



**THE ENVIRONMENTAL CAMPAIGN COMMITTEE
(The ECC)**

**TENDER FOR THE SUPPLY OF FOOD WASTE
SMART BINS TO FACILITATE FOOD WASTE COLLECTION AT PRIVATE
HOUSING ESTATES**

INTERPRETATION

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

“A batch of Goods”	means the aggregate quantities of one or more Item(s) to be supplied in one lot by the applicable Deadline Delivery Date for such lot; where there will only be one batch of Goods, references to “each” or “any” or “all” batch(es) of Goods shall mean just that single one batch; where a batch of Goods should comprise only one unit of one Item, throughout the Contract, references to a batch of Goods shall mean just that unit;
“Accepted Innovative Suggestions”	means those innovative suggestions proposed by the Contractor and accepted by the Government in the version attached to the Memorandum of Acceptance for identification purposes;
“Acceptance Note”	means an acceptance note to be issued under Clause 9.1(a) of the Conditions of Contract;
“Companies Registry”	means the Companies Registry of the Government;
“Compliance Schedule”	means a schedule attached to the Tender for confirming compliance with all the requirements set out in the Tender Document;
“Contract”	means the contract between the ECC and the Contractor comprising the following parts of the Tender Documents and other items as specified below: (a) Terms of Tender (b) Conditions of Contract (c) Annexes (d) Technical Specification (e) Appendix to Technical Specification

Each of the above documents shall be referred to throughout the Tender Documents and the Contract

by their respective titles as appearing in quotation marks above.

References to “the Contract” or “this Contract” shall mean the same Contract as defined above;

“Contract Period”	means, subject to early termination or extension as provided for in the Contract, the period specified in the Technical Specification as the “Contract Period”; or in the absence of which the period commencing from the Date of Tender Acceptance until the completion of all obligations by the Contractor in relation to the Goods;
“Contract Price”	means in relation to one or more batch(es) of Goods comprising one or more Item(s), the one-time amount payable for such batch(es) of Goods on and subject to the terms and conditions of the Contract and is to be calculated based on the one-time unit price(s) for such Item(s) as specified in the Price Proposal and the quantity of such Item(s) in that batch(es) of Goods;
“Contractor”	means the Tenderer whose Tender is accepted by the ECC through the issue of the Tender Acceptance;
“Date of Tender Acceptance” or “Tender Acceptance Date”	means the date of the Tender Acceptance and this date shall, unless otherwise specified in the Interpretation , be taken as the date of the Contract;
“Deadline Delivery Date”	has the meaning given to the term in Clause 6.5 of the Conditions of Contract;
“Deliverables”	means all materials (tangible or intangible) of whatsoever nature stored, presented or embodied in any medium, and which apart from the Goods, are delivered or to be delivered by or on behalf of or for the Contractor to the ECC Representative under or for the purposes of or in relation to the Contract including without limitation data, documents, information text, drawings, pictures, diagrams, images, sound, music, reports, certificates, manuals, instructions, documentation, databases, plans, models, designs, specifications, records, computer source codes,

advice, recommendations, solutions, analyses, compilations; and including all drafts of the foregoing;

“designated bank account”	means the bank account the details of which shall be provided by the Contractor under Clause 14.13 of the Conditions of Contract;
“Desirable Features”	means specifications set out in Technical Specification which are expressly identified as desirable features (if any);
“Electronic Record”	has the meaning given to it under the ETO;
“Essential Requirement”	means a requirement specified in the Tender Documents which is identified as an essential requirement or a requirement in relation to which it is stated in the Tender Documents that the non-compliance by a Tender or a Tenderer as at the Tender Closing Time will lead to that Tender or Tenderer not being considered further (or the Tender or Tenderer being disqualified); for the avoidance of doubt, essential requirements include mandatory features;
“Estimated Goods Price for an Item”	means in relation to an Item, the one-time unit price for that Item as specified in the Price Proposal and multiplied by the estimated quantity of such Item as specified in the Price Proposal;
“ETO”	means the Electronic Transactions Ordinance (Chapter 553 of the Laws of Hong Kong);
“Faster Payment System” or “FPS”	means the Faster Payment System operated by the Hong Kong Interbank Clearing Limited;
“Force Majeure Event”	means: (a) any outbreak of war, hostilities (whether war be declared or not), invasion, acts of foreign

enemies, rebellion, revolution affecting Hong Kong or the Place of Origin or the delivery route from the Place of Origin to Hong Kong, overthrow (whether by external or internal means) of the Government or the government of the Place of Origin; or

- (b) any event which is not caused or contributed to by, and is beyond the control of, the Contractor, its related persons (as defined in Paragraphs 19.6 and 19.7 of the Terms of Tender) or any employee or agent or ex-employee or ex-agent of the Contractor and none of them can prevent the consequences of such event from happening;

and which, in any case of (a) or (b) above, materially prevents the performance of the duties and obligations of any Party hereunder; for the avoidance of doubt, any change of law and regulation of whichever jurisdiction shall not be treated as a Force Majeure Event except that banning or restricting the export of the Goods or any part thereof to Hong Kong after the Contract Date may, at the discretion of the Government, be treated as a Force Majeure Event;

“General holiday” or “public holiday”	means a Sunday and any other day which is a general holiday by virtue of the General Holidays Ordinance (Chapter 149 of the Laws of Hong Kong);
“Good Industry Practice”	means the standards, practices, methods and procedures conforming to all laws and regulations, and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances;
“Goods”	means all or any of the Items;
“Government”	means the Government of the Hong Kong Special Administrative Region of the People’s Republic of China;
“Government Data” or	means all property, equipment, materials, data, documents, information, text, drawings, pictures,

“Government Property”	diagrams, images, sound or music, and any other materials of whatsoever nature stored (tangible or intangible), presented or embodied in any medium, and which are provided or to be provided by the ECC to the Contractor under or for the purposes of or in relation to the Contract or otherwise the Contractor has access;
“ECC Representative”	means the officer authorised to act on behalf of ECC in respect of the administration of this Contract;
“Hong Kong”	means the Hong Kong Special Administrative Region of the People’s Republic of China;
“Hong Kong dollars”	means the lawful currency of Hong Kong;
“Independent Accredited Laboratory”	means a laboratory which: (a) is accredited for the required scope as specified in the Tender Documents under the Hong Kong Laboratory Accreditation Scheme (HOKLAS) operated by Hong Kong Accreditation Service or under other accreditation scheme operated by any one of the laboratory accreditation bodies with which HOKLAS has concluded mutual recognition agreements/arrangements or such other accreditation as may be specified in the Interpretation (Supplement); (b) must not be the same entity as the Tenderer or the Contractor; and (c) must not be an associate or associated person (as defined in Clause 22.3 of the Conditions of Contract) of the Tenderer or the Contractor;
“Information Schedule”	means a schedule for completion of the Tenderer’s information;
“Inspections”	has the meaning given to it in Clause 8.3 of the Conditions of Contract;
“Intellectual Property”	means patents, trade marks, service marks, trade names, design rights, copyright, domain names, database rights, rights in know-how, new inventions,

Rights” or “IPR”	designs, processes, and other intellectual property rights whether now known or created in future (of whatever nature and wherever arising) and in each case whether registered or unregistered and including applications for the grant of any such rights;
“Interpretation”	means this Interpretation;
“Invitation to Tender”	means this invitation to tender for the provision of the Services to the ECC on the terms and conditions set out in the Tender Documents;
“Item”	means an item of goods specified in the column of the table with heading “Description” in Part A of the Price Proposal with a unique item number and where applicable letter assigned to it in the first column of that same table in that Proposal, and shall be inclusive, and be deemed to be inclusive of all services and subject matters specified in the Contract to form part of that item of goods or to be performed in relation to that item of goods including Paragraph 5.1 of the Terms of Tender; references to “Items” mean all such item(s);
“Locations”	means the delivery location(s) to be identified in an Order to which a batch of Goods as specified in that Order shall be delivered;
“Mandatory Features”	means those features identified as “mandatory features” in the Technical Specification;
“Manufacturer”	means the manufacturer specified in the Technical Proposal or such other manufacturer of the Goods as the ECC may approve in writing;
“Manufacturing Plant”	means the manufacturing plant specified in the Technical Proposal or such other location as the ECC may approve in writing;
“Marking Scheme”	means where the Technical Proposal and the Price Proposal of a Tender are to be evaluated separately, a scheme which collectively contain those procedures requirements and criteria for the evaluation of such Proposals separately;
“Materials”	means any and all works and materials of whatsoever nature (including their drafts and uncompleted

versions) developed, written, prepared, produced, created, collected, compiled or provided by or on behalf of or for the Contractor, in relation to the Goods or for the purposes of the Contract including without limitation, any reports, summaries, models, questionnaires, analyses, papers, advice, recommendations, documents, records, plans, designs, drawings, pictures, diagrams, images, sound, music, formula, tables, charts, databases, computer source codes, compilation of data or information, data or information collected, compiled, produced or created by the Contractor, its employees, agents or sub-contractors in relation to the Goods or for the purposes of the Contract, recorded or stored by whatever means;

- “Non-collusive Tendering Certificate” means a document known as such and in the form attached to the Tender Documents for completion and submission by the Tenderer as part of its Tender under Paragraph 30.2 of the Terms of Tender;
- “Order” has the meaning given to it in Clause 6.1 of the Conditions of Contract;
- “Order Period” means the period specified in Clause 1.2 of the Conditions of Contract as the “Order Period” unless the Technical Specification stipulate a different period as to the Order Period in which case that different period shall be the Order Period. This is the period during which an Order may be placed by the ECC for the Goods;
- “Original Tender Closing Date” means the date specified in the “Terms of Tender” as the latest date before which Tenders must be deposited with the ECC, regardless of whether the date has been extended subsequently;
- “Overall Specifications” means collectively (a) all mandatory features set out in the Technical Specification; (b) all proposals as completed by the Contractor; (c) all product literature of each of the Items forming part of the Tender; (d) any sample for any of the Items as accepted by the ECC; (e) the desirable features as set out in the Technical Specification (if and to the extent the Contractor has indicated compliance); (f) the Accepted Innovative Suggestions/ ESG Proposals (if

any); and (g) all other requirements under the Contract;

