

Urgent

財經事務及庫務局
(庫務科)

香港下亞厘畢道
中區政府合署

**FINANCIAL SERVICES AND THE
TREASURY BUREAU
(The Treasury Branch)**

Central Government Offices,
Lower Albert Road,
Hong Kong

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28 November 2011

Clerk to LegCo Panel on Financial Affairs
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong
(Attn: Mr Noel Sung)

Dear Mr Sung,

**Panel on Financial Affair
Follow-up to meeting on 7 November 2011**

I refer to your letter of 8 November 2011 conveying Members' request for supplementary information in relation to our proposal to write off a judgment debt.

The information requested is set out in the attached note. I should be grateful if you could forward it to Members for their information. For your information, the Administration will seek Finance Committee's approval of the write-off proposal at its meeting on 2 December 2011.

We shall separately forward the soft copy of the note to your Office.

Yours sincerely,



(Miss Pat Chung)
for Secretary for Financial Services and
the Treasury

c.c. Director of Government Logistics (Attn: Mr Howard Chan)
Department of Justice (Attn: Mr Brian Leu)

Internal

DS(Tsy)3
PEO(G)

Supplementary information on the proposal to write off a judgment debt

(a) **The respective numbers of write-off cases (i) involving fraud or negligence and (ii) not involving fraud or negligence, and the write-off amounts of each case**

The number of write-off cases involving fraud or negligence and not involving fraud or negligence approved by the Administration under Section 38 of the Public Finance Ordinance (Cap. 2) in 2009-10 and 2010-11 together with the total write-off amount by departments concerned are provided at Annex A. We do not have readily available information on the write-off amounts for each case.

(b) **The procedures for taking disciplinary actions against civil servants and the criteria for determining the disciplinary actions to be taken in such cases**

2. Upon receiving a report of suspected misconduct, the department concerned would examine the information available and conduct a departmental investigation where appropriate. For minor misconduct, the department may issue verbal or written warnings to the civil servant concerned. For repeated minor misconduct or more serious misconduct, the department may institute formal disciplinary proceedings against the civil servants concerned.

3. Formal disciplinary proceedings against civilian civil servants are conducted under the Public Service (Administration) Order (PS(A)O). The range of punishment that may be imposed on a civil servant found guilty of misconduct after formal disciplinary proceedings includes reprimand, severe reprimand, reduction in rank, compulsory retirement and dismissal. A financial penalty may also be imposed in the form of reduction in salary, stoppage/deferment of increment or a fine concurrently with some of the stated punishments should the gravity of the misconduct so warrant.

4. If the department concerned considers that there are sufficient grounds to initiate formal disciplinary action, it will refer the case to the Secretariat on Civil Service Discipline (SCSD) under the Civil Service

Bureau. SCSD is responsible for processing all disciplinary cases under the PS(A)O and advising departments on disciplinary procedures and punishment benchmarks. It will assist in appointing an inquiry officer or committee to conduct an independent hearing of the case. If guilt has been established, the Public Service Commission will be consulted, where appropriate, on the level of punishment.

5. When deciding on the level of punishment, the Administration will take the nature and gravity of the misconduct as the key considerations. Other pertinent considerations include the customary level of punishment for similar misconduct, existence of any mitigating factors, the rank and service as well as disciplinary record of the civil servant concerned, etc.

(c) How the disciplinary actions taken in this case compared with other comparable cases

6. The case in question involves negligence of duty with no wilful intent. According to the Civil Service Bureau, the customary punishment for similar misconduct is usually reprimand or severe reprimand plus a fine. Formal disciplinary proceedings established that the Senior Accounting Officer was held primarily responsible in this case. He was punished with a severe reprimand together with a fine and a caution of removal from the service in the event of further misconduct. That said, comparison would not be appropriate as each case should be considered on its own merits.

(d) A copy of the agreement used nowadays by the Government for the hiring of auctioneers

7. A copy of the standard quotation document (English version only) which is currently used by the Government Logistics Department for the hiring of auctioneers is at Annex B. The document comprises the Notes for Bidder (Annex B(i)), Terms of Quotation (Annex B(ii)), Standard Terms and Conditions of Contract (Annex B(iii)), Special Conditions of Contract (Annex B(iv)) and Schedules (Annex B(v)).

(e) **The assessment of the financial situation of the Hong Kong Auctioneers & Estate Agency Ltd. (HKAEAL) in awarding the auctioneer contract to the company for the period from 1 April 1996 to 31 August 1998, i.e. the contract period during which the present debt case occurred.**

8. No financial vetting of HKAEAL was conducted before the award of the 1996 Contract. There was no requirement that financial vetting must be carried out on this type of contracts at the time. We believe that the then Government Supplies Department did not require financial vetting to be carried out after having taken into consideration relevant factors including the successful tenderer was an existing contractor.

Financial Services and the Treasury Bureau
November 2011

**Write-off cases approved by the Administration
under Section 38 of Public Finance Ordinance (Cap. 2) in 2009-10 and 2010-11**

In 2009-10 and 2010-11, the Administration approved under delegated authority a total of 26 and 15 write-off cases involving fraud or negligence at \$0.3M and \$0.15M respectively. As regards approved cases not involving fraud or negligence, details are provided below.

Year 2009-10

Departments	Number of approved cases	Amount involved (\$million)	Reasons for approval mainly due to waiver of claims
Department of Health	570 935*	8.2	Waiving of medical charges mainly for recipients of Comprehensive Social Security Assistance
Departments	Number of approved cases	Amount involved (\$million)	Reasons for approval mainly due to irrecoverable fines, charges, arrears of revenue, etc.
Judiciary	54 200*	35.6**	Irrecoverable fines, forfeitures and Court fees/Taxing fees/Court costs
Water Supplies Department	45 834*	7.2	Irrecoverable water charges of closed water accounts of which the registered customers were dead or untraceable or companies were wound up; and waiving of odd cents of water charges of closed water accounts
Inland Revenue Department	27 945	556.7**	Irrecoverable arrears of revenue from different types of taxes for various reasons such as company liquidation, adjudged bankrupt, death or untraceable of individual tax defaulters, etc.
Legal Aid Department	823	20.1**	Irrecoverable legal aid costs and contribution
Others	9 045	68.2	—

* the three departments with the largest number of approved cases.

** the three departments with the largest sum involved.

Year 2010-11

Departments	Number of approved cases	Amount involved (\$million)	Reasons for approval mainly due to waiver of claims
Department of Health	596 246*	8.0	Waiving of medical charges mainly for recipients of Comprehensive Social Security Assistance
Departments	Number of approved cases	Amount involved (\$million)	Reasons for approval mainly due to irrecoverable fines, charges, arrears of revenue, etc.
Inland Revenue Department	25 944*	554.1**	Irrecoverable arrears of revenue from different types of taxes for various reasons such as company liquidation, adjudged bankrupt, death or untraceable of individual tax defaulters, etc.
Water Supplies Department	22 722*	3.1	Irrecoverable water charges of closed water accounts of which the registered customers were dead or untraceable or companies were wound up; and waiving of odd cents of water charges of closed water accounts
Government Property Agency	10	31.8**	Irrecoverable debt arising from default of tenancies
Leisure and Cultural Services Department	484	31.5**	Irrecoverable judgment debts arising from breaches to contracts by default contractors
Others	16 670	102.5	—

* the three departments with the largest number of approved cases.

** the three departments with the largest sum involved.

The Government of the Hong Kong Special Administrative Region

**Provision of Auctioneering Services for the Sale of Government Properties
to the Government Logistics Department**

Notes for Bidder

Interpretation

- “Bidder” means the firm or the organisation referred to in Schedule C “Offer to be Bound”.
- “Contractor” means the Bidder whose quotation is accepted.
- “Contract Period” has the meaning given to it in clause 1 of the Special Conditions of Contract
- “Date of Acceptance Of Offer” means the date of the letter of acceptance or facsimile issued by the Government in accordance with clause 21 “Acceptance” of the Terms of Quotation.
- “GLD” means the Government Logistics Department.
- “Government Representative” means the Director of Government Logistics acting for and on behalf of Government or any officer authorised to act on their behalf for the purposes of the Contract;
- “Termination” has the meaning given to it in clause 21 of the Special Conditions of Contract;
- “working day” means a day other than
- (i) a Saturday; or
 - (ii) a general holiday within the meaning of the General Holidays Ordinance, Cap. 149; or
 - (iii) a black rainstorm warning day within the meaning of section 71(2) of the Interpretation and General Clauses Ordinance Cap. 1; or
 - (iv) a gale warning day within the meaning of section 71(2) of the Interpretation and General Clauses Ordinance, Cap. 1.

Notes for Bidders

1. Quotation Document

This Quotation document identified as D0000282011, comprises the following documents (collectively, "Quotation Document") and should be read together with the Interpretation Section, the Terms of Tender and the General Conditions of Contract under GLD-TERMS-2 (January 2010) as stated in clause 1 (Quotation Invitation) of the Terms of Quotation :

- (a) The Notes for Bidder;
- (b) The Terms of Quotation;
- (c) Schedule A (Scope of Services);
- (d) Schedule B (Price Schedule);
- (e) Schedule C (Offer to be Bound);
- (f) Schedule D (Information Schedule);
- (g) Schedule E (Client References);
- (h) The Special Conditions of Contract;
- (i) Supplement to the Special Conditions of Contract (Annex A); and
- (h) Deed of undertakings (Annex B).

2. Lodging of Quotation

(a) Paper-based Tendering

This quotation, completed in **triplicate**, must be addressed to the Chairman, Tender Opening Committee, and placed in the GLD Tender Box, G/F., North Point Government Offices, 333 Java Road, North Point, Hong Kong before **12:00 noon (Hong Kong time) on 31st August 2011** ("the Tender Closing Date") in a sealed plain envelope (without the identification of the Bidder) marked : "**Quotation for the Provision of Auctioneering Services for the Sale of Government Properties to the Government Logistics Department**".

(b) Electronic Tendering

Properly completed quotations shall be submitted by attachment in the required format as specified in the e-Tender Box of GLD. Transmission of the quotations to the ETB must be completed **before 12:00 noon (Hong Kong time)** on the Tender Closing Date. Information submitted should not exceed the size limitation as specified in the e-Tender Box. Otherwise, it should be sent in hard copy in accordance with clause 2(a) above.

Notes for Bidders

2. Lodging of Quotation (Cont'd)

(c) Late Quotation

A late quotation or a quotation not submitted in accordance with one of the submission methods stipulated in clauses 2(a) and 2(b) above, including a quotation submitted by e-mail, facsimile, etc., will not be considered further. Bidders are requested to note that, for quotations submitted through the e-Tender Box, quotation transmissions not completed before the Tender Closing Date and time shall be treated as late and will not be considered further unless the delay is due solely to the breakdown of the e-Tender Box at the Tender Closing Date and time.

3. Supplementary Information /Quotation Addenda

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

4. Bidder's Enquiries

- (a) Subject to clause 4(b) below, any enquiries from a prospective Bidder concerning the quotation terms of this Quotation Document up to the date of lodging its quotation with the Government shall be made in writing to the Director of Government Logistics [Attn. : Supplies Officer (A1)] in one of the following ways :
- (i) through the e-Tender Box of GLD at the website <http://www.gldetb.gov.hk>, if the prospective Bidder has an account under the Procurement and Contract Management System of GLD; or
 - (ii) by facsimile on number (852) 2116 0102; or
 - (iii) by mail to GLD, Procurement Division, 9/F., North Point Government Offices, 333 Java Road, North Point, Hong Kong.
- (b) Any enquiries from a prospective Bidder relating to the Scope of Services in Schedule A or any of the user requirements up to the date of lodging its quotation with the Government shall be made in writing to (and with a copy thereof sent to GLD as set out in clause 4(a) above) :

Director of Government Logistics
Government Logistics Department
Storage and Distribution Section
1/F., Chong Fu Road
Chai Wan
Hong Kong
(Attn : Senior Supplies Officer (S&D))
Facsimile No. : (852) 2515 9447

Notes for Bidders

4. Bidder's Enquiries (Cont'd)

- (c) After lodging a quotation with the Government, a Bidder shall not attempt to initiate any further contact, whether direct or indirect, with the Government in relation to its quotation or the Quotation Document. The Government shall have the sole right to initiate any such further contact and all such contacts and any replies of the Bidder thereof shall be in writing or formally documented in writing.

5. Environmental Protection

(a) Guidance Note for Environmental Management

GLD is committed to implementing an Environmental Management System for government procurement, provisioning, inspection, storage and distribution services in accordance with ISO 14001 standards. In this connection, Bidders are requested to minimise the impact of their activities on the environment and to observe the guidelines in Guidance Note GN-1 as provided.

(b) Environment-friendly Measures

The following environment-friendly measures are recommended for the preparation of the documents relating to the quotation :

- (i) All documents should preferably be printed on both sides and on recycled paper. Paper exceeding 80 gsm is not recommended.
- (ii) Excessive use of plastic laminates, glossy covers or double covers should be avoided as far as possible. Use of recyclable non-glossy art board paper as document covers is recommended.
- (iii) Single line spacing should be used and excessive space in the margins and in between paragraphs should be avoided.

Notes for Bidders**Guidance Note GN-1
for Contractors and Suppliers of
Government Logistics Department**

The Government Logistics Department is committed to protecting the environment. We request you as our contractors or suppliers to minimise the impact of your activities on the environment and to observe the following requirements in particular:

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

**Provision of Auctioneering Services for the Sale of Government Properties
to the Government Logistics Department**

Terms of Quotation

1. Quotation Invitation

- (a) Quotations are invited for the provision of auctioneering services for the sale of government properties as specified in **Schedule A** (Scope of Services) subject to and in accordance with the Quotation Document as listed in the Notes for Bidders.
- (b) Details of the Standard Terms and Conditions (Document Ref. GLD-TERMS-2 (January 2010)) comprising the Interpretation Section, the Terms of Tender and the General Conditions of Contract may be downloaded from the website <http://www.gldetb.gov.hk>. A Bidder is required to note that all of the aforesaid form part of the Quotation Document.

