information to the Consultant, the Government does not expressly state that the information cannot be distributed to the persons named in (e), the Government shall be deemed to have consented to the disclosure of that information to those persons but such disclosure shall be strictly limited to the performance of the Consultant's duties and obligations under the Consultancy Agreement.

- 16.2 Any disclosure permitted under Clause 16.1 shall be in strict confidence and shall extend only so far as may be necessary for the purpose specified in Clause 16.1 and the Consultant shall ensure the confidentiality of any such disclosure by taking all appropriate action to restrain or restrict any further disclosure.
- 16.3 The Consultant shall not make use of or reproduce any information, report, chart, document, plan, software, data or other particulars or information whatsoever relating to the Consultancy Agreement furnished by or on behalf of the Government other than in the performance of its obligations under the Consultancy Agreement and shall not make use of the Deliverables or any Materials or computer models produced or created in relation to the performance of its obligations under the Consultancy Agreement other than in the performance of its obligations under the Consultancy Agreement or with the prior written consent of the Government.
- 16.4 The Consultant shall not without the prior written consent of the Government publish, either alone or in conjunction with any other person, in any newspaper, magazine, periodical, film, video or other medium, any confidential information relating to the Services (including without limitation the advice provided by it or the duties undertaken by it under the Consultancy Agreement).
- 16.5 The Consultant shall inform every person to whom any information, report, chart, document, plan, software, data or other particulars or information relating to the Consultancy Agreement is disclosed pursuant to this Clause of the restrictions on reproduction and disclosure attaching to such information and the Consultant shall require such a person to notify the same restrictions to any other person to whom it makes any such disclosure.
- 16.6 The Consultant shall procure its sub-contractors, each member of the Consulting Team and its professional advisers, directors, officers, employees and agents referred to in Clause 16.1(e) above to execute a legally binding written undertaking in favour of the Consultant and the Government jointly and severally in a form prescribed by the Government agreeing not to disclose any such confidential information and the Consultant shall provide the original or certified true copies of all such undertakings to the Government as may be required by the Government. The Consultant further agrees that, if so required by the Government, it shall take all such steps as are lawful and necessary to enforce such undertakings or to co-operate with the Government in their enforcement.
- 16.7 Clauses 16.1 to 16.6 shall survive the expiry or termination of the Consultancy Agreement and shall continue in full force and effect notwithstanding such expiry or termination.

17. Nature of Agreement

- 17.1 The Consultant will be engaged by the Government as an independent contractor on a principal-to-principal basis and not as a partner, employee or agent of the Government or as a trustee for others.

18. Consultancy Agreement

- 18.1 The selected Consulting Firm will enter into a written agreement (the “**Consultancy Agreement**”) with the Government. The Consultancy Agreement, including without limitation the matters referred to in this Consultancy Brief, expanded and modified as the Government deems necessary, and other matters such as fees, details of the Consulting Team, set-off and force majeure.
- 18.2 Nothing in the Consultancy Agreement will confer or purport to confer on any third party any benefit or any right to enforce any term of the Consultancy Agreement pursuant to the Contracts (Rights of Third Parties) Ordinance (Cap. 623).
- 18.3 This Consultancy Brief will form part of the Consultancy Agreement. The governing laws of the Consultancy Agreement shall be the laws of Hong Kong.