“Parties” (in upper or lower case)	means the ECC Representative and the Contractor; and “Party” (in upper or lower case) means any one of them;
“Place of Origin”	means the place of origin of the Goods specified in the Technical Proposal which shall be the same place in which the Manufacturing Plant is located;
“PRC”	means the People’s Republic of China;
“Price Proposal”	means the Price Proposal to be completed by the Tenderer;
“Ready for Use” or “Ready to Use” or “Ready for Service”	means in relation to a batch of Goods, it complies with all requirements specified in Clause 9.2 of the Conditions of Contract;
“Receiving Officer”	means the public officer in charge of a Government department or bureau or establishment to which any of the Goods are to be delivered or such other public officer as he may authorise to accept delivery thereof;
“Technical Proposal”	means if the two-envelope system is adopted for the submission of the Tender, all proposals, information and documents required to be submitted as part of the Tender apart from the Price Proposal;
“Technical Specification”	means the specifications referred to in PART IV of the tender document; references to Technical Specification include the mandatory features as well as those desirable features offered by the Tenderer and accepted by the ECC (if any);
“Tender”	means an offer to provide the Goods as submitted by a Tenderer in response to the Invitation to Tender;
“Tender Acceptance”	has the meaning given to it in Paragraph 21 of the Terms of Tender;
“Tender Closing Date”	means the date specified as such in the Terms of Tender as the same may be extended by the ECC from time to time whether in accordance with Paragraph 3.11(b) or (c) of the Terms of Tender or otherwise;

“Tender Closing Time”	means the time on the Tender Closing Date before which Tenders must be deposited with the ECC in the manner stipulated in the Terms of Tender as the same may be extended from time to time whether in accordance with Paragraph 3.11(b) or (c) of the Terms of Tender or otherwise;
“Tender Documents”	means the documents issued by the ECC for the purpose of the Invitation to Tender the full list of which shall be as set out in the Terms of Tender for the Invitation to Tender and shall include all documents forming part of the Terms and Conditions and if so stated in the Terms of Tender, all or any of the documents specified below: (a) Terms of Tender (b) Conditions of Contract (c) Annexes (d) Technical Specification (e) Appendix to Service Specification
“Tenderer”	means a person which or who has capacity to contract and has submitted a Tender in response to this Invitation to Tender;
“Terms of Tender”	means the Terms of Tender set out in PART I of this Tender;
“Total Estimated Goods Price”	means an amount equal to the summation of the Estimated Goods Prices for all such Item(s) which have been awarded to the Contractor;
“Unit Price” (in upper or lower case)	means the one-time unit price for an Item set out in the Price Proposal;
“Virus”	means a subversive computer programme or piece of code that may corrupt or erase computer data files and/or change the normal behaviour of a computer;
“Warranties”	has the meaning given to the term in Clause 3.2 of the Conditions of Contract;
“Warranty Period”	has the meaning given to the term in Clause 15.1 of the Conditions of Contract;

“Warranty Services” has the meaning given to the term in Clause 15.1 of the Conditions of Contract;

“working day” means Monday to Friday, other than the following:

- (a) a public holiday; or
- (b) a day on which:
 - (i) Tropical Cyclone Warning Signal No. 8 or above is hoisted; or
 - (ii) Black Rainstorm Warning Signal or “extreme conditions” announced by the Government is/are in force,

for any time during the normal business hours;
and

1.2 Unless otherwise expressly stated to the contrary, the following rules of interpretation shall apply:

- (a) references to statutes or statutory provisions shall be construed as references to those statutes or statutory provisions as replaced, amended, modified or re-enacted from time to time; and shall include all subordinate legislation made under those statutes;
- (b) words importing the singular shall include the plural and vice versa; words importing a gender shall include all other genders; references to any person shall include any individual, firm, body corporate or unincorporate (wherever established or incorporated);
- (c) headings are inserted for ease of reference only and shall not affect the construction of the Tender Documents or the Contract;
- (d) references to a document shall:
 - (i) include all schedules, appendices, annexures and other materials attached to such document; and
 - (ii) mean the same as from time to time amended or supplemented;
- (e) references to “Tenderer” or “Contractor” shall include its permitted assigns, successors-in-title, or any persons deriving title under them;

- (f) references to “ECC” shall include its assigns, successors-in-title, and persons deriving title under them, regardless of whether or not any of these persons are mentioned separately in the relevant provisions;
- (g) references to a Clause, Sub-clause, Section or Paragraph in or a Schedule, Appendix or any other attachment to a document are to a clause, sub-clause, section or paragraph in or a schedule, appendix or attachment to that document;
- (h) references to “laws” and “regulations” shall include any constitutional provisions, treaties, conventions, ordinances, subsidiary legislation, orders, rules and regulations having the force of law and rules of civil and common law and equity, regardless of the jurisdiction;
- (i) any word or expression to which a specific meaning has been attached in any part of the Tender Documents shall bear such meaning whenever it appears in the same and other parts of the Tender Documents;
- (j) a time of a day shall be construed as a reference to Hong Kong time;
- (k) references to “normal business hours” mean 0900 to 1800 hours;
- (l) references to a day mean a calendar day;
- (m) references to a month mean a calendar month;
- (n) any negative obligation imposed on any Party shall be construed as if it were also an obligation not to permit or suffer the act or thing in question, and any positive obligation imposed on any Party shall be construed as if it were also an obligation to procure that the act or thing in question be done;
- (o) any act, default, neglect or omission of any employee, licensee, agent or sub-contractor of the Contractor shall be deemed to be the act, default, neglect or omission of the Contractor; agents of the Contractors shall be treated as sub-contractors of the Contractor;
- (p) words importing the whole shall be treated as including a reference to any part of the whole;
- (q) the expressions “include” and “including” shall be construed without limitation to the words following;
- (r) words and expressions extend to their grammatical variations and cognate expressions where those words and expressions are defined in the Tender Documents or by reference to any other definition;

- (s) references to “in writing” include manuscript, typewriting, printing, lithography, photography, facsimile, electronic mail, and any other modes of representing and reproducing words in a legible form;
 - (t) reference to “original signature” or “originally signed” includes a digital image of a hand-written signature (viz., a scanned signature);
 - (u) where a general obligation in the Tender Documents or the Contract is followed by more specific obligations, the general obligation shall not be construed restrictively by reference to the specific obligations or deemed to be fully performed by reason only that the specific obligations have been performed;
 - (v) references to “acceptance of a batch of Goods” or “acceptance” (appearing in a context concerning a batch of Goods) shall mean the acceptance by the ECC Representative through the issue of an Acceptance Note in respect of that batch of Goods (unless acceptance under Clause 9.1(b) of the Conditions of Contract is applicable, in which case, acceptance in the manner specified in that Clause);
 - (w) where this Invitation to Tender allows partial tenders for some but not all of the Items, and evaluation will be conducted on an Item to Item basis, references to “Tender will not be considered further” will have the further meaning as elaborated in Paragraph 20.5 of the Terms of Tender; and
 - (x) the expressions “public body” and “public officer” have the meanings given to them in the Interpretation and General Clauses Ordinance (Chapter 1 of the Laws of Hong Kong). The expression “officer” has the meaning given to it in the Companies Ordinance (Chapter 622 of the Laws of Hong Kong).
- 1.3 Nothing in the Contract shall be taken to restrict, derogate from or otherwise interfere with any power or duty, or the exercise or performance of any power or duty conferred or imposed by or under any law upon the Government or any person in the service of the Government.
- 1.4 All rights and powers of the ECC under the Contract may be exercised by the ECC Representative. If any provision of the Contract provides for a determination of any matter by the ECC or the ECC Representative, the determination made by the ECC or the ECC Representative (as the case may be) shall, in the absence of manifest error, be final and conclusive.
- 1.5 Unless otherwise provided for in the Tender Documents, all quotations and payments shall be made in Hong Kong dollars.

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PART 1

TERMS OF TENDER

1. Invitation to Tender

- 1.1 Tenders are invited for the supply of the items as more particularly described in the Technical Specification and on such terms and conditions as set out in the Terms of Tender, the Conditions of Contract, Annexes and Appendices.
- 1.2 The Terms and Conditions comprising the Interpretation, the Terms of Tender and the Conditions of Contract. In addition to the aforesaid Tender Documents comprised in the Terms and Conditions, there are other Tender Documents in the respective forms as attached to this Terms of Tender to form the full set of the Tender Documents for this Invitation to Tender. A full list of these Tender Documents is set out in as below:
 - Terms of Tender
 - Conditions of Contract
 - Annexes
 - Technical Specification
 - Appendix to Technical Specification
- 1.3 Each Tenderer should read the Tender Documents carefully prior to submitting a Tender and ensure that it understands all requirements of the Tender Documents.
- 1.4 Each Tenderer should obtain such independent advice from its own advisers as it considers appropriate.
- 1.5 Each Tenderer should check the numbers of pages of the Tender Documents. If it finds any missing or indistinct pages, it should inform the ECC Representative immediately so that the same can be rectified.
- 1.6 Each Tenderer will be regarded to be thoroughly conversant with all aspects of the Tender Documents (including the Contract) and in general to have obtained all necessary information of any circumstances which may influence or affect its Tender or its performance of the Contract. The ECC does not assume any liability in respect of any errors or mistakes made by a Tenderer or any neglect or failure of a Tenderer to obtain any information or clarification relating to the supply of the Goods to the ECC in accordance with the Contract.
- 1.7 No error, mistake, neglect or failure by a Tenderer shall affect any provision of the Tender Documents (including the Contract) or relieve the Tenderer from any of its obligations or liabilities under the Tender Documents (including the Contract). For the avoidance of doubt, a successful Tenderer

shall not be entitled to any additional payment, compensation, exemption from compliance or observance, or allowance by reason of any such error, mistake, neglect or failure. If a Tenderer is awarded the Contract, it shall not be excused from any obligation or liability under the Contract as a consequence of any misinterpretation by it of any provision in the Tender Documents or the Contract.