2. Quotation Preparation and Submission

- (a) A Bidder is required to complete its quotation in ink or typescript in either English or Chinese.
- (b) A Bidder is required to complete :
 - (i) **Schedule B** (Price Schedule) with the items fully priced, costed and totalled; and
 - (ii) **Schedule C** (Offer to be Bound), **Schedule D** (Information Schedule) and **Schedule E** (Client References) with all the information required respectively therein.
- (c) When completing **Schedule C** (Offer to be Bound), a Bidder shall ensure that the name of the Bidder is the same as the name shown in the Certificate of Incorporation or the Certificate of Change of Name (if any) or equivalent document or its trading name as shown in the Business Registration Certificate or other valid business documents issued by a governmental or competent authority.
- (d) For Paper-based Tendering, Schedules B to E shall be duly signed by the Bidder (in the case of a sole proprietorship) or a partner of the Bidder (in the case of a partnership) or an authorised person or persons for and on behalf of the Bidder (in the case of a company) and should be stamped with a company chop (in the case of a company). **A Bidder's offer that fails to sign and submit Schedule C (Offer to be Bound) will not be considered further.**
- (e) The duly completed quotation together with the documents/information required in the Quotation Document shall be submitted in accordance with one of the following submission methods :
 - (i) for Paper-based Tendering – deposited in the GLD Tender Box in accordance with the instruction as stipulated in clause 2(a) of the Notes for Bidder; or

Terms of Quotation

2. Tender Preparation and Submission (Cont'd)

(ii) for Electronic Tendering – submitted in accordance with the instructions stated in the e-Tender Box of GLD

on or before the Tender Closing Date and time (Hong Kong time).

(f) **A late quotation or a quotation not submitted in accordance with one of the submission methods stipulated in clause 2(e) above, including a quotation submitted by e-mail, facsimile, etc., will not be considered further.**

3. Company/Business Organisation Status

(a) A Bidder shall provide all details and attach all documents as requested in Part 1 of Schedule D concerning its organisation status.

(b) In addition, if the Bidder is a company, the Bidder should attach with its quotation a certified copy of the relevant document (e.g. Board Resolution of the Bidder, confirmation letter, etc.) showing the person or persons who is or are authorised to sign the “Offer to be Bound” has or have the authority to sign for and on behalf of the Bidder.

(c) If a Bidder is not a company incorporated under the Companies Ordinance (Cap. 32 of the Laws of Hong Kong), and if the Bidder is an entity formed or established outside Hong Kong, a legal opinion issued by a law firm duly qualified to practise the laws of the place of incorporation, formation or establishment (as the case may be) of the Bidder and acceptable to the Government shall be provided upon request by the Government on the following issues and any other issues as may be required by the Government:

(i) that the Bidder is duly incorporated, formed or established and validly exists under the laws of the place of the Bidder’s incorporation, formation or establishment and that the Bidder has full power and authority to carry on the business as it is now conducting and to supply the Goods to the Government on the terms and conditions of the proposed Contract;

(ii) that the Bidder has the power to enter into and perform the proposed Contract with the Government and that it has taken all necessary legal action to authorise the entry into and performance of the proposed Contract; and

(iii) that the proposed Contract with the Government will, immediately upon acceptance by the Government pursuant to clause 21 “Acceptance” herein, constitute a legal, valid and binding obligation of the Bidder in the jurisdiction of its incorporation, formation or establishment.

The Government may require the Bidder to provide, at its own expense, additional legal opinions satisfactory to the Government issued by a law firm duly qualified to practise the laws of the place of incorporation, formation or establishment of the Bidder on any other matters arising from its quotation.

Terms of Quotation

4. Quotation

- (a) A Bidder shall quote the rates **in Hong Kong dollars** for the items in **Schedule B** (Price Schedule) that cover all costs for the provision of auctioneering services for the sale of government properties to GLD as specified in the scope of services in **Schedule A**. The successful Bidder shall provide **at least one (1) auctioneer and one (1) supporting staff** to lead the auctions at the venue in the Government Logistics Centre, Chai Wan, Hong Kong.
- (b) A Bidder must quote both rates for item 1 – service charge on per session of three (3) hours basis and item 2 – optional hourly rate in addition to the 3-hour session in Schedule B.
- (c) Payment will be made in Hong Kong dollars. **Prices quoted in other currencies will not be considered further.**
- (d) A Bidder shall quote firm and fixed prices for the duration of the Contract. **An offer with any price variation conditions will not be considered further.**
- (e) It is the duty of the Bidder to ensure that the prices quoted are accurate before submitting its quotation. Under no circumstances will the Government be obliged to accept any request for price adjustment on the grounds that a mistake has been made in the quotation prices. For the avoidance of doubt, the Bidder shall be bound by the price quoted in its original quotation if accepted by the Government. Notwithstanding the foregoing, the Government does reserve the power to negotiate with any Bidder and to seek clarification if there is any ambiguity.

5. Qualification and Experience of the Auctioneer(s)

- (a) The auctioneer(s) nominated by a Bidder for execution of the Contract shall have **at least two (2) aggregate years** of auctioneering experience (i.e. auctioning second hand or salvaged goods such as electrical appliances, video/audio equipment, vehicles, vessels, clothing, computer equipment and accessories, office furniture and equipment, radio apparatus, etc.) in the Hong Kong Special Administrative Region (HKSAR) within ten (10) years immediately before the Tender Closing Date and such services were not terminated owing to the Bidder's default.
- (b) The auctioneer(s) nominated by a Bidder for execution of the Contract shall have local auctioneering experience (with the sale of at least 120 lots in a day) within ten (10) years immediately before the Tender Closing Date. (N.B. : One lot may contain hundred/thousand items of goods.)
- (c) A Bidder shall provide the curriculum vitae (cv) and relevant documentary evidence of each of the nominated auctioneer(s) to prove that he/she has the required qualification and experiences as specified in clauses 5(a) and 5(b) above.
- (d) **A Bidder's offer will not be considered further if :**
 - (i) **the Bidder fails to submit the required document as specified in clause 5(c) above with the quotation by the Tender Closing Date and time or within the time subsequently stipulated by the Government; or**

Terms of Quotation

5. Qualification and Experience of Auctioneer(s) (Cont'd)

- (ii) subject to any clarification that the Government may at its sole discretion seek from the Bidder in accordance with clause 16 of the Terms of Quotation, the Bidder fails to demonstrate the requisite qualifications and experience of its nominated auctioneer(s) as specified in clause 5(a) and 5(b) above.

6. Client References

A Bidder should submit positive client references (i.e. a reference letter with the signature or company chop of the client) in providing related auctioneering services in HKSAR in **Schedule E** for the Government's evaluation. The Government reserves the right to verify the references made by the clients of the Bidder. A Bidder is therefore required to provide information on the relevant contact persons for each client to facilitate the Government's contact if necessary.

7. Authentication of the Submitted Information/Document

By submitting a quotation in response to this invitation to quote, the Bidder authorises the Government to obtain from :

- (a) any person whose particulars are set out in the quotation submitted by the Bidder, and
- (b) any issuing body of any of the certificates required in the Quotation Document,

all information which the Government considers appropriate and relevant to the evaluation of the quotation including information to verify the legitimacy, completeness, authenticity and accuracy of any information or document submitted by the Bidder. If any consent from any other person is required for the Government to obtain any of the aforesaid information or document, the Bidder represents that such consent has been duly obtained.

8. Trail Run

- (a) A Bidder may be required to conduct a trail run at the Government's discretion to demonstrate the capacity and performance of each of the nominated auctioneer(s) by the Bidder in carrying out the required auctioneering services. At least 120 lots of goods will be auctioned in the trial run. The Government will pay a fee for the trial service rendered at HK\$3,500.00 for a 3-hour session and if overrun, HK\$1,200.00 per hour overtime rate on top of the 3-hour session. Payment will be made within 30 days from the date of invoice or from the date of completion of service, whichever is the later.
- (b) If a trail run is conducted, the following criteria will be used to evaluate the performance of the auctioneer nominated by the Bidder :
 - (i) The auctioneer's ability in completing the sale of at least 120 lots of goods within a duration of 3 hours;

Terms of Quotation

8. Trail Run (Cont'd)

- (ii) The auctioneer's ability of maintaining the orderliness of the auction venue during auction, including response to bidders' grievances;
 - (iii) The auctioneer's response time towards the bidder's offer;
 - (iv) The auctioneer's ability of motivating the bidders to bid; and
 - (v) The auctioneers' ability in maintaining accurate record, including hammered prices and bidders' identity number, for the lots sold.
- (c) **A Bidder's offer will not be considered further if the Bidder declines to conduct the trial run as specified in clause 8(a) above or the nominated auctioneer(s) fails to demonstrate satisfactory performance based on the criteria as specified in clause 8(b) above during the trial run.**
- (d) Each of the bidders agrees with the Government that by the submission of its quotation, the provision of the auctioneering services as required in the trial run by each of the nominated auctioneer(s) by the Bidder shall be on and in accordance with the same terms and conditions as contained in the Interpretation, the General Conditions of Contract under GLD-TERMS-2 (January 2010), in particular the provisions on liability for damages or compensation and policy of insurance and compensation [save and except clause 1 (Total Services and Variation) and clause 4 (Inspection and Acceptance)], the Special Conditions of Contract [save and except clause 17 (Replacement)], the Scope of Service and Schedules of the quotation documents unless otherwise expressly provided in this clause 8 (Trail Run). For the purposes of the trial run,
- (i) reference of "Contract Period" in the quotation document shall be replaced by "trial run period";
 - (ii) reference to "a period of twenty-four (24) months" in clause 1 (Contract Period) of the Special Conditions of Contract shall be replaced by "a 3-hour session with or without overtime"; and
 - (iii) reference to the "Contractor" shall refer to the Bidder to whom a trial run is required to be conducted by the Government Representative.

9. Quotation to Remain Open

It is a mandatory requirement of this invitation to quote that a quotation shall remain valid and open for acceptance for a period not less than 90 days after the Tender Closing Date. By submitting a quotation, the Bidder is deemed to have agreed to such quotation validity period. Without prejudice to the Government's rights and claims vis-à-vis any Bidder who withdraws its quotation during the quotation validity period **a quotation which contains a counter-proposal for a validity period of less than 90 days will not be considered further.**

Terms of Quotation

10. Payment Terms

- (a) Payment to the successful Bidder shall be made in accordance with clause 18 of the Special Conditions of Contract.
- (b) A Bidder is requested to indicate in the space provided in **Schedule D** what discounts it will allow on the price if payment in full for each acceptance of Service with the specified period.

11. Cost of Quotation

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

12. Statement of Compliance

- (a) A Bidder shall confirm in **Schedule D** that its offer submitted is in compliance with the Scope of Service in Schedule A. Without prejudice to other provisions of the Quotation Document, a **Bidder's offer that fails to comply with any of the mandatory requirements in the Scope of Services and quotation requirements will not be considered further.**
- (b) For the avoidance of doubt, the Government reserves the right to seek clarifications from a Bidder to determine, inter alia, if the services it has offered comply with the Scope of Services in Schedule A.

13. Counter-Proposals

- (a) A Bidder must not submit any proposal that has the effect of varying or modifying any mandatory requirements specified in the Quotation Document.
- (b) If a Bidder fails to comply with clause 13(a) above, its offer will be disqualified and will not be further considered by the Government.
- (c) On condition that a Bidder has complied with clause 13(a) above, the Bidder may submit Counter-Proposals on a requirement in the Quotation Document that is not specified as a mandatory requirement ("Counter-Proposal").
- (d) Any Counter-Proposal must be submitted in the following manner:
 - (i) the Counter-Proposal shall be attached to the "Offer to be Bound" in Schedule C;
 - (ii) the original provision which the Counter-Proposal relates to should be fully recited before the proposed alteration or deletion;

Terms of Quotation

13. Counter-Proposals (Cont'd)

- (iii) the proposed alteration to the original provision should be underlined and should bear the corresponding clause number of the original provision unless it is an addition;
 - (iv) if it is an addition, the additional provision should be underlined;
 - (v) words to be deleted should be crossed out by a single line only; and
 - (vi) an explanation should be given below the alteration or deletion and put in square brackets "[]".
- (e) Any Counter-Proposal that is not submitted in accordance with clause 13(d) above will not be considered by the Government and will not be regarded to form part of a quotation submitted by a Bidder. In such event, the Bidder shall be deemed to have agreed to the original term to which the Counter-Proposal relates and the Government will continue to consider the Bidder's offer on this basis.
- (f) Without prejudice to any other provision of the Quotation Document, the Government may negotiate with a Bidder any Counter-Proposal. The Government may at its absolute discretion reject any Counter-Proposal.

14. Bidder's Commitment

- (a) All quotations, information and responses from a Bidder must be submitted in writing. All parts of the quotation submitted by a Bidder will, if accepted by the Government, and subject to such changes as the Government may stipulate in exercise of its power under the Quotation Document or as the parties may agree, form part of the Contract if the Contract is awarded to that Bidder.
- (b) The Government reserves the right not to consider a quotation that directly or indirectly attempt to preclude or limit the effect of the requirement stated in clause 14(a) above.

15. Communication with the Government

- (a) Only those communications which are in writing from the Government shall be considered as duly authorised to have been made on behalf of the Government. Equally speaking, only communications from the Bidder which are in writing and are stated to be made by or for and on behalf of the Bidder will be recognised by the Government as duly authorised to have been made by or on behalf of the Bidder.
- (b) All communications connected with or arising out of the Quotation Document shall be conducted directly between the Government and the Bidder irrespective of the number of manufacturers or sub-contractors involved.