19. Indemnity

- 19.1 The Consultant shall indemnify and keep indemnified the Government against:
- 19.1.1 any and all claims (whether or not successful, compromised, settled, withdrawn or discontinued, in whole or in part), actions, investigations, liabilities, demands, proceedings or judgments, joint or several, threatened, brought or established against the Government (“Claims”); and
 - 19.1.2 any and all liabilities, losses, damages, costs, charges or expenses (including all legal fees and other awards, payments, costs, charges and expenses) which the Government 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:
- 19.1.3 the performance or breach of any provisions of the Consultancy Agreement by the Consultant;
 - 19.1.4 the negligence, recklessness, tortious acts or wilful misconduct of the Consultant, its employees, agents or sub-contractor(s) in the provision of the Services;
 - 19.1.5 any default, unauthorised act or wilful omission of the Consultant, its employees, agents or sub-contractor(s) in the provision of the Services;
 - 19.1.6 the non-compliance by the Consultant, its employees, agents or sub-contractor(s) with any applicable law, or regulation, order or requirement of any government agency or authority in the provision of the Services;
 - 19.1.7 any allegation of or claim for infringement of the Intellectual Property Rights of any party arising from or in relation to the provision of the Services by the Consultant, its employees, agents or sub-contractor(s); or
 - 19.1.8 the provision, use, reproduction or possession at any time whether before or after the execution of the Consultancy Agreement of the Materials or Licensed Property by the Government.
- 19.2 The Government will NOT under any circumstances provide any indemnity.

20. Restrictions, Limitations and Counter-Proposals Proposed by the Consulting Firms

- 20.1 Restrictions or limitations proposed by a consulting firm which seek to limit or avoid the responsibility of the consulting firm or Consulting Team in contract, tort or otherwise for

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failing to exercise the skill and care required by the Consultancy Agreement or reasonably expected of the Consultant and Consulting Team in these circumstances may render any proposal non-compliant in the absolute discretion of the Government.

- 20.2 The obligations and liabilities imposed on the Consultant in Clauses 15, 16, 19 and 23 (conflict of interest, confidentiality, indemnity and intellectual property rights) in this Consultancy Brief are not subject to negotiation or counter-proposals. Any counter-proposal in contravention of this Clause will be disregarded.

21. Changes in the Scope of the Services

- 21.1 The Government may at any time by giving fourteen (14) days' written notice to the Consultant, make changes as are reasonable in all the circumstances to the scope of the Services. The costs (if any) of such changes and the impact of such changes on the timetable, charging and payment provisions of the Consultancy Agreement shall be mutually agreed in writing by the Government and the Consultant with reference to and on the basis of the breakdown costs and fees quoted in the Consultant's Fee Proposal.
- 21.2 If the Government and the Consultant are unable to agree on the costs of the changes, the revised work schedule, charge or payment schedule for the Deliverables, the Government may nevertheless direct the Consultant in writing to proceed with the changes with reference to and on the basis of the breakdown costs and fees quoted in the Consultant's Fee Proposal and the Consultant shall act accordingly.

22. Termination of the Consultancy Agreement

- 22.1 The Government may, by written notice, immediately terminate the Consultancy Agreement if the Consultant shall be in breach of any of the terms and conditions of the Consultancy Agreement which is not capable of being remedied or, in the case of a breach capable of being remedied, such breach shall not have been remedied by the Consultant within fourteen (14) days of the date of the receipt of a notice to remedy from the Government.
- 22.2 The Government may at any time or times prior to the completion of the Services at its option suspend or terminate the Consultancy Agreement by giving the Consultant thirty (30) days' prior written notice of such suspension or termination.
- 22.3 In the event of termination prior to the completion of the Services, the Government may itself complete the Services or (at the option of the Government) may engage, use or employ any other consulting firm to complete the said services and the Government or such other consulting firm may use the Materials (whether or not title has passed to the Government in respect thereof) and the Licensed Property or any part thereof for such completion. The suspension or termination of the Consultancy Agreement shall not prejudice or affect any rights of action or other remedies which may have accrued to the Government or the Consultant.
- 22.4 The Consultant will be paid for Services properly performed up to the date of suspension or termination. The Consultant shall not be entitled to compensation for remaining Services which have not been performed.

23. Intellectual Property Rights

- 23.1 Subject to Clause 23.3, all the Materials and all the Intellectual Property Rights in all the Materials shall be and shall remain the exclusive property of the Government and shall vest in the Government absolutely at the time when they are created.