- 1.8 Information, statistics and forecasts set out in the Tender Documents are provided for a Tenderer's reference only. The ECC does not warrant or represent that the information, statistics and forecasts are complete, true or accurate. The ECC does not bind itself to adhere to such information, statistics and forecasts.
- 1.9 Without prejudice to Paragraph 1.8 above and subject to the applicability of Clause 4.1 of the Conditions of Contract, the estimated quantity/quantities of the Goods specified in the Price Proposal or Technical Specification (if any) is/are estimate(s) of the quantity/quantities of the Goods that may be required by the ECC. They are given for a Tenderer's reference only and are not figures to which the ECC binds itself to adhere. The ECC's actual requirements may vary depending on their actual need and the successful Tenderer must accept any increase or decrease of the stated estimates.
- 1.10 The provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Invitation to Tender and a Tender submitted by a Tenderer in response to this Invitation to Tender.

2. Supplementary Information/Tender Addenda

All supplementary information or tender addenda to the Tender Documents will be provided in writing by the ECC Representative and forwarded to all potential Tenderers who have registered with the ECC when obtaining a copy of the Tender Documents.

3. Tender Preparation and Submission

- 3.1 A two-envelope system will be adopted for this tender exercise. The submission of offer shall be accompanied with a Technical Proposal and a Price Proposal for the Goods. When submitting an offer, the Tenderer shall complete the tender documents in duplicate, sign and submit them to the address as specified in Clause 3.12(a) by the Tender Closing Date. Offer should be submitted under separate sealed plain envelopes for Technical Proposal and Price Proposal marked with "Technical/Price Proposal for the Supply of Food Waste Smart Bins to Facilitate Food Waste Collection at Private Housing Estates"; and "Tender Closing Date 13 October 2026". The requirements on the Technical Proposal and the tender evaluation

methodology are provided in the Annex II “Guideline for the Preparation of Technical Proposal” and Annex IV “Marking Scheme for the Tender Evaluation” respectively.

- 3.2 The Tenderer must bid for all Items specified in the Price Proposal by submitting the Unit Price for each such Item. Where a Tenderer fails to do so, its Tender will not be considered further.
- 3.3 The Tenderer must submit all of the following in its Tender before the Tender Closing Time, otherwise its Tender will not be considered further:
- (a) Completed Compliance Form of Essential Requirements, with supporting documents as stipulated in Clause 6 of this Terms of Tender (*Annex I*);
 - (b) A Technical Proposal (*Annex III*) (*for Contract A and/or B*);
 - (c) A completed Part A and Part B of the Price Proposal (*Annex V*) (*for Contract A and/or B*); and
 - (d) The duly signed Offer to be Bound containing an original signature by or on behalf of the Tenderer (*Annex VIII*).
- 3.4 In addition to Clause 3.3 above, the Tenderer is required to provide all other information/supporting documents, duly completed and signed where applicable, requested in this Invitation to Tender or relevant to its offer, including but not limited to the following:
- (a) A copy of a valid Business Registration Certificate or other valid business document issued by a governmental or competent authority;
 - (b) Information Schedule (*Annex VI*);
 - (c) Non-collusive Tendering Certificate (*Annex VII*);
 - (d) Compliance Schedule (*Annex IX*); and
 - (e) Contact Details (*Annex XI*).

The Tenderer should provide all the above information/items at the same time when it submits its offer. If any of the above information/items is not provided by the Tender Closing Time and is not provided upon the ECC’s request, the offer will not be further considered. Even so, for this type of documents and/or information, the ECC is not obliged to make any request for resubmission after the Tender Closing Time. If the ECC chooses not to do so, or even if the ECC chooses to do so but the Tenderer fails to supply the missing document or information, the Tender will also not be considered further.

- 3.5 For all other proposals, documents and information which do not fall within Paragraph 3.3 to 3.4 above, the ECC reserves the right to seek submission under Paragraph 15.1 of the Terms of Tender or evaluate the Tender on an “as is” basis.
- 3.6 The Tenderer shall complete and submit all Annexes in either English or Chinese and in accordance with other requirements of the Tender Documents. Where a supporting document in its original form is in a language other than English or Chinese, the Tenderer shall provide translation of that supporting document from the language into English.
- 3.7 Where it is stated in the Terms of Tender that the two-envelope system shall be adopted, the Tenderer shall submit its Tender in two (2) separate proposals, one as the Technical Proposal and another as the Price Proposal. A Tender submitted through a method other than Paper-based Tendering will not be considered.
- (a) The Tender (and where the two-envelope system is applicable, comprising the Technical and Price Proposals) shall be completed in writing on hardcopy and shall be submitted in duplicate (i.e. two sets of identical documents). The Tenderer shall ensure that all the two sets of Tenders submitted by it are identical. The ECC may pick just any one set for the evaluation and for Contract formation purpose on the assumption that all two sets are identical.
- 3.8 The ECC may not consider a Tender (or will not consider a Tender where it is expressly so stated) if:
- (a) false, inaccurate or incorrect information is given in the Tender; or
- (b) any proposal, document or information requested in the Tender Documents is not furnished in full in the Tender.
- 3.9 When completing the Tender Documents (including the Offer to be Bound), each Tenderer shall ensure that the name of the Tenderer is the same as the name shown in:
- (a) if the Tenderer is a company incorporated in Hong Kong:
- (i) the Certificate of Incorporation of the Tenderer;
- (ii) if there is a change of name of the Tenderer since the date of its Certificate of Incorporation, the latest Certificate of Change of Name of the Tenderer; or
- (iii) its business name as shown in the current business registration certificate of the Tenderer; or

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

3.10 Execution and Submission of Tenders

A Tender submitted will be regarded to have been submitted by a Tenderer or authorised to have been submitted by a Tenderer (as the case may be) if the submitted “Offer to be Bound” (Annex VIII) is signed in the following applicable manner:

- (a) if the Tenderer is a sole proprietorship, the Tenderer signing the Tender in the name of the Tenderer (or of the sole proprietorship), or a person authorised by the Tenderer signing the Tender for and on behalf of the Tenderer;
- (b) if the Tenderer is a partnership, one or more partner(s) of the Tenderer signing in the name of the partnership (and in the case of limited partnership, that partner must be a general partner); or a person authorised by the partnership, signing the Tender for and on behalf of the Tenderer; or
- (c) if the Tenderer is a company, a director of the Tenderer or one or more persons who are duly authorised by the Tenderer signing the Tender for and on behalf of the Tenderer.

3.11 Tender Closing Date and Time

- (a) All Tenders must be submitted by **12:00 noon on 13 October 2026 (Tuesday)**.

Late Tenders will not be considered.

All Tenders must be deposited in the Specified Tender Box at Environmental Campaign Committee Secretariat, 5/F, Southorn Centre, 130 Hennessy Road, Wan Chai, Hong Kong.

Tender Submission by fax is NOT acceptable.

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

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

3.13 Modification of Tender

- (a) Before the Tender Closing Time, a Tenderer who has lodged a Tender may modify its Tender as considered necessary.
- (b) Any modification to the submitted Tender considered necessary by the Tenderer shall be the subject of a separate letter accompanying the Tender. Figures and words shall not be altered or erased; any modification shall be effected by striking the incorrect figure or word and inserting the correct figure or word in manuscript above the original figure or word. All such amendments shall be initiated by the Tenderer in manuscript.

3.14 Apart from “Offer to be Bound”, wherever there is any provision in the Tender Documents requiring that the original of any document or the document as mentioned in Paragraph 3.14(b) below to be submitted as part of the Tender,

- (a) The Tenderer may submit a photocopy certified to be true and complete by the person(s) specified in Paragraph 3.10 above;
- (b) In the case of any certificate which is required to be issued by a specified body (for example an Independent Accredited Laboratory or a recognised certification body (if applicable)), the photocopy certificate must be certified as true and complete by that specified body or a lawyer duly qualified to practise in Hong Kong or the laws of the place of incorporation, formation or establishment of the Tenderer;
- (c) If only a photocopy without any certification has been submitted, the ECC reserves the right to request a certified true copy as required in (a) or (b) above (whichever is applicable) (“certified true copy”) after the Tender Closing Date. The Tender may not be considered further if the certified true copy is not provided.

4. Tenders to Remain Open

- 4.1 A Tender once submitted by a Tenderer will be binding on the Tenderer. By submitting a Tender, the Tenderer shall be deemed to have represented to the ECC that it has done so as the principal but not as an agent of any other person. If the Tenderer submits a Tender as an agent on behalf of another person, full disclosure must be made in the Tender.
- 4.2 It is an essential requirement of this Invitation to Tender that a Tender shall remain valid and open for a period of ninety (90) days after the Tender Closing Date (“Tender Validity Period”).
- 4.3 If a Tenderer offers in its Tender a period that is shorter than the applicable Tender Validity Period specified in Paragraph 4.2 above, or if it rejects the Tender Validity Period prescribed in Paragraph 4.2 above, its Tender will not be further considered.

5. Prices

- 5.1 Unless otherwise provided for in the Tender Documents, the Tenderer shall quote the unit price for each Item in the Price Proposal in Hong Kong dollars. The quotations shall be subject to the following deeming provisions:
 - (a) the one-time unit price(s) quoted by the Tenderer for an Item shall be and be deemed to be all-inclusive of all amounts chargeable for the performance by the Tenderer of all obligations as stated in the Contract for or concerning or in relation to such Item including

without limitation, the supply of such Item, insurance, packing, delivery on an F.I.S. basis and the Accepted Innovative Suggestion(s)/ ESG Proposal(s) in relation to such Item; or

- (b) where an Accepted Innovative Suggestion/ESG Proposal does not concern any Item, all Contract Prices payable throughout the Contract Period to be calculated based on the one-time unit price(s) for all Items procured under the Contract shall include and be deemed to include all charges payable for such Accepted Innovative Suggestion/ ESG Proposal. No separate amount shall be payable for any Accepted Innovative Suggestion/ESG Proposal.

For the purposes of Sub-paragraph (a) above, F.I.S. means free into store, i.e. the successful Tenderer is responsible for the delivery of the Goods, at its own cost, to the designated storage area of the Location(s) within Hong Kong in accordance with all requirements of the Contract.