Terms of Quotation

15. Communication with the Government (Cont'd)

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

16. Request for Information

- (a) In the event that the Government determines that :
- (i) clarification in relation to any part of the quotation is necessary; or
 - (ii) certain document or information is missing in the quotation (other than the price information required in Schedule B, or the signed "Offer to be Bound" in Schedule C (for Paper-based Tendering), or other items in respect of which it is expressly specified that if found missing after the Tender Closing Date, will result in the quotation not being considered further),

it may request the Bidder concerned to make the necessary clarification, or submit the document or information. Each Bidder shall thereafter within five (5) working days or such other period as specified in the request submit such clarification, information or document. **A quotation will not be considered further if complete information or document is not provided as required by the deadline specified in the request, or in the case of clarification, such clarification is not acceptable to the Government.** As an alternative to seeking clarification or submission, the Government may not consider the quotation further or proceed to evaluate the Quotation on an "as is" basis.

- (b) Bidders should also note that the Government **will not consider** any clarification or information submitted by a Bidder after the Tender Closing Date and time irrespective of whether or not the clarification or information is submitted at the invitation of the Government if such clarification or information would alter the Quotation in substance or give the Bidder an advantage over the other Bidders.

17. Basis for Acceptance

A Bidder should note that the acceptance of offer will be made on an "overall" basis of both Items 1 and 2 in Schedule B. **An offer with only partial quotation in Schedule B will not be considered further.**

Terms of Quotation

18. Quotation Evaluation

Without prejudice to other rights and powers of the Government not to consider a quotation under other applicable provisions in the Quotation Document, the evaluation of quotations will be conducted as follows:

(a) Completeness Check

A completeness check will be conducted by checking whether the quotation has been submitted in accordance with the requirements of the Quotation Document. **If a Bidder fails to submit the information/items stipulated in clause 29(a) "Information/Items to be Submitted" by the Tender Closing Date and time, its offer will not be considered further.**

(b) Assessment of Compliance with Mandatory Requirements

A quotation will be checked for its compliance with the mandatory requirements as detailed in the Quotation Document. **Any quotation which fails to meet any of these mandatory requirements will not be considered further.**

(c) Assessment of Quotation

- (i) The total price for the provision of auctioneering services based on the rate per 3-hour session as specified in **Item 1 of Schedule B (Price Schedule)** will be used in the price assessment.
- (ii) For price comparison purposes, the optional hourly rate in addition to a 3-hour session quoted by the Bidders in **Schedule B** and any prompt payment discount offered by the Bidder in **Schedule D** will **not** be taken into consideration in the price assessment.

19. Negotiations

The Government reserves the right to negotiate with any Bidder about the terms of the Bidder's offer and the terms and conditions of the Contract.

20. Award of Contract

- (a) Subject to the provisions of the Quotation Document, the Bidder who submits the lowest quotation price calculated in accordance with clause 19(c) of the Terms of Quotation and whose quotation is a conforming one will normally be awarded the Contract.
- (b) Notwithstanding anything herein to the contrary, the Bidder acknowledges that the Government may elect at its sole option to accept all or any part of the Bidder's offer and is not bound to award the Contract for the provision of service for all or any of the items specified in the Schedule B

Terms of Quotation

21. Acceptance

The acceptance by the Government of a quotation shall be in writing and sent by either post or facsimile transmission to the successful Bidder at the address or facsimile number (as the case may be) as specified in its quotation. Any such acceptance by the Government shall occur at the time the acceptance is so posted or transmitted by facsimile provided that, in the case of facsimile transmission, that a transmission report is generated by the Government's facsimile machine, confirming that the acceptance was transmitted to the aforementioned facsimile number. A binding contract shall be constituted immediately when any such acceptance by the Government takes place. A duplicate copy of the formal documentation will subsequently be delivered to the successful Bidder evidencing the earlier acceptance by post or facsimile transmission, as the case may be.

22. Government Discretion

- (a) Notwithstanding anything to the contrary in this Quotation Document, the Government reserves the right to cancel this invitation to quote, and not award the Contract.
- (b) After cancellation pursuant to clause 22(a) above, if and when it considers fit, the Government reserves the right to re-issue this invitation to quote on such terms and conditions as the Government considers appropriate.
- (c) Notwithstanding anything to the contrary in the Quotation Document, the Government reserves the right to disqualify a Bidder on any of the following grounds:
 - (i) if a petition is presented, a proceeding is commenced, an order is made or a resolution is passed for the winding up or bankruptcy of the Bidder; or
 - (ii) in the sole judgment of the Government Representative, the Bidder is not considered fit and proper to perform the Contract; or
 - (iii) if a false, inaccurate or incomplete statement or representation or forged document is contained in the quotation for this invitation to quote or in any other quotations submitted by the Bidder in response to another invitation to quote of the Government Logistics Department any time prior to the Tender Closing Date or any time between the Tender Closing Date and the award of the Contract, or a promise or a proposal is made in the quotation for this invitation to quote knowingly or recklessly that the Bidder will not be able to fulfil or deliver such promise or proposal; or
 - (iv) if a claim is made alleging, or the Government has ground to believe, that some product or material to be supplied or recommended by the Bidder under its Quotation infringes or will infringe any Intellectual Property Rights of any third party; or
 - (v) if any time during a period of twelve (12) months prior to the Tender Closing Date until the date of constitution of the Contract (both dates inclusive), the Bidder or a related person of the Bidder is in default of its material obligation(s) under any other contract for provision of goods and/or services awarded by the Director of Government Logistics on behalf of the Government.

Terms of Quotation

22. Government Discretion (Cont'd)

- (d) If the Bidder is a company, the expression "related person" of the Bidder includes any one of the following :
- (i) a shareholder (corporate or individual) which beneficially owns (whether directly or indirectly) 50% or more of the issued share capital of the Bidder ("majority shareholder");
 - (ii) a holding company or a subsidiary of the Bidder;
 - (iii) a holding company or a subsidiary of a majority shareholder of the Bidder;
 - (iv) a company in which a majority shareholder (being an individual) of the Bidder beneficially owns (directly or indirectly) 50% or more of its issued share capital or controls (directly or indirectly) the composition of its board of directors, and
- the expressions "holding company" and "subsidiary" have the meanings given to them in the Companies Ordinance, Chapter 32 of the Laws of Hong Kong.
- (e) If the Bidder is a sole proprietor or partnership, the expression "related person" includes any one of the following:
- (i) any partner of the Bidder (if it is a partnership);
 - (ii) the spouse, parent, child, brother or sister of the Bidder or any partner of the Bidder, and, in deducing such a relationship, an adopted child shall be deemed to be a child both of the natural parents and the adopting parent and a step child to be a child of both the natural parent and of any step parent;
 - (iii) a company in which the Bidder or any partner of the Bidder beneficially owns (directly or indirectly) 50% or more of its issued share capital or controls (whether directly or indirectly) the composition of its board of directors.

23. Contractor Performance Monitoring

A Bidder is advised that should it be awarded with the Contract, its subsequent performance will be monitored and may be taken into account when its future quotations are evaluated.

24. Warning Against Bribery

- (a) The offer of an advantage to any Government officer with a view to influencing the award of the quotation is an offence under the Prevention of Bribery Ordinance (Cap 201 of the Laws of Hong Kong). Any such offence committed by a Bidder or any of its directors, employees or agents will render its quotation null and void.

Terms of Quotation

24. Warning Against Bribery (Cont'd)

- (b) The successful Bidder shall inform its employees (whether permanent or temporary), agents and sub-contractors who are involved in the supply of the Goods that the soliciting or accepting of advantages, as defined in the Prevention of Bribery Ordinance (Cap 201 of the Laws of Hong Kong) is not permitted. The successful Bidder shall also caution its employees against soliciting or accepting any excessive hospitality, entertainment or inducement which may impair their impartiality in relation to the selection of its sub-contractors, if any, or the supervision of the work of the sub-contractors once selected.

25. Warranty Against Collusion

- (a) By submitting a quotation, a Bidder is regarded to have represented and warranted to the Government that in relation to this invitation to quote:
 - (i) save with the prior written consent of the Government, it has not communicated and will not communicate to any person other than the Government the amount of any price submitted in its quotation;
 - (ii) it has not fixed and will not fix the amount of any price submitted in its quotation by arrangement with any person;
 - (iii) it has not made and will not make any arrangement with any person as to whether it or that other person will or will not submit a quotation; and
 - (iv) it has not otherwise colluded and will not otherwise collude with any person in any manner whatsoever in the quotation process.
- (b) In the event that a Bidder is in breach of any of the representations and/or warranties in clause 25(a) above, the Government shall be entitled to, without compensation to any person or liability on the part of the Government :
 - (i) reject the Bidder's quotation;
 - (ii) if the Government has accepted the quotation, withdraw its acceptance of the quotation; and
 - (iii) if the Government has entered into the contract with the Bidder, terminate the contract.
- (c) By submitting a quotation, a Bidder is regarded to have undertaken to indemnify and keep indemnified the Government against all losses, damages, costs or expenses arising out of or in relation to any breach of any of the representations and/or warranties in clause 25(a) above.
- (d) A breach by a Bidder of any of the representations and/or warranties in clause 25(a) above may prejudice its future standing as a Government contractor or service provider.

Terms of Quotation

25. Warranty Against Collusion (Cont'd)

- (e) Clause 25(a) above shall have no application to Bidder's communications in strict confidence with its own insurers or brokers to obtain an insurance quotation for computation of the prices quoted in its Quotation, or with its professional advisers, consultants or sub-contractors to solicit their assistance in preparation of its quotation.
- (f) The rights of the Government under clauses 25(b) to 25(d) above are in addition to and without prejudice to any other rights or remedies available to it against the Bidder.

26. Personal Data Provided

- (a) The personal data of any individual contained in a quotation will be used for the purpose of this invitation to quote including without limitation for the purposes of quotation evaluation, contract award, and resolution of any dispute arising from the invitation to quote.
- (b) A Bidder shall ensure that the relevant individual to whom the personal data belongs prior to its disclosure in the quotation has acknowledged and consented that his/her personal data may be disclosed to the Government Representative and other Government departments and public bodies for the purpose of this invitation to quote.
- (c) The individual to whom the personal data belongs has the right of access and correction with respect to personal data provided in Sections 18 and 22, and Principle 6 of Schedule 1 of the Personal Data (Privacy) Ordinance (Cap 486). The right of access includes the right to obtain a copy of the personal data provided in the tender at a reasonable charge.
- (d) Enquiries concerning the personal data collected through this invitation to quote, including the making of access and corrections, shall be addressed to the Personal Data Privacy Officer of the Government Logistics Department.

27. Consent to Disclosure

- (a) The Government shall have the right to disclose, whenever it considers appropriate, to the public or upon request by any member of the public (which may have been a Bidder) without any further reference to or consent from the successful Bidder or any other Bidder, the Quotation Document, the Tender Closing Date, particulars of the Goods to be provided by the successful Bidder, the name and address of the successful Bidder and the Contract value.
- (b) Nothing in clause 27(a) above shall prejudice the Government's power to disclose whenever it considers appropriate any information of whatsoever nature whether or not specified in that sub-clause if the disclosure is made under any one of the following circumstances :
 - (i) the disclosure of any information to any public officer or public body (as defined in the Interpretation and General Clauses Ordinance, Cap. 1 of the Laws of Hong Kong) or any other person employed, used or engaged by the Government (including agents, advisers, contractors and consultants);

Terms of Quotation

27. Consent to Disclosure (Cont'd)

- (ii) the disclosure of any information already known to the recipient;
- (iii) the disclosure of any information which is public knowledge;
- (iv) the disclosure of any information in circumstances where such disclosure is required pursuant to any law of Hong Kong or request made by the Review Body or an order of a court of Hong Kong or a tribunal with competent jurisdiction; or
- (v) without prejudice to the power of the Government under clause 27(a) above, to the extent the information relates to a Bidder, with the prior written consent of that Bidder.

28. Deletion

For the purpose of this invitation to quote, clause 1 (Invitation to Tender), clause 3(a) (Tenders to Remain Open), clauses 4(b) and 4(c) (Charges), clause 5 (Acceptance), clause 6 (Alternative Proposals and Negotiation), clause 7 (Consideration of Offers), clause 8 (Saving), clause 9 (Deposit), clause 13(b) (Compliance About Tendering Process or Contract Awards), clause 14 (Personal Data Provided), clause 15 (Contractor's Performance Monitoring) and clause 16 (Cancellation of Tender) of the Terms of Tender (GLD-TERMS-2 (January 2010)) are deleted.

29. Information/Items to be Submitted

- (a) A Bidder shall provide the following information/supporting documents in its quotation **on or before the Tender Closing Date and time** :
 - (i) the price information as required in Schedule B (Price Schedule); and
 - (ii) in case of Paper-based Tendering, a signed Schedule C (Offer to be Bound) by the Bidder.

Otherwise, the Bidder's offer will not be considered further.
- (b) In addition to clause 29(a) above, a Bidder is required to provide all other information/supporting documents requested in the Quotation Document or relevant to its offer, including but not limited to the following :
 - (i) a copy of valid Business Registration Certificate or other valid business document issued by a competent authority;
 - (ii) a copy of Certificate of Incorporation and Certificate of Change of Name (where applicable) if the Bidder is a limited company;
 - (iii) the required document for proving the qualification and experience of the nominated auctioneer(s) as required in clause 5 herein;
 - (iv) Schedule D (Information Schedule);
 - (v) Schedule E (Client References); and

Terms of Quotation

29. Information/Items to be Submitted (Cont'd)

(vi) any other supporting documents essential for quotation evaluation.

A Bidder should provide all the above information when it submits its quotation. If any of the above information is missing in a quotation and is not provided upon any request which may be made pursuant to clause 16 "Request for Information" of the Terms of Quotation, the quotation will not be considered further.

(c) Nothing in this clause shall limit the Government's absolute right to determine or to request any other information/supporting documents in connection with or arising out of this invitation to quote.