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- 23.2 In the event and to the extent that any of the Intellectual Property Rights in the Materials is deemed for any reason not to vest in the Government pursuant to Clause 23.1 above, then, upon request by the Government, the Consultant shall forthwith, free of charge to the Government, assign or otherwise transfer or cause to be assigned or otherwise transferred the same to the Government free of any encumbrance or compensation to the Consultant.
- 23.3 The provisions of Clause 23.1 shall not apply to the following type of property ("**Licensed Property**") namely that of a kind which is available publicly or generally within the business of a kind similar to that to be provided by the Consultant under the Consultancy Agreement or which is or was specifically produced or created solely and exclusively in relation to services, other than services provided or to be provided to the Government under the Consultancy Agreement, and which is incorporated or used in the Materials or otherwise used by the Consultant in the performance of the Consultancy Agreement. The Consultant shall keep the Government informed in writing of any of the Materials that are subject matter(s) of the Licensed Property or any pre-existing Intellectual Property Rights and any restrictions whatsoever affecting the use thereof.
- 23.4 The Consultant undertakes to acquire all the requisite consents and licenses for the benefit of the Government for the use and reproduction of the Licensed Property incorporated in the Materials for any purposes for which the Government may in its absolute discretion use the Materials.
- 23.5 Upon request by the Government at any time, and in the event of the expiration or termination of the Consultancy Agreement, the Consultant shall at its expense promptly deliver to the Government all the Materials and all copies of the Materials (save for Deliverables already submitted), then in the custody, control or possession of the Consultant, any members of the Consulting Team, the Consultant's sub-contractors or their respective officers, employees and agents.
- 23.6 The Consultant hereby waives and will procure all the authors concerned to waive all moral rights (as referred to in the Copyright Ordinance (Cap. 528 of the Laws of Hong Kong) in the Materials and the Licensed Property), such waiver to operate in favour of the Government, its licensees, assigns and successors in title and to have effect upon the vesting of Intellectual Property Rights or the grant of the license (as the case may be).
- 23.7 The Consultant shall ensure that no Intellectual Property Rights of any third parties have been or will be infringed as a result of the Services and shall indemnify the Government against any loss or damage which the Government may sustain or incur as a result of any allegation of or claim for infringement of the Intellectual Property Rights of any party arising from or in any way related to the Services or the use or possession at any time of the Materials by the Government whether before or after the execution of the Consultancy Agreement.
- 23.8 At the request of the Government, the Consultant shall, free of charge to the Government, do all such things and execute all such documents and instruments as may be reasonably necessary in the opinion of the Government to enable the Government to obtain, defend and enforce its rights in the Materials and its rights in respect of the Licensed Property.
- 23.9 Clauses 23.1 to 23.8 shall survive the expiration or early termination of the Consultancy Agreement.
- 23.10 For the purpose of this Consultancy Brief:
- 23.10.1 "**Intellectual Property Rights**" means patents, copyrights, design rights, trademarks, service marks, trade names, domain names, database rights, rights in know-how, new inventions, designs or processes and other intellectual property rights (of whatever nature wherever arising, whether now known or hereafter created) and in each case whether registered or unregistered and including applications for the

grant of any such rights.

- 23.10.2 **“Materials”** includes all the deliverables (including the Deliverables), reports, works of authorship, summaries, briefings, presentations, diagrams, drawings, charts, tables, graphs, pictures, photographs, questionnaires, plans, models, analyses, work programmes, technical notes, information papers, opinions, comments, specifications, formulae, data, information, documents and materials collected, compiled, developed, produced or created by the Consultant, the Consulting Team or the employees, directors, officers, agents or sub-contractors at all tiers of the Consultant, agents or sub-contractors (whether individually or jointly with the Government) in relation to and/or in the course of the performance of the Services or for the purpose of the Consultancy Agreement including but without limitation, the pre-contractual and contractual documents thereof which are recorded or stored by whatever means in whatever form or media and the drafts of any of the above items.