- 5.2 Prices quoted by a Tenderer shall only be shown in the Price Proposal. In accordance with the deeming provisions as set out in Paragraphs 5.1(a) and (b) above, the Tenderer shall not submit any separate price quotation in relation to any item covered by such deeming provisions including any innovative suggestions/ESG Proposals where it is not expressly asked to do so in the Price Proposal. Any separate price quotation submitted in contravention of the aforesaid restriction shall be disregarded and will not form part of the Contract, or otherwise the Tender will be disqualified.
- 5.3 A Tenderer must quote fixed Unit Prices for all Items and the same Unit Price for the same Item regardless of the quantity (or those Items (or where applicable, group(s) of Items) which it intends to bid in the case partial tender is allowed). A Tender with any price variation clause, including one based on foreign exchange market fluctuation, will not be considered further.
- 5.4 Each Tenderer shall make sure that all prices and other proposals offered in its Tender are accurate and complete before it submits the Tender. The Tenderer shall be bound by all prices and other proposals offered in its Tender if the Tender is accepted by the ECC. The Tenderer may not initiate any request for amendment of its Tender after the Tender Closing Time on any ground (including any mistake made in the Tender). On the other hand, in the event of any apparent arithmetical or typo mistake or inconsistency in a Tender, pursuant to Paragraph 15 of the Terms of Tender, the ECC may, but is not obliged to, ask the Tenderer to clarify, or to confirm another figure to replace the original figure. Where the Tenderer's clarification is not provided or not satisfactory, or the Tenderer refuses to confirm such other figure, or where the ECC does not elect to seek clarification or confirmation from the Tenderer, the ECC reserves the power to proceed to evaluate the Tender on an as is basis (i.e., in the form as originally submitted prior to the Tender Closing Time) or disqualify the Tenderer on ground that it has

provided erratic or inconsistent proposals or quotations for proper evaluation.

- 5.5 The unit price for all Items shall be quoted in Hong Kong dollars. If the Tenderer fails to indicate the currency of the price quoted in the Tender, subject to any clarification which the Government may seek at its discretion from the Tenderer, all price quotations shall be deemed to have been submitted in Hong Kong dollars (i.e. HK\$). A Tenderer's Tender with any price quotation submitted in a currency other than Hong Kong dollars will not be considered further. Under no circumstances will the Government compensate the Contractor for any loss incurred in the fluctuation of the currency in which the unit prices are quoted. If the Terms of Tender do not expressly allow any Permissible Currency, all price quotations must be submitted in Hong Kong dollars and a Tender quoted in any other currency will not be considered further.
- 5.6 Payment to the successful Tenderer shall be made in accordance with Section 6 of the Technical Specification.
- 5.7 Payment to the successful Tenderer under the Contract will be made either by bank transfer into the designated bank account or through the FPS proxy. The details of the designated bank account or FPS proxy (depending on the election by the successful Tenderer) shall be provided by the successful Tenderer to the Government after the Contract award in accordance with Clause 14.13 of the Conditions of Contract. No other mode of payment will be entertained unless otherwise agreed by the Government.
- 5.8 Payment through the FPS proxy will not be available to an overseas Tenderer which does not have a bank account or FPS proxy in Hong Kong. By default, all amounts payable under the Contract to such successful Tenderer will be made by telegraphic transfer into the Tenderer's overseas designated bank account.
- 5.9 Without prejudice to the generality of the Terms of Tender, the ECC may require a Tenderer who in the opinion of the ECC has submitted an unreasonably low price to justify and demonstrate that such a Tenderer is capable of carrying out and completing the Contract. The ECC may reject the Tender if the Tenderer fails to so justify and demonstrate to the ECC's satisfaction.

6. Compliance with Essential Requirements

A Tenderer shall comply with all the Essential Requirements stipulated below. If a Tenderer fails to do so, its Tender will not be considered further.

Essential Requirement 1

- It is an Essential Requirement that a Tenderer shall propose the Food Waste Smart Bins with a type of wireless scanning device to recognize the users' 10-digit GREEN\$ membership number in the form of QR code.
- A Tenderer shall complete and submit "Compliance Form of Essential Requirements", for "Essential Requirement 1: QR Code Reading Device" with necessary supporting documents/drawings to substantiate its claim for submission in the Technical Proposal.
- The ECC Representative may, at its absolute discretion, request the Tenderer to arrange demonstration on the proposed Food Waste Smart Bins in achieving the standard of function. All extra costs incurred shall NOT be borne by the ECC. Failing of the Tenderer to do so shall render the tender not to be considered further.

Essential Requirement 2

- It is an Essential Requirement that a Tenderer shall propose to provide a Big Data Platform that must be able to connect to the Environmental Protection Department (EPD)'s Common Communication Platform and transfer data/information through a standard Application Programming Interface (API) and obtain a passed result of the Basic API Tests or Full API Tests, as set out in Appendix A1 to the Technical Specification.
- A Tenderer shall complete and submit "Compliance Form of Essential Requirements" for "Essential Requirement 2: Big Data Platform", with necessary supporting documents to substantiate its claim for submission in the Technical Proposal.
- A tender will not be considered further if the Tenderer fails to comply with the Essential Requirements stated above or the submitted documents/information/demonstration fail to substantiate that the Tenderer has the capability to meet the Essential Requirements as stated above.

7. Mandatory Features in the Technical Specification and Statement of Compliance

- 7.1 The Technical Specification set out the mandatory features in respect of the Goods and other obligations to be performed by the Contractor.
- 7.2 The Tenderer shall confirm in the relevant part of the Compliance Schedule that it and its offered Goods comply with all the mandatory features. Where the Tenderer does not complete the relevant part in the Compliance Schedule, subject to any clarification which the ECC Representative may seek at its discretion from the Tenderer, it shall be deemed that the Tenderer confirms compliance. In addition to the Compliance Schedule, the Tenderer may also be required to provide a point-by-point statement of compliance in the Technical Specification. If this is so required, references to "Compliance

Schedule” throughout this Paragraph 7 shall also be read to include the Technical Specification.

- 7.3 There may be some mandatory features which will only be fulfilled by the Goods after some further customisation or implementation services as specified in the Technical Specification or otherwise to the extent necessary (if any) (“Customisation”). In such case, the Tenderer shall equally be required to confirm that its Goods will comply with the relevant mandatory features after the Customisation in the Compliance Schedule.
- 7.4 A Tenderer’s Tender will not be considered further if the Tenderer expressly indicates non-compliance with all or any mandatory features or other requirements in the Tender Documents with which the Tenderer is required to indicate compliance in the Compliance Schedule. The note(s) in the Compliance Schedule further sets out what indication will be taken as such express indication of non-compliance.
- 7.5 Without prejudice to other provisions of the Tender Documents, and subject to any opportunity which may be provided to the Tenderer to provide clarification, or based on the Tenderer’s other submission or based on other evidence available to the ECC Representative, where the ECC Representative is not satisfied that the Tenderer or its offered Goods comply with any of the mandatory features stipulated in the Technical Specification (or in the case of any mandatory features which can only be accomplished after Customisation, the Goods will comply with the relevant mandatory features), the Tenderer’s Tender will not be considered further.
- 7.6 Notwithstanding anything in these Terms of Tender or in the submitted Compliance Schedule, the ECC Representative reserves the right to seek clarification from the Tenderer or the Manufacturer or authorised distributor or other relevant person to determine, inter alia, if an Item it has offered complies with the mandatory features of the Technical Specification for such Item (or will comply after necessary Customisation).
- 7.7 Where there is any inconsistency between the information, data, drawings or other documents provided by the Tenderer and those provided by the Manufacturer (whether provided through the Tenderer or obtained by the ECC Representative directly from the Manufacturer or from other sources), the tender evaluation will be based on the information, data, drawings or other documents provided by the Manufacturer unless the Tenderer, upon the seeking of any clarification by the ECC, resolves such inconsistency to the satisfaction of the ECC Representative. For the avoidance of doubt, the ECC is not obliged to seek clarification in the event of any apparent inconsistency.

- 7.8 In addition to the mandatory features, there may be other requirements in the Tender Documents with which the Tenderer is specifically requested to confirm compliance in the Compliance Schedule (if any). The consequence for expressly indicating non-compliance with any such requirements is set out in Paragraph 7.4 above.

8. Delivery

- 8.1 Items and quantities of the Goods shall either be supplied on an “as and when required” basis through the issue of Order, or be supplied (subject to other terms and conditions of the Contract) according to Items and quantities of the Goods as specified in the applicable part of the Tender Documents without the need for the ECC to issue any Order, depending on the Technical Specification set out in the Tender Documents. In either situation, each batch of Goods shall be delivered by the Deadline Delivery Date for such batch.
- 8.2 Different manners of determining the Deadline Delivery Date are specified in Clauses 6.1 to 6.4 of the Conditions of Contract. The applicable manner for delivery of the Goods under the Contract shall be stated in Paragraph 3.2 to the Technical Specifications.
- 8.3 If the Deadline Delivery Date(s) for each batch of Goods in the specified quantities are specified in the Technical Specification and if requested in the Compliance Schedule, the Tenderer shall confirm compliance with the Deadline Delivery Date(s) in the Compliance Schedule. In the Compliance Schedule, the ECC Representative may (but is not obliged to) allow counter-proposal from the Tenderer to the Deadline Delivery Date(s) within a permissible range (if any). If there is such a permissible range, the Tender of a Tenderer which expressly counter-proposes an alternative Deadline Delivery Date that is outside such permissible range will not be considered further.
- 8.4 The Goods shall be delivered on an F.I.S. basis as defined in Paragraph 5.1 above. A Tender, with a unit price quotation on delivery terms other than the aforesaid applicable delivery requirement, or expressly excluding any subject matter or services of whatsoever nature which are required to be covered by that unit price quotation, will not be considered further.

8A. Site Visits

- 8A.1 For the purposes of evaluating whether the Tenderer will be capable of performing the Contract, the ECC may, at its own costs, conduct site visit(s) to any premises including the premises of the Tenderer (including its registered office and warehouse), the premises of the Tenderer’s sub-

contractor and/or the Manufacturing Plant, with or without prior notice, whether by the ECC Representative or any person appointed by the ECC. The Tenderer shall make all necessary arrangements to facilitate such site visit(s) and shall complete the contact details including the address(es) of its office, sub-contractor's office (if any) and/or the Manufacturing Plant, facsimile number and email address in the Annex XI to the Terms of Tender.

8A.2 The making of any such site visit does not imply that the Tenderer will be awarded the Contract.

9. Company/Business Organisation Status

9.1 The Tenderer shall provide the following details relating to itself in the Information Schedule:

- (a) name and principal place of business of the Tenderer;
- (b) length of business experience;
- (c) shareholders/partners/proprietor of the Tenderer and their percentage of ownership;
- (d) names of the following:
 - (i) managing director and other directors;
 - (ii) partners; or
 - (iii) sole proprietor;
- (e) a copy of a valid Business Registration Certificate issued under the Business Registration Ordinance (Chapter 310 of the Laws of Hong Kong) or documentary evidence showing that the Tenderer is exempted from business registration under the Business Registration Ordinance (Chapter 310 of the Laws of Hong Kong); or if the Tenderer does not carry on business in Hong Kong, the equivalent document issued by the authority of the place of business of the Tenderer;
- (f) if the Tenderer is a company, its Memorandum (if any) and Articles of Association, Certificate of Incorporation, Certificate of Change of Name (if any); or the equivalent documents issued by the authority of the place of incorporation of the Tenderer if the Tenderer was not incorporated under the Companies Ordinance (Chapter 622 of the Laws of Hong Kong) (or its predecessor Ordinance);
- (g) if the Tenderer is a company incorporated in Hong Kong or is a registered non-Hong Kong company under the Companies Ordinance (Chapter 622 of the Laws of Hong Kong), a copy of the latest annual

return filed with the Companies Registry and all subsequent filings since the latest annual return; or the equivalent documents issued by the authority of the place of incorporation of the Tenderer if the Tenderer was not incorporated or registered under the Companies Ordinance (Chapter 622 of the Laws of Hong Kong) (or its predecessor Ordinance);

- (h) place and date of its incorporation or formation;
- (i) business profile information of the Tenderer including the number and location of full time/contract employees, core business strategies and strength, and industry expertise;
- (j) unless the Tenderer does not have any employee in Hong Kong, information of the employee's compensation insurance policy in respect of the Tenderer's employees in accordance with Part IV of the Employees' Compensation Ordinance (Chapter 282 of the Laws of Hong Kong); and/or if the Tenderer intends to appoint a sub-contractor to perform any part of the Contract in Hong Kong (including where applicable the maintenance services), the same information shall be provided in respect of the employee's compensation insurance taken out by that proposed sub-contractor;
- (k) notwithstanding the deeming provision specified in Paragraph 3.10 of the Terms of Tender, a Tenderer shall provide a certified extract of Tenderer's board resolution or other documentary evidence acceptable to the ECC demonstrating authorisation and approval for the submission of its Tender. This requirement shall always be applicable to a Tenderer which is a company regardless of the mode of submission of Tender. In the case that a Tenderer is a sole proprietorship or a partnership, documentary evidence acceptable to the ECC demonstrating authorisation and approval for the submission of its Tender shall also be required if the signatory of the Offer to be Bound is not the sole proprietor or a partner (or a general partner in the case of a limited partnership) (as the case may be). In any of the aforesaid applicable situations, the name of the person authorised to sign the Offer to be Bound as shown in the aforesaid board resolution or documentary evidence (as the case may be) shall be the same as shown in the Offer to be Bound, failing which the Government reserves the power to seek clarification;
- (l) where a Tenderer is not a company, a partnership, or a sole proprietorship, some of the information mentioned in the foregoing Sub-paragraphs of this Paragraph 9.1 may not apply and may not be available. The ECC reserves the right to request such relevant information and documents in relation to the Tenderer to ascertain the

identity of the Tenderer as well as to ensure that the submission of the Tender has been duly authorised and approved; and

- (m) names and addresses of banks which are prepared to provide references or other relevant financial data which indicate the financial viability of the Tenderer.

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

- (a) the Tenderer is duly incorporated, formed or established and validly existing and in good standing under the laws of the place of the Tenderer's incorporation, formation or establishment and that the Tenderer has full power, capacity and authority to carry on the business as it is now conducting and to provide the Services to the ECC 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 18.2(a) to (e) of the Conditions of Contract or any event which has an equivalent effect to any such event has occurred in relation to the Tenderer based on the searches with independent local authorities conducted by the lawyer shortly before the legal opinion;
- (b) the Tenderer has the full power, authority and legal capacity to:
 - (i) execute and submit its Tender and to incur the liabilities and perform the obligations under the Tender Documents; and
 - (ii) enter into and execute the Contract and to incur the liabilities and perform the obligations thereunder;
- (c) the proposed Contract with the ECC will, upon its formation pursuant to Paragraph 18 of the Terms of Tender, constitute the legal, valid and binding obligations of the Tenderer in the place of its incorporation, formation or establishment and is enforceable against the Tenderer in accordance with its terms; without prejudice to the generality of the foregoing, where an Electronic Record is used in the formation of the Contract (whether with or without any electronic or digital signature), the Contract shall not be denied legality, validity or enforceability on the sole ground that an Electronic Record was used for that purpose;

- (d) the submission of its Tender and the performance of the Contract (if awarded to the Tenderer) have been duly authorised by all necessary corporate action of the Tenderer, and does not violate any provision of any applicable law, regulation or decree of the Tenderer's place of incorporation, formation or establishment, or the Memorandum (if any) and Articles of Association or similar constitutional documents of the Tenderer;
- (e) no authorisations, consents, approvals are required from any governmental authorities or agencies or other official bodies in the place of incorporation, formation or establishment in connection with the execution and delivery of the Tenderer's Tender, or the performance by the Tenderer of its obligations under the Tender Documents and the Contract;
- (f) the Tenderer's Tender and the Contract (if awarded to the Tenderer) need not be registered or filed in the place of incorporation, formation or establishment in order to secure their validity and/or priority;
- (g) there is no restriction under the laws of the place of the Tenderer's incorporation, formation or establishment affecting the Tenderer's obligations under the Tender Documents and the Contract;
- (h) the choice of the laws of Hong Kong to govern the Tender Documents and the Contract is a valid choice of laws;
- (i) the judgment handed by the courts of Hong Kong after the adjudication of any dispute arising from the Contract will be recognised and given effect to by the courts of the place of incorporation, formation or establishment of the Tenderer; and
- (j) it is not necessary under the laws of the place of incorporation, formation or establishment of the Tenderer that the ECC be licensed, qualified or otherwise registered in such place of incorporation, formation or establishment in order to enable it to enforce its rights under the Tender Documents and the Contract.

9.3 The ECC may require a Tenderer to provide, at its own expense, additional legal opinion satisfactory to the ECC in all respects issued by a lawyer duly qualified to practise the laws of the place of incorporation, formation or establishment of the Tenderer or the Place of Origin of all or any of the items, and acceptable to the ECC on any other matters arising from its Tender. Any additional legal opinion may have to opine, including without limitation, whether there is any export ban or otherwise any requirement for export approval in relation to the export or re-export of the Item(s) to Hong Kong for the intended usage and whether the Tenderer has such export approval.

Where the opinion on the question specified in Paragraph 9.2(i) above is negative or otherwise subject to qualifications not satisfactory to the ECC, the additional legal opinion shall opine that any ruling made by the arbitrator under the arbitration provision set out in Paragraph 9.4 below will be recognised and given effect to by the courts of the place of incorporation, formation or establishment of the Tenderer (“additional opinion on arbitration”). Together with the additional opinion on arbitration to be provided, the Tenderer shall also be required to provide a confirmation in writing that in consideration of the award of the Contract, it agrees that Clause 37.2 of the Conditions of Contract shall be replaced by the arbitration clause in Paragraph 9.4 below (“written confirmation on arbitration”).

- 9.4 Where the opinion on the question specified in Paragraph 9.2(i) above is negative or otherwise subject to qualifications not satisfactory to the ECC, subject to the obtaining of the additional opinion on arbitration as mentioned in Paragraph 9.3 above, Clause 37 of the Conditions of Contract shall be deemed deleted and replaced by the following:

“37.1 The Parties shall first refer any dispute or difference arising out of or in connection with the Contract to mediation in accordance with The Government of the Hong Kong Special Administrative Region Mediation Rules prevailing at the time.

37.2 If the said dispute or difference is not settled by mediation according to Clause 37.1 above, the said dispute or difference shall be adjudicated by arbitration to be held in accordance with the Hong Kong International Arbitration Centre Domestic Arbitration Rules prevailing at the time when a notice of arbitration is issued by a Party (“Arbitration Rules”) except that regardless of whether the Arbitration Rules providing anything to the contrary, unless the Parties otherwise agree in writing: (a) the arbitration hearing must be held in Hong Kong and that the Arbitration Ordinance (Chapter 609 of the Laws of Hong Kong) shall apply to the arbitration (including the whole of Schedule 2); and (b) without prejudice to section 18(2) of the Arbitration Ordinance, the Government may on its own disclose any information relating to (i) the arbitral proceedings under the arbitration agreement; and (ii) an award made in those arbitral proceedings, under any of the circumstances mentioned in Paragraph 27.2 of the Terms of Tender”

10. Sub-contractors

- 10.1 If any obligations of the Contractor are proposed to be performed by a sub-contractor, the Tenderer shall submit information of the sub-contractor in Table B of the Information Schedule (“Sub-contractor Table”). Details of the obligations to be performed by the proposed sub-contractor shall be submitted.

- 10.2 The information required in the Information Schedule for each proposed sub-contractor shall cover the information as required in Paragraph 9.1(a) of the Terms of Tender as if references to Tenderer shall mean the proposed sub-contractor.
- 10.3 The ECC reserves the power to request the Tenderer to withdraw any sub-contracting proposal in the Information Schedule whereupon should the Tenderer refuse to do so, its Tender may not be considered further.
- 10.4 A legally binding sub-contractor's undertaking, using the form in Annex XII to the Terms of Tender ("sub-contractor's undertaking") will be required from each proposed sub-contractor specified in the Sub-contractor Table. The following shall apply:
- 10.4.1 the sub-contractor's undertaking shall be provided within 14 days from the date of the written request by the ECC during the Tender Validity Period or such longer time as the ECC may allow. To ensure compliance, the Tenderer is advised to procure these documents in advance of any such request;
- 10.4.2 where the proposed sub-contractor was established or incorporated outside Hong Kong, the ECC reserves the power to request a legal opinion referred to in Paragraphs 9.2 and 9.3 of the Terms of Tender in relation to the proposed sub-contractor together with the sub-contractor's undertaking;
- 10.4.3 where the sub-contractor is a company incorporated in Hong Kong, the documents mentioned in Note (2) at the end of the sub-contractor's undertaking shall be submitted together with the sub-contractor's undertaking; and
- 10.4.4 where the sub-contractor's undertaking is required to be submitted prior to the award of the Contract, and the Tenderer has failed to submit the sub-contractor's undertaking and/or the requisite accompanying documents mentioned above by the specified deadline or within such time extension as the ECC may allow, the ECC may not consider the Tender further.

11. Cancellation of the Invitation to Tender Exercise

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

12. Tenderer's Commitment

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

13. Counter-Proposals

- 13.1 The Tenderer must not submit any proposal that has the effect of varying or modifying (a) any essential requirements specified in the Tender Documents; (b) all provisions in the Tender Documents concerning the preparation, submission and evaluation of Tenders and award of Contract which shall mean all provisions in all Tender Documents (excluding only (i) those provisions which are not identified as essential requirements in the Technical Specification and (ii) the Conditions of Contract).
- 13.2 The Tenderer must not directly or indirectly attempt to preclude or limit the effect of any requirements or instructions set out in these Terms of Tender or the Annexes.
- 13.3 If a Tenderer fails to comply with Paragraph 13.1 or 13.2 above, subject to any clarification which the ECC may, but is not obliged to, seek from the Tenderer, its Tender will not be further considered.
- 13.4 Counter-proposal to other provisions of the Tender Documents not specified in Paragraph 13.1 or 13.2 above, whilst not strictly disallowed, is not encouraged. If the Tenderer wishes to submit one or more counter-proposals to any provision in the Tender Documents not of the types specified in Paragraph 13.1 or 13.2 above (“Counter-Proposals”), the Counter-Proposals shall be submitted in the following manner:
 - (a) the Counter-Proposals shall be attached to “Offer to be Bound”;
 - (b) the original provisions which the Counter-Proposals relate to shall be fully recited before the proposed alteration or deletion;
 - (c) the proposed alteration to the original provisions shall be underlined and shall bear the corresponding clause number of the original provisions unless it is an addition;
 - (d) if it is an addition, the additional provisions shall be underlined;
 - (e) words to be deleted shall be crossed out by a single line only; and
 - (f) an explanation shall be given below the alteration or deletion and put in square brackets “[]”.

- 13.5 Unless the ECC otherwise agrees, Counter-Proposals that are not submitted in accordance with Paragraph 13.4 above will not be considered by the ECC and will not be regarded to form part of the Tender submitted by a Tenderer. In such event, the Tenderer shall be deemed to have agreed to the original provisions to which the Counter-Proposals relate and the ECC will continue to consider the Tenderer's Tender on this basis.
- 13.6 Notwithstanding and without prejudice to the aforesaid, the ECC may, but is not obliged to, negotiate with the Tenderer any Counter-Proposal. The ECC may at its absolute discretion reject any Counter-Proposal. If the ECC does elect to negotiate with a Tenderer concerning a Counter-Proposal, and if after such negotiation, the Tenderer is unwilling to withdraw such Counter-Proposal, or otherwise revise it on terms acceptable to the ECC, its Tender may not be considered further. Any accepted Counter-Proposal following from a successful negotiation shall be deemed as part of the Tenderer's Tender and forms part of the Contract and shall be binding on the Tenderer if the Contract is eventually awarded to it.

14. Alternative Standards

- 14.1 On condition that all of the following are complied with, a Tenderer may offer to supply to the ECC Goods which comply with a standard ("Alternative Standard") alternative to any standards specified in the Technical Specifications ("Original Standard"):
- (a) the Tenderer shall identify and give details of the Alternative Standard in its Tender;
 - (b) the Tenderer shall provide a comparison between the Alternative Standard and the Original Standard;
 - (c) the Tenderer shall demonstrate to the ECC's satisfaction that the requirements that need to be complied with under the Alternative Standard are no worse than those that need to be complied with under the Original Standard, and that Goods that comply with the Alternative Standard are in all respects (including quality, fitness for purpose and compliance with the Technical Specifications) no worse than Goods which comply with the Original Standard; and
 - (d) documentary evidence is submitted to the Government for the purpose of Paragraph 14.1(c) above.
- 14.2 If the ECC considers that an Alternative Standard proposed by a Tenderer is not acceptable to the ECC for the purpose of the Invitation to Tender, the Tenderer's Tender will not be considered further unless (a) the Tenderer has also undertaken in its Tender to comply with the Original Standard; and (b)

in accordance with the requirements as stated in the Technical Specifications, the Tenderer has provided the requisite certifications to prove that the Goods comply with the Original Standard.

15. Request for Information

15.1 In the event that the ECC determines that:

- (a) clarification in relation to any part of the Tender is necessary; or
- (b) a document or a piece of information, other than those specified in Paragraph 3.3 of the Terms of Tender, is missing from any Tender,

it may, but is not obliged to, request the Tenderer concerned to make the necessary clarification, or submit the required document or information. The Tenderer 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 Tender may not be considered further (or will not be considered further where the missing information or document is of the type specified in Paragraph 3.4 of the Terms of Tender).

15.2 Any excess proposal or information supplied by a Tenderer which goes beyond what has been requested by the ECC pursuant to Paragraph 15.1 above will be ignored for the purposes of the tender evaluation or will entitle (but not oblige) the ECC not to consider the Tender further.

15.3 For the avoidance of doubt, if the original signature is missing from the “Offer to be Bound” or the “Offer to be Bound” is missing from the Tender, the Tenderer will be disqualified and no request for resubmission will be made. Otherwise, for any other missing information to be completed in the “Offer to be Bound” or in relation to any ambiguity (including in relation to the signature), the ECC may, but is not obliged to, seek clarification from the Tenderer under Paragraph 15.1(a) above. In the case that the date is missing from the Offer to be Bound, it shall be deemed that the date shall be the Tender Closing Date and no request for clarification will be made.

16. Tenderer’s Enquiries

16.1 Any enquiries concerning the **Technical Specification/Tender Proposal** should be made prior to the Tender Closing Date to -

Name: Mr CHEUNG Long Hei, Felix

Waste Reduction Officer/EPD

Tel No.: 3863 1303

Email: longheicheung@epd.gov.hk

Any enquiries concerning the **tender submission procedure** should be made prior to the Tender Closing Date to-

Name: Mr. CHAN Tsz-fai, Harris

Executive Officer/ECC Secretariat

Tel No.: 2835 1020

Email: harristfchan@eeb.gov.hk

- 16.2 After lodging a Tender with the ECC, the Tenderer shall not attempt to initiate any further contact, whether direct or indirect, with the ECC on its Tender or the Tender Documents. The ECC shall have the sole right to initiate any such further contact and all such contacts and any replies of the Tenderer thereto shall be in writing or formally documented in writing.
- 16.3 Unless otherwise expressly stated by the ECC in writing, a statement made by the ECC (whether oral or written) in response to any enquiry made by a potential Tenderer shall be for information only. No such statement shall constitute a representation or warranty by the ECC of any nature whatsoever (whether express or implied), and no invitation is made by the ECC to any Tenderer or potential Tenderer to rely on such statement. No such statement shall form part of the Tender Documents or alter, negate or constitute a waiver of any provision of the Tender Documents.

17. Communication with the ECC Representative

- 17.1 Without prejudice to the requirements set out in Paragraph 21 of the Terms of Tender concerning notification of acceptance of Tender, all communications given or made by the Government or a Tenderer in relation to the Invitation to Tender shall be in writing and sent or delivered to the other Party in the manner provided in Clause 32 of the Conditions of Contract at the address, facsimile number or email address specified in the Annex XI to the Terms of Tender, save that in the case of lodging any enquiries under Paragraph 16.1 of the Terms of Tender, the Tenderer shall lodge such enquiries by email only. The Tenderer shall complete its postal address, facsimile number and email address in the Annex XI to the Terms of Tender and should note that the ECC will not accept the use of a postal box as the Tenderer's correspondence address for any purpose whether before or after the award of the Contract.
- 17.2 All communications in relation to the Invitation to Tender shall be conducted directly between the ECC Representative and the Tenderer, unless the ECC elects to contact any Manufacturer, proposed sub-contractor, customer or

client of the Tenderer, related person (as defined in Paragraphs 19.6 and 19.7 of the Terms of Tender) of the Tenderer, director or management staff of the Tenderer or those of the related person (as defined in Paragraphs 19.6 and 19.7 of the Terms of Tender) of the Tenderer or any other person directly.

18. Negotiations

The ECC reserves the right to negotiate with any Tenderer in relation to the Tenderer's Tender and/or the Contract.

19. ECC Discretion

19.1 Notwithstanding anything to the contrary in this Tender Documents, the ECC reserves the right to disqualify a Tenderer on grounds including any one of the following:

- (a) a petition is presented or a proceeding is commenced which has not been withdrawn 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 Tenderer or a related person of the Tenderer;
- (b) the Tenderer has made or submitted a false, inaccurate or incomplete statement or representation or a forged document in the Tender or in any subsequent submission by the Tenderer or communication between the ECC and the Tenderer since submission of that Tender;
- (c) in the event of (i) a claim or an allegation or ruling or judgment by a court, or decision by a competent tribunal or arbitration body that anything(s), service(s) or material(s) to be supplied or recommended by the Tenderer in its Tender 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 Tender Closing Date and up to the time of Contract award); or (ii) the ECC having grounds to believe there is or will be such IPR infringement; or (iii) an agreement has been entered into whether by the Tenderer 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 Tender Closing Date and up to the time of Contract award;
- (d) any time during the thirty-six (36) months prior to the Tender Closing Date or between the Tender Closing Date and the award of the Contract, the Tenderer or a related person of the Tenderer (as defined

in Paragraphs 19.6 and 19.7 below and including those who were in such capacity any time within the same period, i.e., thirty-six (36) months prior to the Tender Closing Date or between the Tender 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 regardless of the procurement department of such other Government contract, 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 ECC in its sole judgment is satisfied that such Contract Default(s) casts a reasonable doubt on the capability of the Tenderer to perform the Contract to be awarded in this Invitation to Tender;

- (e) (i) the Tenderer; or (ii) a related person of the Tenderer; or (iii) a director or management staff of the Tenderer or those of the related person of the Tenderer, 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 Tender 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 Tender Closing Date and up to the time of Contract award that adversely reflect on the commercial integrity of the Tenderer or a related person of the Tenderer or a director or management staff of the Tenderer or those of the related person of the Tenderer; professional misconduct includes any breach of the Good Industry Practice; or
- (g) any failure of the Tenderer to pay taxes to the Government during a period of five (5) years preceding the Tender Closing Date and up to the time of Contract award; or
- (h) the ECC considers that the Tenderer will not be capable of fulfilling the terms of the Contract.

The grounds specified in Paragraphs 19.1(a) to 19.1(h) above are separate and independent, and shall not be limited by reference to or inference from the other of them.

19.2 For the purposes of Paragraph 19.1 above, each Tenderer shall provide at the time of submission of its Tender (and thereafter up to the time of award in relation to any event occurring between the time of submission and the time of award) all information in relation to itself and its related person or its director or management staff (which is reasonably relevant to facilitate the ECC's determination as to whether to exercise its right of disqualification), including but not limited to the following:

- (a) details of any petition or proceeding mentioned in Paragraph 19.1(a) above;
- (b) details of all infringement claims or allegations or rulings or judgments or decisions or settlement agreements as mentioned in Paragraph 19.1(c) above;
- (c) details of all Contract Defaults as mentioned in Paragraph 19.1(d) above;
- (d) details of conviction as mentioned in Paragraph 19.1(e) above in Hong Kong or any overseas jurisdiction;
- (e) details of any professional misconduct or act or omission as mentioned in Paragraph 19.1(f) above; and
- (f) details of any failure to pay taxes as mentioned in Paragraph 19.1(g) above.

If none of the events as mentioned in Paragraphs 19.1(a) to 19.1(g) above has ever occurred within the applicable period as mentioned above, the Tenderer shall provide a statement to that effect by completing the relevant part of the Information Schedule at the time of submission of its Tender. If found missing, the ECC reserves the right to seek clarification pursuant to Paragraph 19.3 below. The information provided by the Tenderer is not conclusive. The ECC may independently verify the veracity and completeness of any information provided. In the case of Contract Default, the ECC will form an assessment as to whether or not such Contract Default has occurred.

19.3 In addition to the information mentioned in Paragraph 19.2 above, the ECC reserves the right (but not obligation) to request from a Tenderer, the Manufacturer, proposed sub-contractor, customer or client of the Tenderer a related person (as defined in Paragraphs 19.6 and 19.7 of the Terms of Tender) of the Tenderer, a director or management staff of the Tenderer or

those of the related person (as defined in Paragraphs 19.6 and 19.7 of the Terms of Tender) of the Tenderer, or any other person or other independent sources, such other information that is reasonably relevant to facilitate the ECC's determination as to whether to exercise its right of disqualification under Paragraph 19.1 above.

- 19.4 If the Tenderer fails to comply with the request made by the ECC pursuant to Paragraph 19.3 above within such time as required by the ECC, the ECC may disqualify the Tenderer pursuant to Paragraph 15 of the Terms of Tender. If the Tenderer has submitted false, inaccurate or incomplete information, the ECC may disqualify the Tenderer pursuant to Paragraph 19.1(b) above.
- 19.5 In providing the information required under Paragraphs 19.2 and 19.3 above, the Tenderer may show cause to satisfy the ECC that in relation to any of the events as mentioned in Paragraph 19.1(a) to 19.1(g) above, even if it has occurred, it does not cast doubt on the fitness, propriety or capability of the Tenderer to perform the Contract to be awarded in this Invitation to Tender.
- 19.6 If the Tenderer is a company, the expression "related person" of the Tenderer includes any one of the following:
- (a) a shareholder (corporate or individual) which directly or indirectly beneficially owns fifty (50) percent or more of the issued share capital of the Tenderer ("majority shareholder");
 - (b) a holding company or a subsidiary of the Tenderer;
 - (c) a holding company or a subsidiary of a majority shareholder (being a company) of the Tenderer; or
 - (d) a company in which a majority shareholder (being an individual) of the Tenderer directly or indirectly beneficially owns fifty (50) percent or more of its issued share capital or controls the composition of its board of directors.

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

- 19.7 If the Tenderer is a sole proprietor or partnership, the expression "related person" includes any one of the following:
- (a) any partner of the Tenderer (if it is a partnership);
 - (b) the spouse, parent, child, brother or sister of the Tenderer, and, in deducing such a relationship, an adopted child shall be deemed to be

a child 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 Tenderer or any partner of the Tenderer beneficially directly or indirectly owns fifty (50) percent or more of its issued share capital or controls the composition of its board of directors.

19.8 References to related persons of the Tenderer, directors and management staff of the Tenderer or those of a related person in any of the applicable Sub-paragraph of Paragraph 19.1 above include persons who were in such capacity at such time of the event referred to in that Sub-paragraph.

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

20. Award of Contract

20.1 In this tender exercise, the ECC will award **Two (2)** Contracts, namely, **Contract (A)** and **Contract (B)**, as more particularly described in the Technical Specification, with each Contract can be awarded to the same Tenderer, which the ECC has determined to be capable of fulfilling the terms of the Contract and complies with the following evaluation criteria:

- (a) the Tenderer's Technical Proposal and Price Proposal have respectively passed the completeness check;
- (b) the Tenderer and its Technical Proposal conform with all essential requirements stipulated in Paragraph 6 of this Terms of Tender;
- (c) the Tenderer has not been disqualified (or having its Tender not being considered further) for failing to comply with any other requirements set out in the Tender Documents;
- (d) the Tenderer's Price and Technical Proposals have attained **the highest combined score** amongst all the Tenders for that Contract which fulfil the evaluation criteria as specified in (a) to (c) above. The Technical Proposal will be evaluated according to the Marking Scheme for Tender Evaluation (*Annex IV*), while the Total Amount for Part A of the Price Proposal (*Annex V*) quoted by the Tenderer will be used for price

assessment. The Technical/Price weighting to be applied in assessing Tenderers' proposals shall be 60%/40%;

- (e) In the event that two (2) or more Tenders which fulfil the evaluation criteria as specified in (a) to (c) above have obtained **the same highest combined score**, the tenders which obtained a higher weighted Technical Score will be accepted; and
- (f) In the event that two (2) or more Tenders which fulfil the evaluation criteria as specified in (a) to (c) above have obtained **the same highest combined score and the same weighted Technical Score**, Tenders which obtained a higher score for Section A – Execution Plan of the Assessment of Technical Proposal will be accepted.

The foregoing evaluation criteria (a) to (f) (as further elaborated in the remaining paragraphs of this Paragraph 20 shall be deemed to be incorporated into the Marking Scheme and in the event of any inconsistency, the foregoing shall prevail.

- 20.2 **Contract (A)** will be awarded to Tenderer with Price and Technical Proposals fulfilling the evaluation criteria as specified in Paragraph 20.1 above and obtaining **the highest combined score that is bidding for Contract (A)**. **Contract (B)** will be awarded to Tenderer with Price and Technical Proposals fulfilling the evaluation criteria as specified in Paragraph 20.1 above and obtaining **the highest combined score that is bidding for Contract (B)**.
- 20.3 The term “completeness check” referred to in Paragraph 20.1 above shall mean the checking of (a) whether or not all proposals, documents and information which are, as per provisions in the Tender Documents, required to be submitted before the Tender Closing Time (and failing which the Tender will not be considered further), have been so submitted; and (b) whether or not those which are, as per the provisions in the Tender Documents, required to be submitted before the Tender Closing Time or upon subsequent request (and failing which the Tender will not be considered further), have been so submitted before the Tender Closing Time, or upon such request if a subsequent request has indeed been made by the ECC.
- 20.4 For determining the price score under Paragraph 20.1 above, any prompt payment discount offered by the Tenderer in the Price Proposal will not be taken into consideration in the tender price assessment.
- 20.5 A Tenderer shall note that its offer will be considered on an **"overall"** basis. Tender with only partial or incomplete offer (“a non-conforming Tender”) will not be considered further. Throughout the Tender Documents, references to “Tender will not be considered further” (or other similar

expressions) shall be construed to mean the non-conforming of the entire Tender. The Tenderer must submit an offer for all quantities of all Item(s). All Tenders will be evaluated on an overall basis by taking into account all offered Item(s) based on the quantit(ies) specified in the Price Proposal in accordance with Paragraph 20.1 above.

- 20.6 Notwithstanding anything herein to the contrary, the ECC is not bound to accept the Tender with the highest combined score or any Tender and reserves the right to accept all or any part of any Tender at any time within the Tender Validity Period.

21. Acceptance

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

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

- 21.2 A duplicate hardcopy of each of the documents comprised in the Contract, including the “Memorandum of Acceptance” duly completed by the ECC, will subsequently be delivered to the successful Tenderer evidencing the earlier acceptance by post or facsimile transmission, as the case may be.

- 21.3 Tenderers who do not receive any notification within the Tender Validity Period should assume that their Tenders have not been accepted.

- 21.4 Where an Electronic Record is used in the formation of the Contract (whether with or without any electronic or digital signature), the Contract shall not be denied validity or enforceability on the sole ground that an Electronic Record was used for that purpose.

22. Complaints about Tendering Process or Contract Award

The tendering process is subject to internal monitoring to ensure that the relevant contract is awarded properly and fairly. Any Tenderer who feels that its Tender has not been fairly evaluated may write to the Chairman of the ECC who will personally examine the complaint if the complaint relates to the tendering system or procedures

followed. The Tenderer should lodge the complaint within three (3) months after the award of Contract.

23. Documents of Unsuccessful Tenderers

The ECC may destroy all documents submitted by unsuccessful Tenderers three (3) months after the Contract has been constituted under Paragraph 21.1 of the Terms of Tender.

24. New Information

A Tenderer should inform the ECC Representative in writing immediately of any factor which might affect its ability to meet any requirements of the Tender Documents, e.g., if the Tenderer is no longer the authorised agent for supplying a proprietary product. The ECC Representative reserves the right not to consider a Tenderer's Tender further if the Tenderer's continued ability to meet such requirements is in doubt.

25. Contractors' Performance Monitoring

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

26. Cost of Tender

Each Tenderer shall submit its Tender at its own cost and expense. The ECC shall not be liable for any costs and expenses whatsoever incurred by a Tenderer in connection with the preparation or submission of its Tender and the doing of all acts required for the purpose of this Invitation to Tender, including all costs and expenses relating to (a) communication or negotiations with or providing presentation or demonstration to the ECC Representative, (b) site visits or surveys made by the Tenderer, (c) presenting the Tenderer's reference sites and equipment to the ECC Representative during the site visits, and (d) provision of tender samples, whether before or after the Tender Closing Time.

27. Consent to Disclosure

27.1 The ECC may disclose, whenever it considers appropriate, to the public or upon request by any member of the public (which may have been a Tenderer) without any further reference to or consent from the successful Tenderer or any other Tenderer,

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

27.2 Nothing in Paragraph 27.1 above shall prejudice the ECC's power to disclose whenever it considers appropriate information of any nature whatsoever in relation to or concerning any Tenderer (successful or unsuccessful) or its tender (whether or not the information is specified in Paragraph 27.1 above and including information recorded in whatever media) if the disclosure is made under any one of the following circumstances (even if disclosure may also mean the information will at the same time, or subsequently, become public information):

- (a) the disclosure of any information to any public officer or public body as defined in the Interpretation and General Clauses Ordinance (Chapter 1 of the Laws of Hong Kong) or any other person employed, used or engaged by the Government (including agents, advisers, contractors and consultants);
- (b) the disclosure of any information already known to the recipient;
- (c) the disclosure of any information which is public knowledge (including because of any disclosure under Paragraph 27.2(a) above);
- (d) the disclosure of any information in circumstances where such disclosure is required pursuant to any law of Hong Kong, or an order of a court of Hong Kong or a court or tribunal with competent jurisdiction;
- (e) the disclosure of any information regarding anti-competitive collusive conduct to the Competition Commission of Hong Kong (and other authorities as relevant); or
- (f) without prejudice to the power of the ECC under Paragraph 27.1 above, to the extent the information relates to or concerns a Tenderer, with the prior written consent of that Tenderer.

28. Personal Data Provided

- 28.1 All personal data provided in a Tender will be used by the ECC for the purposes of the Invitation to Tender and all other purposes arising from or incidental to it (including for the purposes of tender evaluation, the award of the Contract, resolution of any dispute arising from the Invitation to Tender, and the disclosure pursuant to Paragraph 27 of the Terms of Tender).
- 28.2 By submitting a Tender, a Tenderer is regarded to have agreed to, and to have obtained from each individual whose personal data is provided in the Tender, his consent for the disclosure, use and further disclosure by the ECC of the personal data for the purposes set out in Paragraph 28.1 above, or the disclosure pursuant to Paragraph 27 of the Terms of Tender.
- 28.3 An individual to whom personal data belongs and a person authorised by him in writing has the right of access and correction with respect to the individual's personal data as provided for in sections 18 and 22 and Principle 6 of Schedule 1 to the Personal Data (Privacy) Ordinance (Chapter 486 of the Laws of Hong Kong). The right of access includes the right to obtain a copy of the individual's personal data provided in the Tender.
- 28.4 Enquiries concerning the personal data collected by means of the Invitation to Tender, including the making of access and corrections, should be addressed to the ECC Secretariat.

29. Licence to use the materials submitted by Tenderers

A Tender once submitted will become the property of the ECC. Tenders of unsuccessful Tenderer may be destroyed in accordance with Paragraph 23 of the Terms of Tender. In light of the ECC considering its Tender, without prejudice to all other rights and powers of the ECC under the Tender Documents (including in particular its right to disclose information in the Tenders) and under the Contract, each Tenderer hereby grants and shall upon the demand of the ECC at the Tenderer's cost procure that the lawful owner or authorised person of the relevant Intellectual Property Rights will grant, to the ECC, 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 Tender for the purposes of tender evaluation and for all other purposes incidental thereto or in connection therewith (including resolution of any dispute arising from the Invitation to Tender). Such right and licence shall continue to subsist so long as all or any Intellectual Property Rights subsist in the Tender (or any part thereof) under any applicable law, including the laws of Hong Kong. Where there is any presentation or demonstration, the aforesaid right and licence shall extend to such presentation and/or demonstration to be conducted by the Tenderer.

30. Warranty against Collusion

- 30.1 The Tenderer must ensure that the Tender is prepared without any agreement, arrangement, communication, understanding, promise or undertaking with any other person (except as provided in paragraph 3 of the Non-collusive Tendering Certificate referred to in Paragraph 30.2 below), regarding, amongst other things, price, tender submission procedure or any terms of the Tender. Bid-rigging is inherently anti-competitive and is considered serious anti-competitive conduct under the Competition Ordinance (Chapter 619 of the Laws of Hong Kong). Tenderers who engage in bid-rigging conduct may be liable for the imposition of pecuniary penalties and other sanctions under the Competition Ordinance.
- 30.2 The Tenderer shall complete and submit to the ECC a Non-collusive Tendering Certificate (*Annex VII*) as part of its Tender.
- 30.3 In the event that a Tenderer is in breach of any of the representations, warranties and/or undertakings in Paragraph 30.1 above or in the Non-collusive Tendering Certificate submitted by it under Paragraph 30.2 above, the ECC shall be entitled to, without compensation to any person or liability on the part of the ECC:
- (a) reject the Tenderer's Tender;
 - (b) if the ECC has accepted the Tender, withdraw its acceptance of the Tenderer's Tender; and
 - (c) if the ECC has entered into the Contract with the Tenderer, terminate the Contract under Clause 18.1 of the Conditions of Contract.
- 30.4 By submitting a Tender, a Tenderer is regarded to have undertaken to indemnify and keep indemnified the ECC 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 Paragraph 30.1 above or in Non-collusive Tendering Certificate submitted by it under Paragraph 30.2 above.
- 30.5 A breach by a Tenderer of any of the representations, warranties and/or undertakings in Paragraph 30.1 above or in Non-collusive Tendering Certificate submitted by it under Paragraph 30.2 above may prejudice its future standing as a ECC contractor or service provider.
- 30.6 The rights of the ECC under Paragraphs 30.3 to 30.5 above are in addition to and without prejudice to any other rights or remedies available to it against the Tenderer.

31. Warning against Bribery

- 31.1 The offer of an advantage to any public officer with a view to influencing the award of the Contract, or as a reward for or otherwise on account of such award, is an offence under the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong). Any such offence committed by a Tenderer or any of its officers (including directors), employees or agents will render its Tender null and void.
- 31.2 The successful Tenderer shall inform its officers, employees (whether permanent or temporary), agents and sub-contractors who are connected with the provision of the Services that the offering, soliciting or accepting of advantages, as defined in the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong) is not permitted. The successful Tenderer shall also caution its officers (including directors), employees and agents and sub-contractors against soliciting or accepting any advantage or entertainment which may impair their impartiality in relation to the performance of the contract.

32. Environmental Protection

- 32.1 Tenderers are encouraged to minimise the impact of their activities on the environment and to observe the Green Measures at Annex X to the Terms of Tender.
- 32.2 The following environment-friendly measures are recommended to be adopted in the preparation of documents relating to a Tender and the future performance of the Contract:
- (a) all documents should be printed on both sides and on recycled paper. Paper that exceeds 80 gsm should not be used for the text;
 - (b) use of plastic laminates, glossy covers or double covers should be avoided as far as possible. If art board paper has to be used as document covers, recyclable non-glossy paper should be used; and
 - (c) single line spacing should be used and excessive space in the margins and in between paragraphs should be avoided;
 - (d) the use of packaging materials should be minimised; and
 - (e) if the Goods are to be packed in a carton box, the carton box packaging should be made from 100% recovered fibre and must be strong enough for storage, stacking and transit
- 32.3 In these Tender Documents:

- (a) “recovered fibre” means:
 - (i) postconsumer fibre; or
 - (ii) manufacturing wastes such as:
 - (1) dry paper and paperboard waste generated after completion of the papermaking process; and
 - (2) repulped finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others,

but does not include mill broke.
- (b) “postconsumer fibre” means:
 - (i) paper, paperboard and fibrous wastes (including used corrugated boxes, old newspapers, old magazines and mixed waste paper) from retail stores, office buildings, homes and other premises, which have passed through end-usage as a consumer item; and/or
 - (ii) all paper, paperboard and fibrous wastes that enter and are collected from municipal solid waste,

but excluding fibre derived from printers’ over-runs, converters’ scrap and over-issue publications.
- (c) “mill broke” means any paper waste generated in a paper mill prior to completion of the papermaking process, and such paper waste is usually returned directly to the pulping process.

33. Offer to be Binding

By signing the “Offer to be Bound”, the Tenderer confirms that its offer has been made subject to the terms and conditions contained in these Tender documents, and any variation or adjustment agreed with the ECC and upon being accepted by the ECC, be incorporated into and form part of the Contract.

34. Restrictions or limitations proposed by Tenderer

Restrictions or limitations proposed by any Tenderer which seek to limit or avoid the responsibility of the Tenderer in contract, tort or otherwise for failing to exercise the skill and care required by the Contract, or reasonably expected of the Tenderer/Contractor under the Contract may render any Tender non-compliant in the absolute discretion of the ECC.

35. Proposal by joint venture

The Tenderer's proposal submitted by joint venture will NOT be accepted.

36. Tender Briefing Session

A tender briefing session will be held at 3:00 p.m. on 30 September 2026 (Wednesday) by online video conferencing through the "Zoom" software. Prospective Tenderers who wish to attend the briefing session are requested to complete the registration form in Annex XIII. To facilitate the meeting, each prospective Tenderer is limited to two representatives. The link/Meeting ID and password for joining the online briefing session will be provided by email to the prospective Tenderers who have submitted the registration form on or before 28 September 2026. Only "Zoom" accounts with registered email address provided in the registration form will be allowed to join the online tender briefing session.

Date : 30 September 2026 (Wednesday)
Time : 3:00 p.m. (Hong Kong Time)
Format : Online through Zoom Meeting (Meeting ID and Password will be provided to registered prospective Tenderers)
Language : The tender briefing session would be **conducted in Cantonese**, with the support of English Presentation Materials

37. Presentation of Proposals

Following the tender closing date, Tenderers may be invited to present their submitted proposals to the ECC assessment panel. The date/time and relevant details of the meeting will be provided by email to the prospective Tenderers who have completed panel and submitted all the required proposals, documents and information. The presentation should be given in Cantonese.