Ref. : GLD-TERMS-2
(January 2010)

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

**TENDER FOR SERVICES
STANDARD TERMS AND CONDITIONS
Reference No. GLD-TERMS-2**

FOREWORD

This document Ref. GLD-TERMS-2 issued by the Government Logistics Department (GLD) contains the standard terms and conditions used for tendering for services for the Government of the Hong Kong Special Administrative Region. GLD may issue addenda to these terms and conditions whenever necessary.

In the invitations to tenders, these terms and conditions will not be re-issued in order to reduce the documentation. However, tenderers who respond to the invitation will be asked to confirm compliance with these terms and conditions, and those issued under the addendum.

The Chinese translation is for reference only. In the event of any conflict or ambiguity between the English text and the Chinese translation, the English text will prevail.

INTERPRETATION

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

“Contract” means the contract hereunder and reference to the terms thereof shall include the terms of tender in PART 1 hereof unless inconsistent with the context of such reference;

“Contractor” means the Tenderer whose tender is accepted;

“Digital Signature” in relation to an electronic record, means an electronic signature of the signer generated by the transformation of the electronic record using an asymmetric cryptosystem and a hash function such that a person having the initial untransformed electronic record and the signer's public key can determine:

- (a) whether the transformation was generated using the private key that corresponds to the signer's public key; and
- (b) whether the initial electronic record has been altered since the transformation was generated;

For details, please refer to the "Supplementary Information Concerning Digital Signature and Electronic Record" in pages 5 to 7;

“Electronic Form” means the form provided in the e-Tender Box of the Government Logistics Department for tenderers making tender offers;

“Electronic Record” means a record generated in digital form by an information system, which can be:

- (a) transmitted within an information system or from one information system to another; and
- (b) stored in an information system or other medium;

For details, please refer to the "Supplementary Information Concerning Digital Signature and Electronic Record" in pages 5 to 7;

- “Electronic Tendering” means the electronic tendering method by which tenderers making offers through the e-Tender Box of the Government Logistics Department;
- “e-Tender Box” means the electronic tendering system adopted by the Government Logistics Department for tenderers making offers electronically;
- “Government” means the Government of the Hong Kong Special Administrative Region of the People’s Republic of China;
- “Government Representative” means the Director of Government Logistics or the Head of the Department acting for and on behalf of Government or any officer authorized to act on his behalf for the purposes of the Contract;
- “Hong Kong” means the Hong Kong Special Administrative Region of the People’s Republic of China;
- “Inspecting Officer” means the officer appointed by the Government Representative for the purpose of inspecting the services performed in pursuance of the Contract;
- “Paper-based Tendering” means the traditional method by which the tenderers making offers by paper documents to the Government Logistics Department;
- “Schedule” means the schedule attached to the invitation to tender;
- “Services” means the work referred to in the Schedule;
- “Tender Closing Date” means the latest date (Hong Kong time) by which tenders must be lodged;
- “Tenderer” means the firm or the organization referred to in the “Offer to be Bound” section of the invitation to tender;

- “Virus” means a subversive computer program or piece of code that may corrupt or erase computer data files and/or change the normal behaviour of a computer. A virus can replicate itself and spread to other computers;
- “WTO GPA” means the Agreement on Government Procurement of the World Trade Organization.

Supplementary Information Concerning Digital Signature and Electronic Record

“digital signature” (數碼簽署), in relation to an electronic record, means an electronic signature of the signer generated by the transformation of the electronic record using an asymmetric cryptosystem and a hash function such that a person having the initial untransformed electronic record and the signer's public key can determine:

- (a) whether the transformation was generated using the private key that corresponds to the signer's public key; and
- (b) whether the initial electronic record has been altered since the transformation was generated;

“electronic record” (電子紀錄) means a record generated in digital form by an information system, which can be:

- (a) transmitted within an information system or from one information system to another; and
- (b) stored in an information system or other medium;

“asymmetric cryptosystem” (非對稱密碼系統) means a system capable of generating a secure key pair, consisting of a private key for generating a digital signature and a public key to verify the digital signature;

“certificate” (證書) means a record which :

- (a) is issued by a certification authority for the purpose of supporting a digital signature which purports to confirm the identity or other significant characteristics of the person who holds a particular key pair;
- (b) identifies the certification authority issuing it;
- (c) names or identifies the person to whom it is issued;
- (d) contains the public key of the person to whom it is issued; and
- (e) is signed by a responsible officer of the certification authority issuing it;

The e-Tender Box adopts the use of the following digital certificates;

- (i) e-Cert (Personal) certificate issued by the Hongkong Post;
- (ii) e-Cert (Organisational) certificate issued by the Hongkong Post;
- (iii) Personal ID-Cert Class 1 issued by the Digi-Sign Certification Services Limited;
- (iv) Organisational ID-Cert Class 2 issued by the Digi-Sign Certification Services Limited; or
- (v) Organisational ID-Cert Class 5 issued by the Digi-Sign Certification Services Limited.

"certification authority" (核證機構) means a person who issues a certificate to a person (who may be another certification authority);

"correspond" (對應), in relation to private or public keys, means to belong to the same key pair;

"electronic signature" (電子簽署) means any letters, characters, numbers or other symbols in digital form attached to or logically associated with an electronic record, and executed or adopted for the purpose of authenticating or approving the electronic record;

"hash function" (雜湊函數) means an algorithm mapping or transforming one sequence of bits into another, generally smaller, set as the hash result, such that:

- (a) a record yields the same hash result every time the algorithm is executed when using the same record as input;
- (b) it is computationally not feasible for a record to be derived or reconstituted from the hash result produced by the algorithm; and
- (c) it is computationally not feasible that 2 records can be found to produce the same hash result when using the algorithm;

"information" (資訊) includes data, text, images, sound codes, computer programmes, software and databases;

"information system" (資訊系統) means a system which:

- (a) processes information;
- (b) records information;
- (c) can be used to cause information to be recorded, stored or otherwise processed in other information systems (wherever situated); and
- (d) can be used to retrieve information, whether the information is recorded or stored in the system itself or in other information systems (wherever situated);

“key pair” (配對密碼匙), in an asymmetric cryptosystem, means a private key and its mathematically related public key, where the public key can verify a digital signature that the private key generates;

“private key” (私人密碼匙) means the key of a key pair used to generate a digital signature;

“public key” (公開密碼匙) means the key of a key pair used to verify a digital signature;

“record” (紀錄) means information that is inscribed on, stored in or otherwise fixed on a tangible medium or that is stored in an electronic or other medium and is retrievable in a perceivable form;

“verify a digital signature” (核實數碼簽署), in relation to a given digital signature, electronic record and public key, means to determine that:

- (a) the digital signature was generated when using the private key corresponding to the public key listed in a certificate; and
- (b) the electronic record has not been altered since its digital signature was generated,

and any reference to a digital signature being verifiable is to be construed accordingly.

PART 1 TERMS OF TENDER

Unless otherwise specified below that particular clauses apply to either paper-based tendering or electronic tendering, the following Terms of Tender in Part 1 and General Conditions of Contract in Part 2 apply to both paper-based tendering and electronic tendering.

1. Invitation to tender

Tenders are invited for the execution of the whole (or any part) of the Services more particularly set out in the Schedule subject to and in accordance with these Terms of Tender, the General Conditions set out in Part 2 hereof and the Special Conditions if any, set out in the invitation to tender.

2. Tender

(a) The tender relates to the execution of all (or any part) of the Services during the Contract period as specified in the Schedule.

(b) The Schedule issued with the tender must not be altered by the Tenderer.

(i) Paper-based Tendering

Any modification of the Schedule considered necessary by the Tenderer should be the subject of a separate letter accompanying the tender. Figures should not be altered or erased; any alteration should be effected by striking through the incorrect figures and inserting the correct figures in ink above the original figures. All such amendments should be initialled by the Tenderer in ink.

(ii) Electronic Tendering

Any modification of the Schedule considered necessary by the Tenderer should be clearly stated in the tender. In case of alteration to the submitted offer, the Tenderer should send in a revised offer superseding the original offer and this should be stated in the revised offer. However tenders that are found contaminated with a Virus will be invalidated. Tenderers with these offers being invalidated shall be notified of such. Where an Electronic Record is used in the formation of a contract, that contract shall not be denied validity or enforceability solely on the ground that an Electronic Record was used for that purpose.

(c) Tenders are to be submitted in the manner as specified below. Tenders not so submitted may not be considered.

(i) Paper-based Tendering

Tenders are to be submitted in triplicate and are to be completed in ink or typescript.

(ii) Electronic Tendering

Tenders are to be submitted in the Electronic Form or by attachment in the required format as specified in the e-Tender Box.

(d) Tenders may not be considered if complete information is not given with the tender or if any particulars and data asked for in the Schedule are not furnished in full.

(i) Paper-based Tendering

Complete information should accompany the tender.

(ii) Electronic Tendering

Information submitted should not exceed the size limitation as specified in the e-Tender Box. Otherwise it should be sent in a hard copy, bearing the Tenderer's name, tender subject and reference as well as Tender Closing Date, to the Chairman of the Tender Opening Committee before the Tender Closing Date and time (Hong Kong time). If information is to be sent under separate cover, Tenderer should clearly state this in the tender offer. Tenders may not be considered if complete information has not reached the Chairman of the Tender Opening Committee before the Tender Closing Date and time (Hong Kong time).

(e) The Government reserves the right to postpone the process of verifying the validity of the digital certificate for signing the tender offer, if the certification authority's (i.e. the Hongkong Post for e-Certs or the Digi-Sign Certification Services Limited for ID Certs) (or their contractors') directory service and/or the certification authority's (or its contractor's) revocation list service is/are not available for any reason such as Disaster Recovery, until such time that the certification authority's (or its contractor's) directory and/or revocation list services is/are resumed or the tender offer is opened, whichever is the later. Tenders will not be considered if the digital certificate used for signing the tenders is

subsequently found invalid. In case the process of verifying the validity of the digital certificate is postponed, the tenderer will be informed of this through an on-screen message and on-line acknowledgement of the tender offer. Disaster Recovery means a period of unavailability of the digital certificate related service as declared by the certification authority in a disaster situation.

3. Tenders to Remain Open

- (a) Tenders shall, unless otherwise indicated by the Tenderer, remain open for not less than 90 days after the Tender Closing Date. If Tenderers are unable to comply with this requirement, they must clearly state the period for which their tender is valid for acceptance in the space provided in the invitation to tender. If their offer is withdrawn before the expiry of the agreed validity period, they are advised that due notice will be taken of their action and this may well prejudice their future status as a Government supplier.

(i) Paper-based Tendering

Tenderers should state the tender validity period in the space provided in the invitation to tender if they are unable to comply with the required period.

(ii) Electronic Tendering

Tenderers should state the tender validity period in the Electronic Form or by attachment in the required format as specified in the e-Tender Box if they are unable to comply with the required period.

(b) Tender Closing Date and Time

All tenders must be submitted before the Tender Closing Date and time (Hong Kong time). Late tenders will not be considered.

(i) Paper-based Tendering

All tenders must be deposited in the tender box as specified in the tender.

(ii) Electronic Tendering

Transmission of tenders to the e-Tender Box should be completed before the Tender Closing Date and time (Hong Kong time). Tender transmissions not completed before the Tender Closing Date and time (Hong Kong time) will be treated as late.

(c) Tender Closing Date and Time Extension in case of Rainstorm/Typhoon

(i) Paper-based Tendering

In case a black rainstorm warning or typhoon signal No. 8 or above is in force for any duration between 9:00 a.m. (Hong Kong time) and 12:00 noon (Hong Kong time), the tender closing time will be extended to 12:00 noon (Hong Kong time) on the next weekday (i.e. except Saturday and Sunday) other than public holidays.

(ii) Electronic Tendering

Tenderers will be notified on the screen of the e-Tender Box Web site the extended Tender Closing Date and time (Hong Kong time).

4. Charges

(a) The charges to be quoted by Tenderers are to be shown in Hong Kong dollars. Such charges shall be net and where applicable, they shall include trade and cash discounts and all expenses incidental to the due and proper performance of the Contract by the Contractor.

(i) Paper-based Tendering

The charges to be quoted by the Tenderer must only be shown on the Schedule provided in the invitation to tender.

(ii) Electronic Tendering

The charges to be quoted by the Tenderer must be shown in the Electronic Form or by attachment in the required formats as specified in the e-Tender Box.

(b) If, at the request of the Contractor, assistance of any Government staff is provided after normal working hours (i.e. Mondays to Fridays, inclusive, 9 a.m. to 5 p.m.; Saturdays, 9 a.m. to 12 noon; Sundays and

public holidays excluded) the Contractor will be responsible for the overtime remuneration, subsistence allowances and travelling expenses of such Government staff directly engaged in such assistance.

(c) Prices quoted

It will be assumed, unless Tenderers clearly stipulate otherwise, that their offers will remain valid for the duration of the Contract. Therefore no request for price variation will be considered. If, however, a Tenderer wishes to submit a conditional offer which contains a price variation clause, he may do so, on the clear understanding that such an offer may prejudice the award of the Contract. In any such case, the basis of the price variation formula should be clearly stipulated and accepted by the Government in writing.

(i) Paper-based Tendering

The conditional offer to be quoted by the Tenderer must only be shown on the Schedule provided in the invitation to tender.

(ii) Electronic Tendering

The conditional offer to be quoted by the Tenderer must only be shown in the attachment in the required format as specified in the e-Tender Box.

(d) Accuracy of Tender Prices

Tenderers should make certain the prices quoted are accurate before submitting their quotations. Under no circumstances will the Government accept any request for price adjustment on grounds that a mistake has been made in the tender prices.

5. Acceptance

- (a) The successful Tenderer will receive as an indication of acceptance a fax or a letter of acceptance prior to the receipt of the duplicate copy of the contract document with the "Memorandum of Acceptance" part duly completed. This fax or letter of acceptance shall constitute a binding contract. Tenderers who do not receive any notification within the validity period of their offer should assume that their tenders have not been accepted.