24. Withholding Tax

- 24.1 Where the Consultant is or becomes a non-Hong Kong resident, the Government shall withhold a percentage (equivalent to the prevailing Hong Kong profits tax rate prescribed by the Inland Revenue Ordinance (Cap. 112 of the Laws of Hong Kong) for unincorporated or incorporated business or profession, as the case may be) of any fees payable to the Consultant [(excluding any amount that is reimbursement of expenses pursuant to an express term of the Consultancy Agreement)] in respect of the Services provided in Hong Kong by the non-Hong Kong resident Consultant for the settlement of profits tax chargeable on the fees. Without prejudice to the Government’s right as to set off, the Government shall return to the Consultant any balance representing the excess of fees so withheld in the basis period of the year of assessment over the Consultant’s profit tax liability chargeable on the fees for that year without interest within a reasonable time upon final determination and settlement of the Consultant’s profits tax liabilities.

25. Performance Monitoring of the Consultant

- 25.1 Should a consulting firm be awarded the Consultancy, its subsequent performance shall be monitored and may be taken into account when its future bids for other Government consultancy works are evaluated. A consulting firm may be suspended from bidding for any new Government consultancy works if its performance is unsatisfactory.

26. Warranty

- 26.1 The Consultant will be required to warrant and undertake to the Government that:
- 26.1.1 the Services shall be performed and completed in an impartial, timely and diligent manner and that the Consultant, each member of the Consulting Team, each of the Consultant’s sub-contractors and every person employed, used or engaged by the Consultant in the performance of the Services shall use all the experience, skills, care and diligence in the performance of the Services and the discharge of all its duties and obligations under the Consultancy Agreement as may be expected from a person who is an expert in providing services of a kind similar to the Services; and
- 26.1.2 it, the Consulting Team and the Consultant’s sub-contractors have the necessary skills and experience to provide the Services and it shall provide independent and unbiased professional advice to the Government in relation to the Consultancy in

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accordance with applicable professional standards in the Hong Kong and international markets.

27. Warranty of No Collusion

- 27.1 The consulting firm must ensure that the Technical Proposal is prepared without any agreement, arrangement, communication, understanding, promise or undertaking with any other person (except as provided in Clause 3 of the Non-collusion Certificate referred to in Clause 27.2 below), regarding, amongst other things, price, consultancy selection process or any terms of the Technical Proposal. Bid-rigging is inherently anti-competitive and is considered serious anti-competitive conduct under the Competition Ordinance (Cap. 619). Consulting firms which engage in bid-rigging conduct may be liable for the imposition of pecuniary penalties and other sanctions under the Competition Ordinance (Cap. 619).
- 27.2 The consulting firm shall complete and submit to the Government a non-collusion certificate in the form in Annex II of this Brief.
- 27.3 In the event that the consulting firm is in breach of any of the representations, warranties and/or undertakings in Clause 27.1 above or in the Non-collusion Certificate submitted by it under Clause 27.2 above, the Government shall be entitled to, without compensation to any person or liability on the part of the Government:
- 27.3.1 reject the Proposal;
 - 27.3.2 if the Government has accepted the Proposal, withdraw its acceptance of the Proposal; and
 - 27.3.3 if the Government has entered into the Consultancy Agreement with the Consultant, forthwith terminate the Consultancy Agreement.
- 27.4 By submitting a Proposal, a consulting firm is regarded to have undertaken to indemnify and keep indemnified the Government against all losses, damages, costs or expenses arising out of or in relation to any breach of any of the representations, warranties and/or undertakings in Clause 27.1 above or in the Non-collusion Certificate submitted by it under Clause 27.2 above.
- 27.5 Any breach of any of the representations, warranties and/or undertakings in Clause 27.1 above or in the Non-collusion Certificate submitted by it under Clause 27.2 above by the consulting firm may prejudice its future standing as a Government consultant.
- 27.6 The rights of the Government under Clauses 27.3 to 27.5 above are in addition to and without prejudice to any other rights or remedies available to it against the consulting firm.