(b) Schedule of Compliance

Tenderers shall complete the 'Schedule of Compliance' provided in respect of the offer. Should alternative offer(s) be included, separate 'Schedule of Compliance' should be completed accordingly. Failure to complete the 'Schedule of Compliance' will invalidate the tender. Tenderers are requested to confirm in the 'Schedule of Compliance' that offers submitted comply with the required specification in every respect. If an offer does not conform to the tender specification, Tenderers should provide full details of their alternative offer, but the Government reserves the right to accept or reject any such offer.

(i) Paper-based Tendering

Tenderers shall complete the 'Schedule of Compliance' provided in the invitation to tender.

(ii) Electronic Tendering

Tenderers shall complete the 'Schedule of Compliance' in respect of the offer by attachment in the required format as specified in the e-Tender Box.

6. Alternative Proposals and Negotiation

Alternative proposals which improve the value of the offer may be submitted. The Government reserves the right to negotiate with any Tenderer the terms of the offer.

7. Consideration of Offers

The Government is not bound to consider an offer in the event of a claim being received by the Government alleging or the Government having grounds to believe that the Goods to be supplied by the Tenderer in the tender are infringing copyrights or have otherwise infringed the intellectual property rights in the goods or product of a third party.

8. Saving

The Government Representative is not bound to accept the lowest or any tender and reserves the right to accept all or any part of any tender at any time within the period mentioned in clause 3 hereof.

9. Deposit

- (a) The Tenderers must deposit the sum as specified and when so required in the invitation to tender as a pledge of bona fides of their tenders. Tenders which are not accompanied by a deposit receipt will not be considered and will be rejected.

(i) Paper-based Tendering

A receipt of the sum deposited shall be attached to each tender.

(ii) Electronic Tendering

A receipt of the sum deposited shall be sent in by attachment or by hard copy, bearing the Tenderer's name, tender subject and reference as well as Tender Closing Date, to the Chairman of the Tender Opening Committee before the Tender Closing Date and time (Hong Kong time). If the deposit receipt is to be sent under separate cover, Tenderer should clearly state this in the tender offer. Tenders will not be considered if the deposit receipt has not reached the Chairman of the Tender Opening Committee before the Tender Closing Date and time (Hong Kong time).

- (b) In the event that the Tenderer withdraws or revokes his tender within the period stipulated in clause 3 hereof without any valid reason acceptable to Government, the sum deposited shall be absolutely forfeited to Government.
- (c) The sum deposited will be returned to individual unsuccessful Tenderers without interest at the conclusion of the tendering exercise.
- (d) Subject to any Special Conditions set out in the invitation to tender, the sum deposited will be returned to the successful Tenderer without interest within a reasonable time of notice of acceptance given in pursuance of clause 5 hereof.

10. Documents of Unsuccessful Tenderers

Documents of unsuccessful Tenderers may be destroyed not less than three months after the date the Contract has been awarded and the agreement signed. For procurement covered by WTO GPA, documents submitted by Tenderers shall be retained for a period of not less than three years after the Contract has been executed.

11. New Information Relevant to Qualified Status

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

12. Latest Audited/Unaudited Accounts

The Tenderers shall upon request by the Government representatives whilst their tenders remain open submit the latest audited accounts or unaudited accounts as appropriate for checking within 14 days from the date of such request. Late submission will not be considered.

13. Complaints About Tendering Process or Contract Awards

- (a) The tendering process is subject to internal monitoring to ensure that contracts are awarded properly and fairly. Any Tenderer who feels that his offer has not been fairly evaluated may write to the Head of the Department who will personally examine the complaint and refer it to the approving authority/relevant tender boards for consideration if it relates to the tendering system or procedures followed. For tenders not covered by the WTO GPA, the Tenderer shall lodge the complaint before disposal of documents of unsuccessful Tenderers which shall be within 3 months after the award of contract.
- (b) For tenders covered by the WTO GPA, a Review Body on Bid Challenges under the WTO GPA has been set up by the Government to deal with challenges made against alleged breaches of the WTO GPA. The relevant procedures for handling bid challenges are set out in the Rules of Operation of the Review Body which are available for inspection at the Secretariat of the Review Body located at the Trade and Industry Department or which may be sent to the interested parties

upon request to the Secretariat of the Review Body. In the event that a Tenderer believes that a breach of the WTO GPA has occurred, the Tenderer may, within 10 working days after he/she knew or reasonably should have known the basis of the challenge, lodge a challenge to the Review Body on the alleged breaches of the WTO GPA. Nevertheless the Tenderer is encouraged to seek resolution of its complaint in consultation with the tender issuing department before lodging a complaint to the Review Body. In such instances, the tender issuing department shall accord impartial and timely consideration to any such complaint, in a manner that is not prejudicial to obtaining corrective measures through the Review Body. The Review Body may receive and consider a late challenge but a challenge shall not be considered if it is filed later than 30 working days after the basis of the challenge is known or reasonably should have been known.

14. Personal Data Provided

- (a) A Tenderer's personal data provided in the tender will be used for tender evaluation and contract award purposes. If insufficient and inaccurate information is provided, his tender may not be considered.
- (b) A Tenderer acknowledges and consents that his personal data provided in the tender may be disclosed to other government departments and non-government organizations.
- (c) A Tenderer has the right of access and correction with respect to personal data as provided for in Sections 18 and 22 Principle 6 of Schedule 1 of the Personal Data (Privacy) Ordinance. The right of access includes the right to obtain a copy of the Tenderer's personal data provided in the tender.
- (d) Enquiries concerning the personal data collected by means of the tender, including the making of access and corrections, should be addressed to Personal Data Privacy Officer of the department issuing the tender.

15. Contractors' Performance Monitoring

Tenderers are advised that should they be awarded the contract their subsequent performance will be monitored and may be taken into account when their future tenders are evaluated. A tender will be rejected if by the tender closing date, the tenderer is under suspension from tendering for GLD tenders.

16. Cancellation of Tender

Without prejudice to the Government's right to cancel the tender, where there are changes of requirement after the tender closing date for operational or whatever reasons, the Government is not bound to accept any conforming tender and reserves the right to cancel the tender.

[GLDT2]

PART 2
GENERAL CONDITIONS OF CONTRACT

1. Total Services and Variation

- (a) The Services to be performed under the Contract shall be as laid down in the Schedule and Special Conditions (if any) and shall be carried out, as and when required, to the satisfaction of the Inspecting Officer. All orders placed under the Contract shall be issued in writing and Government will not be responsible for Services performed on oral instructions issued by any person whomsoever.

- (b) The Contractor shall not extend the Services beyond the requirements specified in the Schedule except as directed in writing by the Government Representative; but the Government Representative may, subject to the proviso hereinafter contained, at any time during the Contract period by notice in writing direct the Contractor to alter, amend, omit, add to, or otherwise vary any of the Services and/or the Contract period, and the Contractor shall carry out such variations, and be bound by the same conditions, so far as are applicable, as though the said variations were stated in the Schedule.

Provided that no such variation shall, except with the consent in writing of the Contractor, involve a net addition to or deduction from the Contract price of more than twenty per cent or the Contract period of more than six months, unless otherwise mutually agreed by the Contractor and Government.

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

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

2. Assignment

The Contractor shall not, without the written consent of the Government Representative, assign or otherwise transfer the Contract, or any part share or interest therein, and the performance of the Contract by the Contractor shall be deemed to be personal to him.

3. Quality of Services

- (a) The Services shall be as specified in the Schedule and shall fulfil all the conditions and terms of any drawings and specifications (if any) supplied to the Contractor.
- (b) Any drawings and specifications reasonably required for the Contractor's guidance in the execution of the Contract shall be provided by Government free of charge but shall be returned on completion of the Contract.

4. Inspection and Acceptance

All Services performed in pursuance of the Contract shall be subject to inspection and shall not be deemed to have been accepted unless either:

- (a) The Government Representative shall so certify; or
- (b) The Services are not rejected as being unsatisfactory within 21 days of the date upon which they were executed.

5. Rejections

- (a) Without prejudice to any statutory rights, the Inspecting Officer or the Government Representative may reject any Services (or part thereof) which do not strictly conform to the conditions of sub-clause (a) of clause 3 hereof.
- (b) Within 24 hours of being notified in writing of the rejection of any Services the Contractor shall be required to take the necessary action to rectify such rejected Services.

6. Government Property

When Government property is issued to the Contractor under the Contract, the Contractor shall be responsible for the due return of all such property. Should any such property be lost or damaged from any cause whatsoever while in the possession or control of the Contractor or his servants, workmen or agents, the Contractor shall pay for the same at total original cost plus 20%. A count of the articles or material in the possession of the Contractor may be made at any time by the Government

Representative and the Contractor shall render such assistance as is necessary for this purpose.

7. Government Premises/Contractor's Premises

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

8. Payment for Services

The Contractor shall render to the Government Representative:

- (a) an itemised account on or before the 10th or the 25th day of each month of the charges which he considers due to him for Services completed under the Contract; or
- (b) on completion of any separate portion of the Services (in respect of which a charge is laid down in the Schedule) an account for such portion.

All such accounts shall be signed by the Government Representative or the Inspecting Officer. Unless otherwise agreed by the Government Representative such accounts shall be paid within 30 days of the date upon which:

- (i) where the said accounts are signed by the Government Representative or Inspecting Officer, or
- (ii) where the Services have been accepted pursuant to clause 4 of the General Conditions herein,

whichever date is the earlier.

9. Illegal Workers

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

10. Default

If the Contractor shall fail to carry out all or any of the Services provided for in the Contract within the Contract period or such extended period as may be agreed in accordance with clause 1(b) hereof, the Government may at its absolute discretion terminate the whole or any part of the Contract by notice in writing to the Contractor, but without prejudice to any claims by the Government for breach of Contract including but not limited to its right of Government to assign the balance of the uncompleted Services to another contractor or contractors whereupon the Contractor shall be liable for any sums so incurred in excess (hereinafter called 'any excess') of the Contract price.

11. Recovery of Sums Due

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

12. Liability for Damages or Compensation

- (a) Government and its employees or agents shall not be under any liability whatsoever for or in respect of:

- (i) any loss of or damage to any of the Contractor's property or that of his employees or agents however caused (whether by any Negligence of the Government or any of its employees or agents or otherwise).
 - (ii) any injury to or death of any of the Contractor's employees or agents save and except any such injury or death caused by the Negligence of the Government or any of its employees or agents.
- (b) The Contractor shall indemnify the Government and its employees or agents against any claim or demand made against or liability incurred (including all costs, charges or expenses whatsoever) by the Government or any of its employees or agents in respect of :
 - (i) any loss, damage, injury or death referred to in sub-clause(a) of this clause (save and except injury or death caused by the Negligence of Government or any of its employees or agents).
 - (ii) any loss or damage sustained by or any injury to or death of any third party in consequence of any Negligence of the Contractor or any of its employees or agents.
- (c) The Contractor shall indemnify the Government against any loss of or damage to any property of the Government or of any of its employees or agents or any injury to any employee or agent of the Government arising out of the Negligence of the Contractor or any of its employees, sub-contractors or agents.
- (d) For the purposes of this clause 'Negligence' shall have the same meaning as that assigned to it in Section 2(1) of the Control of Exemption Clauses Ordinance.

13. Policy of Insurance and Compensation

- (a) The Contractor shall effect a policy of insurance against all claims, demands or liability under the Contract with an insurance company approved by Government (which approval shall not be unreasonably withheld) and shall continue such insurance during the continuance of the Contract and shall when required, deposit with the Government Representative for safe keeping during the Contract period such policy of insurance together with the receipt of payment of the current premium.

- (b) If the Contractor shall fail to effect and keep in force the insurance referred to or any other insurance which he may be required to effect under the terms of the Contract then and in any such cases Government may effect and keep in force any such insurance and pay such premium or premiums as may be necessary for that purpose and from time to time deduct the amount so paid by Government as aforesaid from any moneys due or which may become due to the Contractor or recover the same as a debt due from the Contractor.
- (c) In the event of any of the Contractor's employees or agents suffering any injury or death in the course of or arising out of the Contract and whether there be a claim for compensation or not, the Contractor shall within 7 clear working days give notice in writing of such injury or death to the Government Representative.

14. Bankruptcy

The Government Representative may at any time by notice in writing summarily terminate the Contract without entitling the Contractor to compensation in any of the following events:

- (a) if the Contractor shall at any time be adjudged bankrupt, or shall have a receiving order or orders for administration of his estate made against him, or shall take any proceedings for liquidation or composition under any Bankruptcy Ordinance for the time being in force, or make any conveyance or assignment of his effects or composition or arrangement for the benefit of his creditors or purports so to do; or
- (b) if the Contractor, being a company shall pass a resolution or the court shall make an order for the liquidation of its assets, or a receiver or manager shall be appointed on behalf of the debenture holders, or circumstances shall have arisen which entitled the court or debenture holders to appoint a receiver or manager.

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

15. Corrupt Gifts

- (a) If the Contractor or any employee or agent of the Contractor shall be found to have committed an offence under the Prevention of Bribery Ordinance (Chapter 201) or any subsidiary legislation made thereunder or under any law of a similar nature in relation to the Contract or any other Government contracts, the Government Representative may, on

behalf of the Government, summarily terminate the Contract, without entitling the Contractor to any compensation therefor.

- (b) The Contractor shall be liable for all expenses necessarily incurred by the Government as the result of the termination of the Contract.

16. Consent to Disclosure

The Government shall have the right to disclose whenever it considers appropriate or upon request by any third party (written or otherwise) information on the awarded contract, without any further reference to the successful tenderer, the name and address of the successful tenderer, description of services and the contract amount.

17. Publicity

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

18. Governing Law

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

19. Order of Precedence

In the event that there is any conflict, contradiction or ambiguity between any documents which form part of the Contract, the following order of precedence shall be applied in order to resolve any such conflict, contradiction or ambiguity:

- (a) Special Conditions of Contract

- (b) Specification
- (c) General Conditions of Contract
- (d) Contract Schedules

[GLDT2]

**Provision of Auctioneering for the Sale of Government Properties
to the Government Logistics Department**

Special Conditions of Contract

1. Contract Period

Subject to any provisions for earlier termination or extension of this Contract, this Service Contract shall be effective for a period of twenty-four (24) months commencing on 1 November 2011 or the Date of Acceptance of Offer, whichever is the later.