28. Settlement of Disputes

- 28.1 Any dispute or difference between the parties arising out of or in connection with the Consultancy Agreement which is not resolved within twenty-eight (28) days may first be referred to mediation in accordance with the then current Hong Kong International Arbitration Centre Mediation Rules.
- 28.2 If the matter cannot be resolved by mediation or any party to the Consultancy Agreement does not wish the matter to be referred to mediation, any party may within ninety (90) days from the failure of mediation or the refusal to mediate (as the case may be) require that the matter be referred to arbitration in accordance with and subject to the provisions of the Arbitration Ordinance (Cap. 609 of the Laws of Hong Kong). Any such reference shall be deemed to be a submission within the meaning of the Arbitration Ordinance.

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- 28.3 Subject to Clauses 28.4 and 28.5, the then current Hong Kong International Arbitration Centre Domestic Arbitration Rules (“Arbitration Rules”) shall apply to any arbitration instituted in accordance with this Clause.
- 28.4 Notwithstanding any provision of the Arbitration Rules, the place of meetings and hearings in the arbitration shall be Hong Kong unless the parties otherwise agree.
- 28.5 Article 20.1 of the Arbitration Rules shall be deleted and replaced by:
- “20.1 The arbitration proceedings are private and confidential between the parties and the arbitrator. No information relating to the arbitration shall be disclosed by any person without the written consent of each and every party to the arbitration. Notwithstanding the above, disclosures are permissible where disclosures –
- 28.5.1 are necessary for enforcement of the arbitral award or any settlement agreement between the parties;
- 28.5.2 are required by the parties’ auditors or for some other legitimate business reason;
- 28.5.3 are required by law or an order of the courts of Hong Kong; or
- 28.5.4 are necessary for the making of claims against any third party or to defend a claim brought by any third party.”
- 28.6 All provisions in Schedule 2 to the Arbitration Ordinance shall apply to any arbitration instituted in accordance with these provisions on settlement.

29. Other Conditions

- 29.1 The Government reserves the right, in its absolute discretion, not to appoint any of the consulting firms which have submitted proposals in response to this invitation for the whole or any part of the Consultancy. Submission of a Technical Proposal shall be made on the understanding that the Government will not be liable to pay any costs arising out of or incidental to the preparation, submission or clarification of any Technical Proposal. The Government is also under no obligation to discuss the assessment or assessment result of any proposal with any person.
- 29.2 After submission of the Technical Proposals, the consulting firms shall not attempt to initiate any further contact, whether direct or indirect, with the Government on its Technical Proposal or this invitation to submit Technical Proposals. The Government shall have the sole right to initiate any such further contact and all such contacts and any replies of consulting firms thereto shall be in writing or formally documented in writing.

CONSENT TO DISCLOSURE

(To be completed and returned together with the Consultancy Proposal)

To : The Government of the Hong Kong Special Administrative Region

Desktop Study on Energy Efficiency of Electric Vehicles

We, _____, hereby irrevocably authorize, consent and agree that if the Government of the Hong Kong Special Administrative Region ("Government") agrees to appoint us to carry out the captioned consultancy, the Government may, whenever it considers appropriate or upon request by any person (written or otherwise) and without any further reference to us, disclose to any person in such form and manner as the Government deems fit:

- (a) the Consultancy Fee and any other fees, costs and expenses payable by the Government for engaging us; and
- (b) the Fee Proposal submitted by us on _____; and
- (c) our engagement by the Government under the Consultancy Agreement; the names of ourselves and our sub-contractors appointed or engaged by us to perform any part or parts of the services in accordance with the Consultancy Agreement, or to advise or assist in relation thereto; and description of the services.

We hereby waive and forego our right, if any, to make any claims against the Government for any losses, damages, costs, charges, liabilities, demands, proceedings and actions that may arise out of or in consequence of such disclosure by the Government.