2. Contractor's Acknowledgement

- (a) The Contractor acknowledges and agrees that it has been supplied with sufficient information to enable it to provide to the Government the Services which comply fully with the requirements set out in Schedule A (Scope of Services) and other provisions of the Contract. The Contractor shall not be entitled to any additional payment or be excused from any liability under the Contract as a consequence of any misinterpretation by the Contractor of any matter or fact relating to Schedule A or any other provisions of the Contract.
- (b) The Contractor acknowledges that the Government does not give any exclusive right to the Contractor to provide the Services to the Government and that the Government may enter into similar contracts with any third party at any time.

3. Contractor's Warranties and Undertakings

The Contractor warrants and undertakes to the Government that:

- (a) its nominated auctioneer(s) provide for execution of this Contract shall meet the qualification requirements and relevant working experience as set out in clause 5 of the Terms of Quotation and the necessary skills and expertise to provide the Services on the terms set out in the Scope of Services.
- (b) it shall manage the nominated auctioneer(s) and its supporting staff as a responsible employer in similar trade so that the Services provided is of professional standard;
- (c) it shall provide independent and unbiased advice to the Government in relation to the Services;
- (d) it shall provide the Services in a timely and professional manner and will conform to the standards generally observed in the industry for similar services;
- (e) no announcement or publicity concerning this Contract or any matter ancillary thereto shall be made by the Contractor without the prior written consent of the Government;
- (f) it has power to enter into this Contract and has obtained all necessary approvals to do so;

Special Conditions of Contract

3. Contractor's Warranties and Undertakings (Cont'd)

- (g) it shall not employ illegal workers in relation to this Contract or any other contract relating to the Government. Should the Contractor be found to have employed illegal workers in breach of this undertaking, the Government may by notice in writing, terminate this Contract and the Contractor is not entitled to claim any compensation and the Contractor shall be liable for all expenses necessarily incurred by the Government as a result of the termination of this Contract;
- (h) it shall offer to the nominated auctioneer(s) and supporting staff, if any, the pay and conditions which are not less favourable than the general level of wages and conditions observed by other employers in similar trade; and
- (i) it shall promptly pay salaries to the nominated auctioneer(s) and supporting staff, who are employed for the purpose of this Contract, failure to do so will entitle the Government to terminate this Contract.

4. Provision of Auctioneer

- (a) The Contractor warrants that all the auctioneer(s) nominated in **Schedule D** or any replacement auctioneer provided shall have at least 2 years' experience in the auction trade in the Hong Kong Special Administrative Region and in handling at least 120 lots in a day during ten year immediately before the Tender Closing Date.
- (b) In case a new auctioneer other than those nominated in **Schedule D** is proposed by the Contractor, the Contractor should immediately submit information on the relevant qualification and experience of the new auctioneer as required in clause 5 of the Terms of Quotation for the Government's approval before engaging the new auctioneer for provision of the Services. The Government has the absolute discretion to request the new auctioneer nominated by the Contractor to conduct trial run in the provision of the Services and to accept or reject such nomination by the Contractor.

5. Free Valuation Service

The Contractor shall, at the request of the Government Representative and no charge to the Government, provide professional advice on appraising the value of ornaments, jewellery and any other valuable items which may be put up for auction.

6. No Surcharge on Bidders

The Contractor shall not impose any charge whatsoever on the bidders or successful buyers in the auction sale.

Special Conditions of Contract

7. Auction Venue

The auctioneer shall conduct the auctions at the Government Logistics Centre, 11 Chong Fu Road, Chai Wan, Hong Kong or any other venue as designated by the Government Representative.

8. Exception

This Contract is awarded on a non-exclusive basis and does not preclude the Government from employing any other auctioneer or arranging auctions through other means for the Government properties during the Contract Period.

9. Severability

In the event that any condition or clause of this Contract not being of a fundamental nature is held to be illegal or unenforceable, the validity or enforceability of the remainder of this Contract shall not be affected thereby.

10. Confidentiality

- (a) The Contractor shall treat as confidential all information supplied by the Government under this Contract which is designated as confidential by the Government or which is specified as protected by the Government or which is by its nature clearly confidential provided that this clause shall not extend to any information which was rightfully in the possession of the Contractor prior to the commencement of the negotiations leading to this Contract or which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this clause). The Contractor shall not divulge any confidential information to any person except to their own employees who need to know the same. The Contractor shall ensure that its employees are aware of and comply with the provisions of this clause.
- (b) The Contractor shall not make use of or reproduce or allow the use or reproduction of any information, report, document, software, data or any other particulars whatsoever of a confidential nature or relating to the business or affairs of the Government.
- (c) The Contractor shall ensure that the nominated auctioneer(s) and supporting staff, if any, are aware of and complies with the provisions of this clause. The foregoing obligations shall survive indefinitely any termination of this Contract.

11. Assignment and Sub-contracting

- (a) The Contractor shall not, without the written consent of the Government Representative, assign or otherwise transfer the Contract, or any part share or interest therein, and the performance of Contract by the Contractor shall be deemed to be personal to it.
- (b) The Contractor shall not be relieved from any of its obligations hereunder by entering into any assignment or sub-contract for the performance of any part of this Contract.

Special Conditions of Contract

12. Conduct of the Services

- (a) The Contractor shall exercise all due and reasonable skill, care and diligence in its conduct of the Services.
- (b) The Contractor shall follow instructions and directions and, where appropriate, receive the Government's decisions only from the Government Representative.
- (c) The Contractor shall comply with all reasonable instructions of the Government Representative in so far as they are applicable to the Services. Nothing in this clause shall affect the responsibility of the Contractor in connection with the duties undertaken by it under this Contract.
- (d) The Contractor shall, through the Government Representative, keep the Government informed of all matters related to the Services and shall answer all reasonable enquiries received from the Government Representative.
- (e) The Contractor shall attend or be represented by its staff at all meetings convened by the Government Representative to which it may be summoned and shall advise and assist the Government on all matters relating to the provision of Services under this Contract at no extra cost.

13. Contractor's Liability

The Contractor shall be solely and fully liable for any wrongful act and default of the nominated auctioneer(s) and its staff.

14. Working Conditions

- (a) The nominated auctioneer(s) shall follow instructions of the Government Representative for the provision of the Services and shall work as member of team/teams with other members from the Government and/or Government Logistics Department and/or other contractors at the Government premises or at other premises designated by the Government Representative.
- (b) The Contractor shall provide Services to the Government during normal working hours as well as prolonged hours as requested by the Government Representative. The normal working hours refer to auction session each of 3 hours basis.
- (c) The nominated auctioneer(s) and the supporting staff will be subject to the security and any other regulations of the Government. The Contractor shall ensure that while any of the nominated auctioneer(s) and its supporting staff are in the Government's premises or at other premises designated by the Government Representative, they will conform to the Government's normal codes of staff and security practise.
- (d) The Contractor shall cover the nominated auctioneer(s) and its supporting staff by valid insurance pursuant to the Employees' Compensation Ordinance.

Special Conditions of Contract

14. Working Conditions (Cont'd)

- (e) The Government will not be responsible for any expenses that may be incurred by the nominated auctioneer(s) and its supporting staff e.g. transportation, meal allowance and subsistence allowance other than the rates quoted in Schedule A.
- (f) The nominated auctioneer(s), if recruited from overseas, must possess valid work permits issued by the Hong Kong Immigration Department before they can commence work for the Government.
- (g) The Contractor or any person employed or engaged by the Contractor or any subcontractor or person concerned with the same shall not be deemed to be the employee, servant, or agent of the Government.
- (h) The Contractor shall seek prior agreement of the Government Representative for the time and length of any leave to be taken by the nominated auctioneer(s) during the period of Services and the proposed relieving measures.

15. Entire Agreement

This Contract constitutes the entire agreement between the parties relating to the subject matter hereof. No addition to or modification of any provision of this Contract shall be binding except agreed by both parties in writing.

16. Government Premises

- (a) The Government Representative reserves the right to refuse admission to any premises occupied by the Government for the purposes of this Contract any nominated auctioneer(s), or any person employed by the Contractor, or by an assignee or a subcontractor, whose admission would be, in the reasonable opinion of the Government Representative, undesirable. Any refusal of admission shall not be construed as a breach of this Contract by the Government and the Contractor shall continue to provide the Services.
- (b) The Contractor shall provide a list of the names of all persons who may at any time require admission on behalf of the Contractor to any premises occupied by the Government for the purposes of this Contract, if so required by the Government Representative, and in that event such list shall specify the capacities in which those persons are connected with the Contractor and shall contain such other particulars as the Government Representative may reasonably require.
- (c) In the event that the Contractor fails to comply with the preceding sub-clause and the Government determines that such a failure is prejudicial to the interests of the Government, it may thereupon terminate this Contract forthwith by notice in writing addressed to the Contractor, and such termination shall not prejudice or affect any rights of action or other remedies, which may have accrued or shall accrue thereafter to the Government.

Special Conditions of Contract

16. Government Premises (Cont'd)

- (d) The Contractor shall ensure that all persons engaged by it in carrying out this Contract keep to such parts of Government premises as are necessary for the proper discharge of the Contractor's obligations under this Contract.

17. Replacement

- (a) The Contractor shall ensure that the nominated auctioneer(s) will provide the Services properly and satisfactorily to the Government during the period of Services.
- (b) If the nominated auctioneer(s) that considered by the Government not to have providing the Services properly or satisfactorily (the Government's decision shall be final in this matter), the Government shall be entitled to exercise its right under clause 20 and at its sole option give a written notice to the Contractor demanding a replacement. The Contractor shall upon receipt of the Government's notice propose a replacement staff meeting the minimum qualification and experience requirements as stipulated in clause 5 of the Terms of Quotation within 7 working days at no extra cost for the Government's approval.
- (c) If the Contractor fails to provide a replacement of auctioneer within 7 working days from the date of the Government's notice, the Government shall be entitled to obtain a replacement from other contractor to complete the Services required and the Contractor shall, without prejudice to any other remedies or right the Government may have, pay to the Government any cost in excess of the replaced auctioneer cost until the Contractor provides a replacement of auctioneer acceptable to the Government under clause 17(b) above.

18. Payment for Services

- (a) The Services provided under this Contract shall be subject to certification by the Government Representative who may reject the Services or part thereof if, in his opinion, the Services provided do not comply with this Contract or in the case of a poor standard of performance by any of the nominated auctioneer(s) or the supporting staff. The Government shall not be liable for any payment in respect of the Services so rejected.
- (b) At the end of each month during this Contract Period, the Contractor shall produce an invoice for the month and time-sheets for certification by the Government Representative.
- (c) Subject to other provisions in this Contract, the payment for any Services provided under this Contract shall become due upon certification of the invoice of the Services in accordance with clause 18(b) above.
- (d) Subject to other provisions in this Contract, the Government will effect the payment for the Services provided within 30 days after the payment become due in accordance with clause 18(c) above.

Special Conditions of Contract

18. Payment for Services (Cont'd)

- (e) All invoices and correspondence concerning payment shall be addressed to :

Director of Government Logistics
M/F., Government Logistics Centre,
11 Chong Fu Road,
Chai Wan, Hong Kong.
(Attn.: Senior Supplies Officer (S&D))

The Government shall not be responsible for any delay in payment if any invoice or correspondence is improperly addressed.

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

19. Breach of Contract

Should there be any breach or non-performance by the Contractor of its obligations under this Contract, the Government may forthwith terminate this Contract by notice in writing of such termination. This Contract shall thereupon wholly cease and terminate without prejudice to any other rights or remedies of the Government to assign the balance of the incomplete services to another Contractor whereupon the Contractor shall be liable for any amounts in excess of the prices specified in this Contract.

20. Termination of Services

- (a) The Government shall be entitled to terminate forthwith the Services of the nominated auctioneer(s) or the supporting staff provided without prior notice to the Contractor, if the nominated auctioneer(s) or the supporting staff is found in the opinion of the Government Representative to be incompetent or inattentive or to conduct himself improperly. The Government's decision shall be final.
- (b) For clause 20(a), the Contractor shall not be entitled to claim compensation against the Government.

Special Conditions of Contract

21. Termination of the Contract

- (a) Without prejudice to other rights and claims of the Government under the Contract or at law, the Government shall be entitled to terminate the Contract if :
- (i) the Contractor fails to observe or perform any of the terms and conditions of the Contract and (in the case of a breach capable of being remedied) has failed to remedy the breach to the satisfaction of the Government within fourteen days (or such longer period as the Government may, in its sole discretion, allow) after the issuance by the Government to the Contractor of a notice in writing requiring it to do so; or
 - (ii) a petition is presented or a proceeding is commenced or an order is made or an effective resolution is passed for the winding-up, insolvency, bankruptcy, administration, reorganisation, reconstruction, or dissolution of the Contractor otherwise than for the purpose of a solvent reconstruction or amalgamation previously approved by the Government in writing, or the Contractor makes any composition or arrangement with creditors; or a receiver, administrator, trustee or similar officer has been appointed in respect of the Contractor or all or any part of its business or assets; or
 - (iii) the Contractor, or an associate or associated person of the Contractor, or a director or any other officer in the management position of the Contractor or of such associated person or associate (who has been in such office any time during the 12 months preceding the Contract period or during the Contract period) has been convicted of any criminal offence in Hong Kong based on any acts committed in the bidding or performance of any contract awarded by the Government (including without limitation any offence of conspiracy to defraud the Government); or
 - (iv) the Contractor abandons the Contract in part or in whole; or
 - (v) the Contractor assigns or transfers or purports to assign or transfer all or any part of the Contract or all or any of its rights or obligations thereunder without the prior written consent of the Government; or
 - (vi) if any event or circumstance occurs which enables the Government to terminate the Contract under any of the conditions of Contract.
- (b) Each of the grounds entitling the Government to terminate the Contract as specified in clause 21(a) above shall be construed independently and shall not be limited or restricted by reference to or inference from any other ground or any other term of this Contract.

22. Consequences of Early Termination

- (a) Upon expiry or early termination (howsoever occasioned) of the Contract ("Termination"):
- (i) the Contract shall be of no further force and effect, but without prejudice to:
 - (1) the Government's rights and claims under the Contract or otherwise at law against the Contractor arising from antecedent breaches of the Contract by the Contractor (including any breach(es) which entitle the Government to terminate the Contract);

Special Conditions of Contract

22. Consequences of Early Termination (Cont'd)

- (2) the rights and claims which have accrued to a party prior to the Termination; and
 - (3) the continued existence and validity of those provisions which are expressed to or which in their context appropriately survive Termination and any provisions of the Contract necessary for the interpretation or enforcement of the Contract;
- (ii) the Government shall not be responsible for any claim, legal proceeding, liability, loss (including any direct or indirect loss, any loss of revenue, profit, business, contract or anticipated saving), damage (including any direct, special, indirect or consequential damage of whatsoever nature) or any cost or expense, suffered or incurred by the Contractor arising out of or in relation to the Termination;
 - (iii) without prejudice to the other rights and remedies of the Government, if the Contract is terminated pursuant to clause 21(a) of the Special Conditions of Contract, the Contractor shall be liable for all losses, damage, costs and expenses incurred by the Government arising from the Termination including without limitation the excess contract price payable by the Government for procuring the services under a separate contract in comparison with the price for such Services as specified in Schedule A over the terminated portion of the original Contract period;

23. Disputes

Any dispute which may arise between the parties concerning this Contract shall be determined as follows:

- (a) If the dispute shall be of a technical nature concerning the Services or any similar or related matter then such dispute shall be referred for arbitration in the Hong Kong Special Administrative Region to an arbitrator nominated jointly by the parties. The arbitrator's decision shall (in the absence of clerical or manifest error) be final and binding on the parties and his fees for so acting shall be borne by the parties in equal shares unless he determines that the conduct of either party is such that such party should bear all of such fees.
- (b) In any other case the dispute shall be determined by the courts of the Hong Kong Special Administrative Region and the parties hereby submit to the exclusive jurisdiction of such courts for such purpose.

24. Documents to be completed after award of Contract

The #Representative of the Contractor shall complete the Supplement of Special Conditions of Contract in Annex A and the Deed of Undertakings in Annex B respectively after the award of the Contract.

The Representative shall be the person authorised to sign the tender.

Special Conditions of Contract

25. Exchange of Correspondence

- (a) Invoices and correspondence concerning payment should be forwarded to the appropriate office to which the Services are accepted by the Government. The Government shall not be held responsible for any delay in payment if invoices and correspondence concerning payment are not properly addressed.
- (b) All notices, demands or other communications given or made under the Contract shall be in writing and delivered or sent to the Contractor at its address or facsimile number set out in Schedule D (or such other address or facsimile number as the Contractor has by giving five days' prior written notice specified to the Government Representative). The Government will not accept the use of a postal box as the Contractor's correspondence address. Notices, demands or other communications on all matters given or made under the Contract by the Contractor to the Government Representative shall be in writing and handled as follows :
 - (i) Correspondence on any matters in respect of the Contract (other than matters concerning the scope of services in Schedule A and daily execution of the Contract such as payment arrangements) should be addressed to the Director of Government Logistics [Attn. : Supplies Officer (A1) by fax (fax no. 2116 0102 unless the Government otherwise specifies)] or by mail}.
 - (ii) Correspondence on matters concerning the scope of services in Schedule A and daily execution of the Contract such as payment arrangements should be addressed to the Director of Government Logistics [Attn. : Senior Supplies Officer (S&D) by fax (fax no. 2515 9447 unless the Government otherwise specifies)] provided that any such correspondence is copied to the Director of Government Logistics [Attn. : Supplies Officer (A1) (fax no. 2116 0102 unless the Government otherwise specifies)].
- (c) Such notices, demands or other communications shall be addressed as provided above and, if so addressed, shall be deemed to have been duly given or made as follows :
 - (i) if sent by personal delivery during normal business hours on a working day upon delivery at the address of the relevant party;
 - (ii) if sent by ordinary post or registered mail to a local address, on the next working day; if sent by airmail to an overseas address, on the seventh day after the same are sent by post; or
 - (iii) if sent by facsimile during normal business hours on a working day, when despatched with confirmed receipt as evidenced by the transmission report generated at the end of the transmission of such facsimile by the facsimile machine used for such transmission.
- (d) For the avoidance of doubt, nothing herein shall affect the validity of any notice, demand or communication despatched by personal delivery or by fax outside normal business hours. Any such notice, demand or communication fulfilling the conditions specified in clause 25(c)(i) or 25(c)(iii) above (apart from conditions as to time) shall be deemed to have been duly given or made on the working day immediately following delivery. The expression "normal business hours" shall mean 09:00 to 18:00 hours.

Special Conditions of Contract

26. Order Statement

The Contractor shall provide a statement to the Director of Government Logistics (Attn. : SSO(S&D) on fax no.: 2515 9447), every alternate month, an order statement showing the following particulars:

- (a) Contract number;
- (a) Number of auction sessions and additional hours overrun; and
- (b) Monthly and cumulative service order value.

27. Contractor Performance Monitoring

The Contractor should note that its performance in this Contract will be monitored and may be taken into account when its future quotations are evaluated.

28. Acknowledgement of Being Notified of the Ethical Requirements

The Contractor acknowledges that it has been reminded that dishonesty, theft and corruption on its part or those of its employees, agents or sub-contractors who are involved in the Contract may lead to prosecution under, without limitation, section 9 of the Prevention of Bribery Ordinance, Cap 201; section 17, section 18D or section 19 of the Theft Ordinance, Cap 210 and section 161 of the Crimes Ordinance, Cap 200. These offences commonly carry upon conviction terms of imprisonment.

29. Deletion

For the purpose of this Contract, clause 1 (Total Services and Variation), clause 4 (Inspection and Acceptance), clause 8 (Payment for Services) and clause 19 (Order of Precedence) of Part 2 - General Conditions of Contract of GLD-TERMS-2 (January 2010) are deleted.

30. Order of Precedence

In the event there is any conflict, contradiction or ambiguity between the documents mentioned below which form part of Contract, the following order of precedence shall be applied in order to resolve any such conflict, contradiction or ambiguity :

- (a) The Special Conditions of Contract;
- (b) Schedules A to E;
- (c) The Terms of Quotation;
- (d) The Interpretation Section of the Standard Terms and Conditions (GLD-TERMS-2 (January 2010)) and its Supplement;
- (e) The General Conditions of Contract;
- (f) The Terms of Tender; and
- (g) The Notes for Bidder.

Supplement to the Special Conditions of Contract

A. Reference is made to the contract for auctioneering services comprising Quotation Document with reference number **D0000282011** between _____ and the Government of the Hong Kong Special Administrative Region ("Contract").

B. Each of the undersigned agrees with the other of them that the following shall with immediate effect be added to, and form part of the Contract.

1. Conflict of Interest

1.1 During the Contract Period as specified in clause 1 of the Special Conditions of Contract and for six months thereafter, the Contractor:

(a) shall not, and shall ensure that none of (i) its associate or associated persons, and (ii) the Contractor's employees, agents and sub-contractors (collectively, "Contractor's Personnel") and (iii) associates or associated persons of any one of the Contractor's Personnel will, undertake, any service, task or job or do anything whatsoever on its or their own account or for or on behalf of or in conjunction with a third party (other than in the proper performance of this Contract) which touches, concerns or affects the duties and obligations of the Contractor under this Contract or which may be seen to touch, concern or affect such duties or obligations without the prior written approval of the Government; and

(b) shall forthwith notify the Government in writing of all or any facts which come to the actual or constructive knowledge of the Contractor and which may reasonably be considered to give rise to a situation where the interests of (i) the Contractor or (ii) an associate or associated person of the Contractor, or (iii) any of the Contractor's Personnel or (iv) an associate or associated person of any one of the Contractor's Personnel, conflict or compete, or may conflict or compete, with the Contractor's duties to the Government under this Contract.

1.2 The Contractor shall perform its obligations and duties under this Contract, and render its advice and recommendations to the Government, on an impartial basis, and without giving favour to any particular person, business, company, product, services or equipment in which the Contractor or any of the Contractor's Personnel or any of their respective associates or associated persons has a commercial or personal interest.

1.3 None of the Contractor, the Contractor's Personnel, and their respective associates and associated persons may take part as bidder in their personal capacity in an auction to be conducted by the Contractor under this Contract.

1.4 The Contractor shall perform its duties and obligations under this Contract (including the conduct an auction) impartially without giving favour to any person or bidder.

1.5 The Contractor shall not, and shall ensure that each of the Contractor's Personnel will not, disclose to any bidder or his associate or associated person any information or document: (a) which have not otherwise been disclosed to the other bidders; and (b) which will put that person in a more informed or advantageous position than the other bidders, in determining whether or not to bid, or if so the amount of his bid, at an auction.

Supplement to the Special Conditions of Contract

1.6 If and when requested by the Government, the Contractor shall forthwith obtain from each of the Contractor's Personnel a binding undertaking in the form set out in the Annex A hereto. The Contractor shall upon request by the Government provide to the Government written copies of any such undertakings, to be certified as true copies. The Contractor further agrees that, if so required by the Government, it will, at its cost, take such actions and steps as are lawful and necessary to enforce such undertaking in the event of any breach thereof by the undertaker.

1.7 For the purposes of this Contract:

(a) "associate" of a person means:

- (i) a relative or partner of that person; or
- (ii) a company one or more of whose directors is in common with one or more of the directors of that person;

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

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

"person" means any individual, corporation, firm and any unincorporated body;

(b) "associated person" of a person means:

- (i) any person who has control, directly or indirectly, over that person; or
- (ii) any person who is controlled, directly or indirectly, by that person; or
- (iii) any person who is controlled by, or has control over, the first-mentioned person in (b)(i) or (b)(ii) above;

(c) a person having "control" over another person means the power of that person to secure:

- (i) by means of the holding of shares or interests or the possession of voting power in or in relation to that or any other person; or
- (ii) by virtue of any powers conferred by any constitution, memorandum or articles of association, partnership, agreement or arrangement (whether legally enforceable or not) affecting that or any other person

that the affairs of the second-mentioned person are conducted in accordance with the wishes of the first-mentioned person.

Supplement to the Special Conditions of Contract

1.8 For the avoidance of doubt, any default by the Contractor of any provision of this Clause 1 or any default by a Contractor's Personnel of his undertaking executed pursuant to Clause 1.6 shall entitle the Government to terminate this Contract pursuant to Clause 16(c) of the Special Conditions of Contract and to hold the Contractor fully liable for any loss or damage which the Government may sustain or incur arising from such termination.

2. Anti-corruption

2.1 The Contractor shall inform each of the Contractor's Personnel that the soliciting or accepting of advantages, as defined in the Prevention of Bribery Ordinance (Cap 201) is not permitted. The Contractor shall caution each of the Contractor's Personnel against soliciting or accepting excessive hospitality, entertainment, or inducements which could impair their impartiality in performing the Contractor's duties and obligations under this Contract.

2.2 In the event that the Contractor or any of the Contractor's Personnel shall be found or suspected to have offered, given, solicited or accepted any advantage, gratuity, bonus, discount, bribe, or loan of any sort in contravention of the Prevention of Bribery Ordinance Cap 201 (whether or not such offence was committed or is suspected to have been committed in the course of discharge of the Contractor's duties and obligations under this Contract), the Government shall be at liberty to forthwith terminate this Agreement pursuant to Clause 16(c) of the Special Conditions of Contract (and such contravention is not considered as a breach capable of being remedied and no notice shall be required for termination) and hold the Contractor fully liable for any loss or damage which the Government may sustain or incur arising from such offence and termination."

C. Save to the extent supplemented by this Supplement to the Special Conditions of Contract, all other terms and conditions of the Contract shall remain unchanged and continue to be fully valid, binding and subsisting in all respects.

For and on behalf of

For and on behalf of
Director of Government Logistics

Name :

Name :

Title:

Title:

Date:

Date:

Contractor Representative

Government Representative

DEED OF UNDERTAKINGS

To : The Government of The Hong Kong Special Administrative Region of the People's Republic of China ("Government")

_____ ("Contractor")
[name of the Contractor]

From : _____ [Name of the Contractor's Personnel] holder of
Hong Kong Identity Card Number [_____]

Date : _____

Reference is made to the contract _____ between the Government and the Contractor pursuant to which the Contractor is appointed to perform auctioneering services for the Government ("Contract"). It is a term of the Contract that I execute this deed in favour of the Government and the Contractor.

Unless the context otherwise requires, capitalised terms and expressions shall have the meanings ascribed to them in the Contract when used herein.

1. I hereby undertake in favour of each of the Government and the Contractor as follows:
 - 1.1 During the Contract Period as specified in Clause 1 of the Special Conditions of Contract and for six months thereafter :
 - (a) shall not undertake, and shall ensure that none of my associates and associated persons will undertake, any service, task or job or do anything whatsoever on my or their own account or for or on behalf of or in conjunction with a third party (other than in the proper performance of this Contract) which touches, concerns or affects the duties and obligations of the Contractor under the Contract or which may be seen to touch, concern or affect such duties or obligations without the prior written approval of the Government; and
 - (b) shall forthwith notify the Contractor in writing of all or any facts which come to my actual or constructive knowledge and which may reasonably be considered to give rise to a situation where my interests or those of my associate or associated person, conflict or compete, or may conflict or compete, with the Contractor's duties to the Government under the Contract.
 - 1.2 I shall perform such part of the Contractor's obligations and duties under the Contract, which may from time to time be assigned by the Contractor to me, for and on behalf of the Contractor, on an impartial basis, and without giving favour to any particular person, business, company, product, services or equipment in which I or any of my associates or associated persons has a commercial or personal interest.
 - 1.3 Neither I nor my associates and associated persons may take part as bidder in my or their personal capacity in an auction to be conducted by the Contractor under the Contract.

DEED OF UNDERTAKINGS

- 1.4 I shall perform such part of the Contractor's duties and obligations under the Contract, which may from time to time be assigned by the Contractor to me, for and on behalf of the Contractor impartially without giving favour to any person or bidder.
- 1.5 I shall not, and shall ensure my associate or associated person will not, disclose any information or document to a person: (a) which have not otherwise been disclosed to the other bidders; and (b) which will put that person in a more informed or advantageous position than the other bidders, in determining whether or not to bid, or if so the amount of his bid, at an auction to be conducted by the Contractor under the Contract.
- 1.6 For the purposes of this Undertaking:
- (a) "associate" of a person means:
- (i) a relative or partner of that person; or
 - (ii) a company one or more of whose directors is in common with one or more of the directors of that person;
- "relative" means the spouse, parent, child, brother or sister of the relevant person, and, in deducing such a relationship, an adopted child shall be deemed to be a child both of the natural parents and the adopting parent and a step child to be the child of both the natural parents and of any step parent;
- "director" means any person occupying the position of director by whatever name called and without limitation a de facto or shadow director;
- "person" means any individual, corporation, firm and any unincorporated body;
- (b) "associated person" of a person means:
- (i) any person who has control, directly or indirectly, over that person; or
 - (ii) any person who is controlled, directly or indirectly, by that person; or
 - (iii) any person who is controlled by, or has control over, the first-mentioned person in (b)(i) or (b)(ii) above;
- (c) a person having "control" over another person means the power of that person to secure:
- (i) by means of the holding of shares or interests or the possession of voting power in or in relation to that or any other person; or
 - (ii) by virtue of any powers conferred by any constitution, memorandum or articles of association, partnership, agreement or arrangement (whether legally enforceable or not) affecting that or any other person

DEED OF UNDERTAKINGS

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

2. This deed shall survive the termination or early expiration of the Contract.
3. This deed shall be construed in accordance with the laws of Hong Kong Special Administrative Region of the People's Republic of China ("Hong Kong"), and I hereby submit to the exclusive jurisdiction of the courts of Hong Kong.

In witness whereof this deed has been executed on the day and year first above written.

SIGNED SEALED AND DELIVERED BY)

[NAME])

in the presence of:)

**Provision of Auctioneering for the Sale of Government Properties
to the Government Logistics Department**

Schedule A – Scope of Service

(M) : Mandatory requirement

(I) : For information

1. General Requirements

- (M) (a) The Contractor shall provide at least **one (1) nominated auctioneer(s) and one (1) supporting staff** to conduct auctions on alternate Thursdays or any other days as specified by the Government at the Conference Room on M/F of the Government Logistics Centre, 11 Chong Fu Road, Chai Wan, Hong Kong or any other venue as designated by the Government Representative. The Government shall be entitled, by giving 7 days' **prior written notice** to the Contractor, to postpone or cancel the auction. Auction session may also be postponed or cancelled due to inclement weather on the day the auction session to be held.
- (I) (b) The associated clerical and supporting services and materials will be provided by the Government.
- (M) (c) The Contractor's nominated auctioneer(s) shall provide auctioneering services to the Government during normal working hours as well as extended hours as requested by the Government Representative. The normal working hours are referred to the schedule as stated in clause 2(a) below and each auction session shall be of three hours' duration, with extension on an hourly basis, if required.
- (M) (d) The Contractor shall manage the auctioneer(s) and the supporting staff as a responsible employer so that the services provided are in a timely and professional manner and will conform to the standards generally observed in the industry for similar services.
- (M) (e) The Contractor shall provide independent and unbiased advice to the Government Representative in relation to the Services.
- (M) (f) The supporting staff provided by the Contractor shall assist in the smooth running of the auction including, but not limited to,
- (i) assisting the auctioneer in marking the auction result of individual lot; and
 - (ii) preparing documentation to the successful bidder supporting the sales and facilitating the subsequent payment .
- (M) (g) The auctions will be conducted in Cantonese. The Contractor will be required to conduct the auctions, or part of the auctions, in bilingual languages including Putonghua and English, whenever necessary.

Schedule A – Scope of Services

2. Auction Schedule

- (I) (a) Public auctions will be held on alternate Thursdays or any other days as specified by the Government in an air-conditioned room of about 77 square meters on M/F of the Government Logistics Centre at Chai Wan or any other venue as designated by the Government Representative. Auctions will normally start at 10:30 a.m. till completion of the auction process.
- (M) (b) The nominated auctioneer(s) shall arrive at the place of auction by not later than 10:00 a.m. on the auction day and to acquaint himself with the auction lists which will be provided on arrival and the reserve prices, etc.
- (M) (c) The Government reserves the right to change the auction day (including Saturday and public holidays) and time by notifying the Contractor in writing at least 7 days' before the day of auction. Auction session may also be postponed or cancelled due to inclement weather on the day the auction session to be held. The Government shall not be responsible for any charge due to such postponement or cancellation of auction session.

3. Free Valuation Service

- (M) The Contractor shall, at the request of the Government Representative and no charge to the Government, provide professional advice on appraising the value of ornaments, jewelleryes and any other valuable items which may be put up for auction.

4. Statistics

- (I) The following statistics on auctions conducted in the past 3 years are provided for the Bidders' reference:

Year	Number of		Average	
	Auctions	Lots	Lots/Auction	Duration
2007/2008	24	3,808	159	3 hours
2008/2009	25	3,000	120	3 hours
2009/2010	24	2,918	122	3 hours

**Provision of Auctioneering for the Sale of Government Properties
to the Government Logistics Department**

Schedule B – Price Schedule

<u>Item No.</u>	<u>Description</u>	<u>Estimated Quantity Required</u>	<u>Unit Rate (HK\$)</u>	<u>Total Amount (HK\$)</u>
1.	<p>Provision of auctioneering services for the sale of government properties as detailed in Schedule A</p> <p>* Charge for per session of a 3-hour</p>	48 sessions		

Optional Requirement

<u>Item No.</u>	<u>Description</u>	<u>Hourly Rate (HK\$)</u>
2.	** Additional hourly rate which on top of the 3-hour session as specified in Item 1 above	

N.B. : (a) * The charge quoted by a bidder shall cover all cost for the provision of auctioneering services on a 3-hour session basis and shall provide at least one auctioneer and one supporting staff for conduct auctions.

(b) ** A Bidder shall quoted the hourly rate of auctioneering services for every subsequent hour or any part thereof in case the auctions are overrun. However, the Government reserves the right to acquire any or none of this additional service during the Contract Period.

Name of Bidder : _____

Company Chop : _____
(for Paper-based Tendering)

Signed by an authorised signatory
for and on behalf of the Bidder: _____
(for Paper-based Tendering)

Telephone No. : _____

Facsimile No. : _____

Name and Post of
authorised signatory: _____

Date : _____

**Provision of Auctioneering for the Sale of Government Properties
to the Government Logistics Department**

Schedule C – Offer to be Bound

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

1. Having read the Quotation Document, I/We agree to be bound by the terms and conditions of the Quotation Document.

2. I/We do hereby agree to execute orders for any or all of the Services specified in the Schedule, which may during the Contract Period be placed by the Government Representative at the prices quoted in the Price Schedule free of all other charges, subject to and in accordance with the terms of the Quotation Document.

3. I/We, for myself/ourselves and the firm and partners therein/the limited company hereunder mentioned hereby warrant that the provision of the Services as mentioned in the Schedule or any of them by me/us/the said firm/the limited company will not infringe any Intellectual Property Rights of any other person, including without limitation any patents, designs or trade marks, any copyright or trade secrets and confidential information protected under the laws of Hong Kong or elsewhere in the world.

4. I/We also certify that the particulars given by me/us below are correct :
 - (a) The number of my/our/the Company's Business Registration Certificate is _____
and the expiration date of which is _____

 - (b) The number of Employee's Compensation Insurance Policy is _____
and the expiration date of which is _____

5. I am the Secretary/Managing Director of the company hereinafter mentioned and duly authorised to bind the said company by my signature.

- or -

I am a partner/we are partners in the firm hereinafter mentioned and duly authorised to bind the firm and the partners therein for the time being.

Schedule C – Offer to be Bound

6. This quotation is submitted with the authority and on behalf of :

(the Company/Firm)

whose registered office is situated at _____

- or -

This quotation is submitted on behalf of myself/ourselves and the firm known as

Of

_____ Hong Kong

And the other partners thereof namely; (state names and residential addresses of all other partners) :

7. In the event of any queries relating to our offer, please contact

Tel. No.: _____ Fax No.: _____

8. Name(s), post(s)/title(s) and address(es) of person(s) signing:

*Signature of the Authorised Person : _____

(with company chop)

(*Applicable to Paper-based Tendering)

Dated this _____ day of _____ 2011

Note : (a) All the particulars required above must be completed.

(b) Strike out clearly alternatives which are not applicable.

Note : * A Bidder is reminded to sign and return this Schedule together with the quotation (for a Paper-based tender) and to note the quotation validity requirement (i.e. it remains valid for not less than 90 days after the Tender Closing Date) as stipulated in clause 2(d) and clause 9 of the Terms of Quotation when submitting its offer.

**Provision of Auctioneering for the Sale of Government Properties
to the Government Logistics Department**

Schedule D – Information Schedule

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

1. Company/Business Organisation Status [Please refer to clause 3 of the Terms of Quotation.]

A Bidder shall provide the following details:

(a) Name and address of the company/business organisation:

(b) Length of business experience (in years) :

(c) Shareholders/partners/proprietor of the company/business organisation and their percentage of ownership:

(d) Name and residential address of the following:

(i) Managing director/partners:

(ii) Other directors:

(iii) Sole proprietor:

(e) A copy of the Business Registration Certificate, Memorandum and Articles of Association, Certificate of Incorporation or other constitutional documents or documents evidencing its business status is attached. (Note: The name of company/business organisation shown in the documents required under this clause shall be the same as the one stated in the "Offer to be Bound.")

(f) A copy of relevant document showing the authorised person(s) who sign(s) the "Offer to be Bound" has/have the authority to sign for and on behalf of the Bidder is attached.

Note : The Government will not accept the use of a postal box as the Contractor's correspondence address.

Name of Bidder : _____

Company Chop : _____
(for Paper-based Tendering)

Signed by an authorised signatory for and on behalf of the Bidder: _____
(for Paper-based Tendering)

Telephone No. : _____

Facsimile No. : _____

Name and Post of authorised signatory: _____

Date : _____

Schedule D – Information Schedule

2. Qualification and Experience of the Auctioneer(s) [Please refer to clause 5 of the Terms of Quotation.]

(a) A Bidder shall provide the name of all the nominated auctioneers for the execution of Contract .

	<u>Name</u>	<u>Identity Card No.</u>
(i)	_____	_____
(ii)	_____	_____
(iii)	_____	_____

(b) I/We confirm that I/we ***have submitted / cannot submit** the required curriculum vitae and relevant documentary evidence of each of the nominated auctioneer as listed in clause 2(a) above to prove the compliance of the required qualification and experiences in accordance with clauses 5(a) and 5(b) of the Terms of Quotation.

N.B. : If a Bidder fails to submit the required documents mentioned in clause 5(c) of the Terms of Quotation by the Tender Closing Date and time or within the time subsequently stipulated by the Government, its offer will not be considered further.

* Delete whichever is not applicable.

3. Payment Discounts [Please refer to clause 10(b) and clause 18(c)(ii) of the Terms of Quotation.]

Discount allowed on the price if payment for each order is made in full within :

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

N.B. : (i) Acceptance of Services shall be construed within the meaning of clause 4 of the General Conditions of Contract of GLD-TERMS-2 (January 2010).

(ii) A Bidder is required to ensure that no more than two digits after the decimal place are quoted for the above discount. Please insert the word "Nil" in the space if no payment discount is offered.

Name of Bidder : _____ Company Chop : _____
(for Paper-based Tendering)

Signed by an authorised signatory for and on behalf of the Bidder: _____ Telephone No. : _____
(for Paper-based Tendering) Facsimile No. : _____

Name and Post of authorised signatory: _____ Date : _____

Schedule D – Information Schedule

4. Statement of Compliance [Please refer to clause 12 of the Terms of Quotation]

- (a) *I/We confirm that the Services offered **do** comply with the Quotation requirements and Scope of Services in Schedule A.
- (b) *I/We confirm that the Services offered **do not** comply with the Quotation requirements and Scope of Services in Schedule A in the following aspects :

<u>Clause No.</u>	<u>Details of Deviation</u>
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*Delete whichever is not applicable.

Name of Bidder : _____	Company Chop : _____ (for Paper-based Tendering)
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Signed by an authorised signatory for and on behalf of the Bidder: _____ (for Paper-based Tendering)	Telephone No. : _____
	Facsimile No. : _____

Name and Post of authorised signatory: _____	Date : _____
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**Provision of Auctioneering for the Sale of Government Properties
to the Government Logistics Department**

Schedule E – Client References

(a) A Bidder is required to provide the contact details of its client(s) in support of the reference letters submitted in accordance with clause 6(a) of the Terms of Quotation in the table below:

<u>Item</u>	<u>Name of Client</u>	<u>Contact Person</u>	<u>Telephone No.</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

(b) I/We hereby authorise the Government Logistics Department to obtain information from all clients and give consent to the all clients concerned to release and provide information of my/our record of above to the Government Logistics Department for the purposes of verifying the above client reference.

Name of Bidder : _____ Company Chop : _____
(for Paper-based Tendering)

Signed by an authorised signatory for and on behalf of the Bidder: _____ Telephone No. : _____
(for Paper-based Tendering) Facsimile No. : _____

Name and Post of authorised signatory: _____ Date : _____