Dated this _____ day of _____

* SEALED with the Common Seal of _____)

[insert the name of the consulting)

firm] and SIGNED by *[insert the*)

name(s) of the signator(ies)], the)

[insert the post(s) of the)

Signator(ies)] of the company in the presence of:

(*affix common seal of the consulting firm)

Signature of Witness: _____

Name of Witness: _____

Occupation: _____

Address: _____

* To be adopted if the consulting firm is a limited company and uses a common seal (adapt execution clause as appropriate)

NON-COLLUSION CERTIFICATE

(To be completed and returned together with the Consultancy Proposal)

To: The Government of the Hong Kong Special Administrative Region

Dear Sir/ Madam,

Non-Collusion Certificate

1. We, (name of the consulting firm) _____
of (address of the consulting firm) _____, refer to
the consultancy brief issued by the Government in relation to **Desktop Study on Energy Efficiency of
Electric Vehicles** ("Consultancy Brief") and our Consultancy Proposal in response to the Consultancy
Brief.

Non-collusion

2. We represent and warrant that in relation to the Consultancy Brief:
- (a) Our Consultancy Proposal was prepared genuinely, independently and made with the intention to accept the Government's appointment if selected;
 - (b) Our Consultancy Proposal was not prepared with any agreement, arrangement, communication, understanding, promise or undertaking with any person (including any other consulting firm 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 Consultancy Proposal;
 - iv) an intention or decision to withdraw any Consultancy Proposal;
 - v) the submission of any Consultancy Proposal that does not conform with the requirements of the Consultancy Brief;
 - vi) the quality, quantity, specifications or delivery particulars of the services to which the Consultancy Brief relates; and
 - vii) the terms of our Consultancy Proposal,
- and we undertake that we will not, whether before or after the appointment by the Government to provide the Services, enter into or engage in any of the foregoing.
3. Clause 2(b) of this certificate shall not apply to agreements, arrangements, communications, understandings, promises or undertakings with:
- (a) the Government;
 - (b) a joint venture partner with which we have submitted our Consultancy Proposal, and such joint venture arrangement has already been notified to the Government in our Consultancy Proposal;

Part E - Brief

Signature of Witness: _____
Name of Witness: _____
Occupation: _____
Address: _____

* To be adopted if the consulting firm is a limited company and uses a common seal (adapt execution clause as appropriate)

Part F - Schedule of Fees

THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION
ELECTRICAL AND MECHANICAL SERVICES DEPARTMENT

DESKTOP STUDY ON ENERGY EFFICIENCY OF ELECTRICAL VEHICLES
QUOTATION NO.: Q2754

PART F - SCHEDULE OF FEES

(To be completed by the Bidder)

1. The remuneration for the performance of the services stipulated in the Brief shall be a total Lump Sum of HK\$ _____ (to be inserted by the Bidder).

	Nos. of person	Professional fees		Other expenses		Sub-total (HKD)
		hourly rate in HKD	man-hours	hourly rate in HKD	man-hours	
Team Leader						
Team Assistant						
Others (please specify)						
Total (HKD)						

2. This is a lump sum contract.
3. Interim payments on account for the fee stipulated in Clause 1 of this Schedule of Fees shall be made in such amounts and at such times as are set out in the Clause 13.2 of the Brief.

Signature of authorised person: _____

Name in block letters: _____

Name of company/organisation: _____

Tel. no. _____ Fax no. _____ Date _____

To be submitted on or before 2 January 2024 at 4:00 p.m.
by FAX at 2890 6081 or email to kelvinfong@emsd.gov.hk.

THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION
ELECTRICAL AND MECHANICAL SERVICES DEPARTMENT

QUOTATION FOR
DESKTOP STUDY ON ENERGY EFFICIENCY OF ELECTRIC VEHICLES

QUOTATION NO.: Q2754

QUOTATION BRIEFING REPLY SLIP

To : Director of Electrical and Mechanical Services,
Energy Efficiency Office,
Electrical and Mechanical Services Department,
7/F, 3 Kai Shing Street, Kowloon Bay, Kowloon, Hong Kong.

1. We will attend the Quotation Briefing on **4 January 2024 at 11:00 a.m.**

Name of Company in English

(in Block Letters):

Name of Company in Chinese:

Name and Title of Representative(s) attending the Briefing Session:

(1) _____

(2) _____

Detail of the Organisation/Company:

Authorised Signature
and Company Chop:

Contact Person:

Post:

Address:

Telephone No.:

Fax No.:

E-Mail:
