

**Supply of Hardware and Software Items  
for the Vacancy Search Terminal System (VST System)  
of the Labour Department**

**Special Conditions of Contract**

**References to “Interpretation”, “Terms of Tender” and “General Conditions of Contract” shall mean these documents in BD-TERMS-1 (August 2018).**

**1. Durations**

[Clauses 1.1 and 1.2 of the General Conditions of Contract shall be read subject to this Clause 1.]

(a) Contract Period

This Contract shall be effective from the Date of Tender Acceptance to the end of the Maintenance Period for the last batch of New Hardware and New Software.

(b) Order Period

- (i) Clause 1.2 of the General Conditions of Contract shall apply except that the Order Period specified therein shall be revised as stated in Clause 1(b)(ii) below.
- (ii) The period during which an Order for the Goods may be placed shall be as follows: (“Order Period”) 18 months from the Date of Tender Acceptance

**2. Commitment to Purchase**

[Clauses 4.1 to 4.4 of the General Conditions of Contract shall be read subject to this Clause 2.]

(a) The mechanism for setting quantities

- (i) Clause 4.1 of the General Conditions of Contract shall not apply.
- (ii) Clause 4.2 to Clause 4.4 of the General Conditions of Contract shall apply.

(b) Caps On Quantities

- (i) The percentage for the cap as stated in Clause 4.3 of the General Conditions of Contract shall be changed to 120%.
- (ii) The percentage for the cap as stated in Clause 4.4 of the General Conditions of Contract shall be changed to 80%.

**3. Warranties**

[Clause 3 of the General Conditions of Contract shall be read subject to this Clause 3.]

(a) Additional Warranties

- (i) All Goods shall be procured directly from the manufacturers or authorised distributors. During the Warranty Period, the Contractor shall perform the Maintenance Services as stipulated in the Overall Specifications in respect of each unit of New Kiosks to maintain them in full working order at its own costs and expenses.
- (ii) The Contractor warrants that the Goods shall conform fully to the Overall Specifications and shall provide the facilities and functions set out in the Overall Specifications.
- (iii) The Contractor warrants that it has the right to sell the Goods and to grant the Licence to use all New Software and all Bundled Software and the right or authority to provide Maintenance Services for the Goods; and that such items of the Goods are free from any third party claims, charges and encumbrances of whatsoever nature.
- (iv) The Contractor further warrants that each batch of New Hardware and New Software shall, any time during the time of delivery to the date when such batch becomes Ready for Use, and thereafter for so long as that batch receives Maintenance Services from the Contractor, conform fully to the Overall Specifications and Reliability Levels.
- (v) The Contractor warrants that the Work shall be performed and completed in a professional manner and that the Contractor, the Contractor's employee and any person employed or engaged by it and any subcontractor or agent of the Contractor or person concerned with the same shall use all necessary skill, care and diligence in the discharge of the duties and obligations under this Contract.
- (vi) The Contractor warrants to the Government that through the provision of the Work by the Contractor in performing this Contract:
  - (1) the use, operation or possession by the Government, its authorised users, assigns and successors-in-title of the Goods, Deliverables or any part thereof for any of the purposes contemplated by this Contract does not and will not infringe any Intellectual Property Rights of any person;
  - (2) the exercise by the Government, its authorised users, assigns and successors-in-title of any of the rights granted under this Contract will not infringe any Intellectual Property Rights of any persons;
  - (3) in respect of all the Goods and the Deliverables supplied by the Contractor, the Contractor has the valid and legal authority from the manufacturer or authorised dealer to supply the same to the Government on the terms set out in this Contract; and
  - (4) Without prejudice to and in addition to Clause 17(a) and Clause 17(b) of the Special Conditions of Contract, to the extent Intellectual Property Rights in all or any part of the Goods and Deliverables belong to a third party, prior to the use and incorporation of such Intellectual Property Rights in performing the Work (if necessary or as the case may be), the Contractor shall have

obtained from such third party the grant of all necessary rights (including the grant of all necessary consents, approvals, licences and agreements) for the Government, its successors-in-title, assigns and authorised users, and for the Contractor itself, its successors-in-title, permitted assigns and authorised users) from the relevant owner(s) of the Intellectual Property Rights in the Goods and Deliverables to use such Intellectual Property Rights in the manner and for any of the purposes contemplated by this Contract and as may be necessary for the Contractor to perform the Contract including without limitation (i) all obligations in relation to the supply, testing and installation of the Goods and the supply of Deliverables; (ii) the Maintenance Services; and (iii) the use of the Bundled Software and New Software within the scope as provided for or contemplated in the Contract. The costs of obtaining all such rights including all necessary consents, approvals, licences and agreements shall be borne by the Contractor

(b) Additional requirements concerning Warranties

- (i) Without prejudice to and in addition to Clause 3.6 of the General Conditions of Contract, if the Contractor receives written notice from the Government of any breach of Warranties, the Contractor shall, without prejudice to any other rights and claims the Government may have, at its own expense and as soon as possible after receiving such notice, take all such remedial action to the satisfaction of the Government within such time period as stipulated by the Government in the written notice to ensure that the breaches of the Warranties are remedied to the satisfaction of the Government.
- (ii) The Contractor accepts and acknowledges that the Government is entering into the Contract strictly in reliance upon each of the Warranties notwithstanding any knowledge (actual or constructive) of the Government or investigations which the Government or its agent or advisor may have made.

**4. Price Variation**

[Clause 5 of the General Conditions of Contract shall be read subject to this Clause 4.]

Only the annual unit price for Maintenance Services shall be subject to adjustment as specified in Clause 11(d) of these Special Conditions of Contract.

**5. Delivery and Implementation Plan**

[Clause 6 of the General Conditions of Contract shall be read subject to this Clause 5.]

- (a) The Contractor shall perform its obligations under the Contract in accordance with the timetable specified in Section 5.4 of the Technical Specifications (“Implementation Plan” or “Implementation Timetable”) and shall complete each activity by the date specified in the Implementation Plan. The Contractor shall perform all services stated in the Contract to ensure that each batch of the New Kiosk is Ready for Use by the completion date (“Completion Date”) specified therein. The Completion Date for a batch of the New Kiosks may also alternatively be known as the Deadline Delivery Date throughout the Contract. All time stipulations in the Implementation Plan shall be of the essence of this Contract.

- (b) Clauses 6.1, 6.2, 6.3, and 6.7 of the General Conditions of Contract shall not apply.

**6. Delivery on terms other than on F.I.S. terms**

[Clause 6.10 of the General Conditions of Contract shall be read subject to this Clause 6.]

Clause 6.10 of the General Conditions of Contract shall not apply.

**7. Licences**

[Clauses 3.1(c) and 7.1 of the General Conditions of Contract shall be read subject to this Clause 7.]

N/A

**8. Inspection and Testing**

[Clause 8.1 of the General Conditions of Contract shall be read subject to this Clause 8.]

- (a) The Goods shall be installed and subject to all tests and inspections specified in Annex A (Delivery, Installation and Acceptance Tests) to these Special Conditions of Contract. All of the tests and inspections as specified in Annex A (Delivery, Installation and Acceptance Tests) shall form part of the “Acceptance Tests” as defined in Clause 8.1 of the General Conditions of Contract.
- (b) The person responsible for each part of these Acceptance Tests shall be as specified in Annex A (Delivery, Installation and Acceptance Tests) to these Special Conditions of Contract.
- (c) The Contractor shall perform all of the obligations as specified in Annex A (Delivery, Installation and Acceptance Tests) to the Special Conditions of Contract.

**9. Acceptance and passing of title**

[Clauses 9.1(b), 9.2 and 11.2 of the General Conditions of Contract shall be read subject to this Clause 9.]

- (a) Clause 9.1(b) and Clause 11.2 of the General Conditions of Contract shall not apply.
- (b) The other conditions which have to be fulfilled as mentioned in Clause 9.2(d) of the General Conditions of Contract in order for the Government to issue an Acceptance Note in respect of a batch of New Hardware and New Software shall be as follows:

In relation to each batch of New Hardware and New Software, the Contractor shall ensure that it has issued a certificate of destruction of hard disks of all Existing Kiosks which have been collected by the Contractor as part of the Trade-in Services for that batch of New Hardware and Software.

**10. Liquidated damages for delay**

[Clause 10.3(h) and Clause 10.11 of the General Conditions of Contract shall be read subject to this Clause 10.]

- (a) If the Contractor fails to provide any New Kiosk covered by any batch of New Hardware and New Software Ready for Use by the applicable Completion Date (whether due to faulty unit(s) falling within such batch failing to pass any of the Installation Tests or Function Tests, or the entire batch failing to pass the Reliability Tests, or due to failure to deliver the entire quantity of Items covered by a batch of New Hardware and New Software to the requested Locations) (and the batch is known as the “delayed batch”), the Contractor shall pay the Government as and by way of liquidated damages and not as a penalty for any losses or damage sustained by the Government resulting from delay during the period from the applicable Completion Date to the date on which the Contractor provides the delayed batch Ready for Use the sum of 0.15% of the Contract Price for such delayed batch for each day or part of the day of such delay provided the total amount of liquidated damages payable for a delayed batch shall be capped to a total maximum of 15% of the Contract Price for such delayed batch. Subject to the provisions of Sub-clause (c) below, the payment of such sums shall be in full satisfaction of the Contractor’s liability for such delay only. In the event the delayed batch has never become Ready for Use, the liquidated damages provision under this Clause is not applicable, and the Government will claim from the Contractor under the indemnity in Clause 18.2 of the General Conditions of Contract arising from such failure and in the event of any termination, the termination consequences specified in Clause 20.1 of the General Conditions of Contract shall also apply. The payment of liquidated damages shall not relieve the Contractor from its obligation to provide all Goods Ready for Use or from any other liability or obligation under the Contract.
- (b) The payment of liquidated damages shall not relieve the Contractor from its obligation to provide all Goods in full compliance with the requirements of the Contract or from any other liability or obligation under the Contract.
- (c) In the event the Delayed Goods as mentioned in Sub-clause (a) has never been delivered in lieu of the liquidated damages as specified in Sub-clause (a), the Government may exercise all or any one or more of the rights specified in or referred to in Clause 10.10 of the General Conditions of Contract.

**11. Payment of the Contract Price and the Service Price**

[Clause 14 of the General Conditions of Contract shall be read subject to this Clause 11.]

- (a) Clauses 14.2(b), 14.3, 14.6, 14.8 and 14.9 of the General Conditions of Contract shall not apply.
- (b) The Service Price in respect of each batch of New Hardware and New Software shall be payable in respect of each billing period within the Maintenance Period for that batch of New Hardware and New Software but after the Warranty Period for that batch of New Hardware and New Software. The billing period is a yearly period. The Service Price is payable in arrears of each billing period.
- (c) References to “Contract Price” in Clauses 14.4 and 14.10 of the General Conditions of Contract shall read “Contract Price and Service Price”.

- (d) The parties agree that there shall be no change in the annual unit price for Maintenance Services during the first and second years of the Maintenance Period in respect of a batch of New Hardware and New Software. Thereafter such annual unit price for Maintenance Services may, at the Government's initiative and sole and absolute discretion, be adjusted either upwards or downwards and shall come into force with effect from a prospective date to be designated by the Government ("Adjustment Date") until the next adjustment (if any) or the end of the Maintenance Period (as the case may be). The upward or downward adjustment in percentage (as the case may be) shall be equal to or less than the Government Consumer Price Index B average for the 12 months ended in the most recent month last published by the Government on the website of the Census and Statistics Department prior to the Adjustment Notice (as defined below) as compared with the average for the 12 months preceding the aforesaid 12 months. The Government shall give to the Contractor not less than one month's notice prior to the Adjustment Date informing the Contractor of an adjustment (upward or downward, as the case may be) to such annual unit price for Maintenance Services as specified in that notice in accordance with this Clause ("Adjustment Notice"), whereupon with effect from the Adjustment Date, the new annual unit price for Maintenance Services shall be deemed to override the previous annual unit price for Maintenance Services specified in Price Schedule. The Government is not obliged to take into account of any particular factor in determining whether there should be an adjustment, and is not obliged to give reasons for its decision one way or the other. The expression "most recent month" as referred to above means the month in respect of which the Consumer Price Index B average has been most recently published as at the date of the Adjustment Notice.

## **12. Maintenance Services**

[Clause 15 of the General Conditions of Contract shall be read subject to this Clause12.]

The whole of Clause 15 of the General Conditions of Contract shall not apply. The following Clause 12 shall apply instead.

### **(a) Maintenance Services**

Throughout the Maintenance Period, the Contractor shall provide the Maintenance Services to keep each unit of each Item covered by each batch of New Hardware and New Software in proper order in accordance with the Overall Specifications and Reliability Levels on the terms and conditions as set out in the Contract including this Clause 12 of the Special Conditions of Contract and Table G of the Information Schedule.

### **(b) Other requirements for the Maintenance Services**

- (i) The Contractor shall provide Maintenance Services on-site at the relevant Location at which the New Kiosks are located.
- (ii) In respect of each batch of New Hardware and New Software, the Maintenance Services shall be provided free of charge to the Government throughout the Warranty Period as applicable to that batch. Thereafter, the annual unit price payable for the Maintenance Services is specified in Table 1.1 of Part A of the Price Schedule.

- (iii) Without prejudice to the right of the Government to terminate the Contract early or its right under Clause 19 of the General Conditions of Contract, the Maintenance Services shall continue during the Maintenance Period after the Warranty Period unless the Government gives the Contractor a notice of not less than one (1) month to the effect that the Maintenance Services in relation to all or any of the New Hardware and/or New Software as specified in the notice shall be terminated. The notice may be issued any time within the Maintenance Period.
  - (iv) The Government shall have the option to extend the Maintenance Period for further period(s) of not more than twelve (12) months in aggregate. The Government shall be entitled to exercise such option, not less than one (1) month's prior to the expiry of the Maintenance Period, by giving the Contractor a written notice to that effect specifying in such notice the period of extension whereupon the Maintenance Period shall be deemed to be so extended on and subject to the same terms and conditions set out in the Contract.
  - (v) If the initial period of extension is less than twelve (12) months, the Government shall have the option (without limitation on the number of times that this option may be exercised), on giving the Contractor not less than one (1) month's notice prior to the expiry of the Maintenance Period as last extended, to make further extensions to the Maintenance Period subject always up to the aggregate period of extension specified in Sub-clause (iv) above.
  - (vi) The Government is entitled from time to time to relocate New Kiosks covered by a batch of New Hardware and New Software or any part thereof. In such case, the Contractor shall remain responsible for the Maintenance Services irrespective of the party(ies) performing such relocation. There shall be no increase of the Service Price due to any relocation.
  - (vii) Prior to the commencement of the Warranty Period and thereafter each remaining year of the Maintenance Period, the Contractor shall provide documentary proof to the Government Representative that the updates for each item of New Software and Bundled Software have been procured from the manufacturer/developer/authorised dealer of that New Software and Bundled Software in respect of the relevant period. No Service Price shall be payable until and unless the Contractor has provided such documentary proof to the Government Representative.
- (c) Specifications of the Maintenance Services
- (i) The Contractor shall provide preventive maintenance and remedial maintenance as more particularly spelled out in this Clause 12 and in Table G of the Information Schedule for all New Kiosks on-site at their relevant Locations throughout the prime maintenance period as set out in Table G of the Information Schedule.
  - (ii) Upon receipt of a request for remedial maintenance, the Contractor shall despatch a suitably qualified service engineer to the Location as identified in the request within the response time set out in Table G of the Information Schedule.
  - (iii) Remedial maintenance by the Contractor shall comprise:
    - (1) the inspection, testing and diagnosis of any fault reported in any of the New

Kiosks (“faulty Kiosk”);

- (2) identifying the source of the problem; and
- (3) carrying out all such repairs, adjustments and replacement of the relevant faulty Kiosk as may be necessary to restore it to proper working order.
- (iv) The Contractor acknowledges that the New Kiosks it supplies to the Government may form only part of the Government’s computer system. If the Government’s computer system is not working properly, the Contractor shall give all such assistance to the Government and other suppliers of other parts of the Government’s computer system as may be necessary to enable the relevant parties to remedy the defects.
- (v) The Contractor shall at its own cost and expense provide all necessary brand new replacement parts and units to effect the Maintenance Services complying with the Overall Specifications including same essential requirements as specified in the Technical Specifications and the Particulars of Goods Schedule. For any unit of New Hardware which cannot be repaired within five (5) working days counting from the date of the time of request for remedial maintenance, the Contractor shall provide brand new replacement units to replace the faulty New Hardware subject to such part of the Acceptance Tests as the Government may stipulate.
- (vi) In the event that the Contractor proposes to modify the New Kiosks:
  - (1) in such a way that the system operation is affected, the Contractor shall request the consent of the Government to the proposed modifications. If the consent is given, the Contractor shall carry out the work at a time convenient to the Government; and
  - (2) the Contractor shall bear the cost and expense for any such modifications.
- (vii) In the event that the Contractor removes any parts of the New Kiosks away from the Location for overhaul or repair, the Contractor shall bear all the costs, including without limitation the costs and expenses for packing, carriage and insurance incurred in the dismantling, removal, overhaul, repair, return and re-installation of any parts of the New Kiosks which are removed from the Location for overhaul or repair.
- (viii) Any replacement parts and units provided by the Contractor hereunder shall become the property of the Government. Old parts and units (if they are not or do not contain storage devices) may only be removed by the Contractor if the Contractor has completely and securely erased all the data stored in any form in such parts of the Goods. The Contractors shall be liable to indemnify the Government on the terms set out in Clause 18.2 of the General Conditions of Contract for failing to observe the requirement of this provision. The Government shall be entitled to retain the parts and units if the Contractor is unable to prove and certify to the Government in writing that all data stored in such parts and units has been completely and securely erased. For those old parts and units which contain storage devices or are storage devices, they shall be dealt with in the same manner as specified in Clause 24 of the Special Conditions of Contract.



- (ix) Up to the date when New Kiosks covered by each batch of New Hardware and New Software becoming Ready for Use, and throughout the Maintenance Period for such batch, the Contractor hereby undertakes that it shall provide or cause to be provided to the Government and install onto the New Kiosks covered by such batch, in respect of each item of Bundled Software and New Software including device drivers covered by such batch, the latest version (or version specified by the Government) releases, upgrades, patches, service packs, updates, and on-going maintenance service support packages of such item together with all manuals, documentation and technical literature published by the manufacturer/developer in conjunction with such item (collectively “updates”) so long as the individual Bundled Software or New Software item remains to be supported by its original manufacturer/developer. No charge shall be payable by the Government for any such updates save as part of the Service Price for the relevant Item incorporating the Bundled Software or the New Software (if any and as the case may be). Notwithstanding the foregoing, for the Windows 10 software pre-installed in Item 2 of the New Hardware (as specified in Table 1.1 of Part A of the Price Schedule), the Government will not ask for updates which the Manufacturer requires payment.
- (x) The Service Price for each New Hardware and New Software Items (as specified in Table 1.1 of Part A of the Price Schedule) includes the charges for all of the aforementioned updates in respect of the Bundled Software (covered by the charges for the New Hardware Item with which it is bundled) or that New Software Item and the software licence in respect of each such update.
- (xi) The Contractor shall be responsible for performing recovery of disk clone images of New Hardware Item 2 without additional charge, whether or not as a result of supplied hardware and software failure, if necessary or upon LD’s request from time to time.
- (xii) Other government contractors and in-house staff of LD may from time to time perform initial diagnosis, modification of the burn-in of Windows 10 image installed in the New Hardware, and any necessary system configuration work including plug/unplug any attached cables/wires on New Hardware. The Contractor shall not raise any objection or put any of the aforementioned work as a ground for non-compliance with any Reliability Levels or Overall Specifications.
- (xiii) All New Kiosks covered by each batch of New Hardware and New Software shall be accessible to the Contractor for performing inspection and preventive maintenance at least once a year or at scheduled times to be mutually agreed between the Contractor and the Government Representative.

### **13. Minimum Serviceability Level**

- (a) In respect of each month of Maintenance Period in respect of each batch of New Hardware and New Software (“Given Period”), the Contractor warrants that such batch shall achieve the Reliability Levels (viz., minimum performance level) as specified in Section 5.6 of Technical Specifications.
- (b) For the purpose of determining the actual Reliability Levels, the definitions and the

formulas of the same are specified in Section 5.6 of Technical Specifications.

- (c) In the event of any corruption to data, without prejudice to the other rights and claims of the Government, the Contractor shall assist the Government to recreate the corrupted files and to reprocess the necessary jobs as the Government may determine and compensate the Government for the cost incurred in so doing.
- (d) If at any time during the Given Period in relation to a batch of New Hardware and New Software, any one or more of the non-compliance thresholds specified in the column titled “Threshold for Early Termination of the Contract” in the table below have been reached, without prejudice to its other rights and claims under the Contract or at law, the Government shall be entitled to terminate the Contract in accordance with Clause 19.1(h) of the General Conditions of Contract:

Non-compliance Event	Deduction of Charges	Threshold for Early Termination of the Contract
(a) The total downtime of a batch of Items exceeds the Maximum Downtime as specified in Section 5.6 of Technical Specifications in respect of a Given Period	N/A	The total downtime of a batch of New Hardware and New Software over each Given Period exceeds the Maximum Downtime as specified in Section 5.6 of Technical Specifications for three (3) consecutive Given Periods

- (e) The Government may withhold payment of the Service Price for any material or persistent non-compliance with any of the terms and conditions of the Contract (including without limitation the Overall Specifications and the Reliability Levels), until and unless all actions and measures have been taken to remedy the non-compliance to the absolute satisfaction of the Government.

#### **14. Year 2000 Compliance**

- (a) The Contractor warrants that the New Hardware and New Software shall be Year 2000 compliant.
- (b) All New Hardware and New Software shall conform to year 2000, meaning that neither performance nor functionality is affected by dates prior to, during and after the year 2000. In particular:
  - (i) *No value for current date will cause any interruption in operation;*
  - (ii) *Date-based functionality must behave consistently for dates prior to, during and after year 2000;*
  - (iii) *In all interfaces and data storage, the century in any date must be specified either explicitly or by unambiguous algorithms or inferencing rules; and*

(iv) *Year 2000 must be recognised as a leap year.*

Note: The text in italics above is quoted from British Standards Institution committee BDD/1/-/3.

- (c) Notwithstanding that this Contract or any warranty provision in it is expressed to endure for a period of time, the warranty provided for in this Clause shall survive the expiry or termination of this Contract and endure for the life of the New Hardware and New Software.
- (d) The Contractor shall immediately on demand by the Government remedy or correct any defect in the New Hardware and New Software which causes a breach of the warranty in Clause 14(a) above whether or not such defect has resulted in a failure of the New Hardware and New Software at the time of the Government becoming aware of it.
- (e) The Contractor shall indemnify the Government on the terms set out in Clause 18.2 of the General Conditions of Contract if the Contractor is in breach of the warranty in Clause 14(a) above.

## **15. Termination**

[Clause 19.1(h) of the General Conditions of Contract shall be read subject to this Clause 15.]

The following Clause shall also be added to the list of Clauses specified in Clause 19.1(h) of the General Conditions of Contract:

Clause 13(d) of the Special Conditions of Contract

## **16. Survival**

[Clause 20.1(a)(iii) of the General Conditions of Contract shall be read subject to this Clause 16.]

Other provisions of the Contract which shall survive the Termination shall include the following provisions of the Special Conditions of Contract:

- (a) Clause 3 (Warranties)
- (b) Clause 17 (Intellectual Property Right provisions)

## **17. Intellectual Property Right provisions**

[Clauses 21 and 22 of the General Conditions of Contract shall be read subject to this Clause 17.]

### **(a) Intellectual Property Rights**

- (i) Clauses 21.5(b), 21.6 and 21.7(b) of the General Conditions of Contract shall not apply to the extent they relate to the New Hardware, New Software, Bundled Software, and all manuals accompanying such items.

- (ii) The Contractor agrees and undertakes that in respect of each item of the New Software and each item of Bundled Software and the accompanying manuals and other documentation with each such Item, and the accompanying manuals and other documentation with each item of New Hardware, the terms and conditions of the licence governing the usage of each of them (collectively, “H &S Licences”) shall be equivalent to or better than those published by the manufacturers of such item as they are sold under volume licensing or if volume licensing is not available or applicable, on a retail basis whether as a standalone product or to be bundled with another product (whichever are better). All rights exercisable by the Government and each of its authorised users, assigns, and successors-in-title (collectively, “H&S licensees” and each a “H&S licensee”) shall be known as “H&S Licensed Rights”.
  - (iii) In Clauses 21 and 22 of the General Conditions of Contract and Clause 17 of these Special Conditions of Contract, references to “Licences” (subject to the exclusion as mentioned Sub-clause (a)(i) above) shall also include H&S Licences; references to “licensees” shall also include H&S licensees; and references to “Licensed Rights” shall also include “H&S Licensed Rights” as defined in Clause 17(a)(ii) above.
- (b) Additional undertaking in relation to Intellectual Property Rights
- (i) Without prejudice to and in addition to other provisions including Clause 3(a)(vi)(4) above and Clause 17(a) above, the Contractor shall at its own cost and expense obtain all rights (including the grant of all necessary consents, approvals, licences and agreements for the Government, its successors-in-title, assigns and authorised users, and for the Contractor itself, its successors-in-title, permitted assigns and authorised users) from the relevant owner(s) of the Intellectual Property Rights in the Goods as may be necessary for the Contractor to perform the Contract including without limitation (i) all obligations in relation to the supply, testing and installation of the Goods; (ii) the Maintenance Services; and (iii) use the Bundled Software and New Software.
  - (ii) The Contractor shall at all times during the validity of the Contract exercise due diligence in software asset management and as and when required by the Government, furnish to the Government satisfactory evidence that this Clause 17(b)(ii) has been complied with.
  - (iii) The Contractor warrants and undertakes that the use or exercise of any software or other Intellectual Property Rights (of whatsoever nature and in whatsoever medium) by the Contractor for the purpose of or otherwise in connection with the performance of the Contract will not infringe any Intellectual Property Rights of any person. In the event of any allegation, claims, actions and/or proceedings in respect of infringement of Intellectual Property Rights of any person, the Contractor shall notify the Government of the same and any progress thereof from time to time.
  - (iv) The Contractor shall indemnify the Government on the terms set out in Clause 22.1 of the General Conditions of Contract in the event of any non-compliance with this Clause 17.

## **18. New Technology**

Without prejudice and in addition to any upgrade or downgrade rights which come with the New Hardware and New Software, the Contractor undertakes to offer to the Government and the Government may, at any time before issuing an Order for a batch of New Hardware and New Software, elect to obtain from the Contractor any hardware or software in substitution for the Item of New Hardware (or any part thereof including any Bundled Software) and/or where applicable New Software as specified in the Price Schedule and/or the Technical Specifications where the substitute unit contains older (i.e. downgrade) or newer (i.e. upgrade) technology or has function or performance or security or reliability characteristics similar to or better than the relevant New Hardware (or such part thereof to be substituted) and New Software. Unless the Government otherwise agrees on a case-by-case basis, such substitute unit or New Hardware incorporating such substitute unit shall be offered to the Government at the same unit price or lower in respect of the Item of New Hardware or New Software which it substitutes, subject further to all discounts offered to the Government in respect of the New Hardware and New Software under this Contract. In the event that the Government elects to obtain the substitute unit of hardware or software from the Contractor, the provisions of this Contract shall apply to such substitute unit as it shall form part of the New Hardware and New Software.

## **19. Insurance**

[Clause 26.1 of the General Conditions of Contract shall be read subject to this Clause 19.]

The insurance policies specified in Clause 26.1.1 of the General Conditions of Contract shall not be required.

## **20. Issue of invoices**

[Clause 14.8 or 14.9 of the General Conditions of Contract or Appendix 1 to the Terms of Tender shall be read subject to this Clause 20.]

Notwithstanding anything in the General Conditions of Contract, invoices for the Contract Price of a batch of Goods or for other payment shall be issued to the following postal address and marked for the attention of the following officer:

Labour Department  
Room 1529, 15/F, Harbour Building, 38 Pier Road, Central, Hong Kong  
(Attn.: Labour Officer (ES)(IS)2)

## **21. Sub-contracting arrangements**

[Clause 29.1 of the General Conditions of Contract shall be read subject to this Clause 21.]

The Contractor shall not, without the prior written consent of the Government, enter into any sub-contract with any person for the performance of any part of the Contract provided that this provision shall not apply to:

- (a) the purchase by the Contractor of equipment and materials; and
- (b) the sub-contract(s) (if any) specified in Table C of the Information Schedule.

**22. Disclosure of Information**

[Clause 30(b) of the General Conditions of Contract shall be read subject to this Clause 22.]

References to “Total Estimated Goods Price” in Clause 30.1(b) of the General Conditions of Contract shall read “Total Estimated Contract Value” as defined in the Interpretation (Supplement).

**23. Connection of other Computer Equipment and Programs**

The Contractor shall permit the Government at no extra charge to connect or install other computer equipment and/or program to the Goods, which is not supplied under the Contract and which the Government considers to be compatible with such Goods. The Contractor shall provide all reasonable assistance to the Government with regard to the installation, acceptance tests and maintenance of such computer equipment and/or programs upon request by the Government. Such assistance shall form part of the Maintenance Services and no further charges shall be payable by the Government during the Warranty Period.

**24. Trade-in Items**

- (a) The Government reserves the right to increase or decrease the quantity of the Existing Kiosks designated to be collected from the Locations for trade-in within the batch delivery period covering those Locations.
- (b) The Existing Kiosks designated for trade-in (viz iKiosks only but not nKiosks and references to “Existing Kiosks” in this Clause 24 shall be understood to cover iKiosks only) are located in the Locations as listed in Section 5.2 of the Technical Specifications. Dates of collection of the Existing Kiosks shall be agreed with LD. The Contractor is required to collect the Existing Kiosks designated for trade-in by batches at its own costs and resources.
- (c) The Contractor shall, at its own costs and expenses, be responsible for the provision of transport, labour and necessary equipment required for the collection and removal of any of the Existing Kiosks designated for trade-in regardless of whether or not the Contractor has offered a Trade-in Price in Table 1.2 of Part A of the Price Schedule.
- (d) Regardless of whether the Contractor has offered a Trade-in Price for a Trade-in Item in Price Schedule, it shall be obliged to at its cost and at no charge to the Government collect and remove all Existing Kiosks from each Location. Dates of collection of the Existing Kiosks will be determined by LD within fourteen (14) days before the batch delivery period for a batch of New Hardware and New Software. The Contractor is required to retain the Existing Kiosks in their original condition at a location in Hong Kong, and not to transfer ownership until the Government has issued the Acceptance Note for the corresponding batch of the New Hardware and New Software. LD reserves the right to demand the return of the Existing Kiosks if any part of any of the New Kiosks fails in any of the Function Tests, Inspections or User Acceptance Tests or Reliability Tests.

- (e) For the avoidance of doubt, regardless of whether or not the Contractor has offered a Trade-in Price in Table 1.2 of Part A of the Price Schedule, the Government always has the absolute discretion to determine whether or not to sell the Trade-in Items to the Contractor, and if yes, the quantity to be sold.
- (f) If the Contractor has offered a Trade-in Price for a Trade-in Item in Price Schedule, the Contractor shall pay the Government the Trade-in Price of Trade-in Items at the rate as specified therein multiplied by the respective quantities.
- (g) For the purpose of this Clause, all risks in the Trade-in Items shall be vested in the Contractor on the date of their removal or collection by the Contractor. The title of such Trade-in Items shall be passed to the Contractor only after the Contractor settles the payment for such Trade-in Items, or after the Government has issued the Acceptance Note in respect of the corresponding batch of the New Hardware and New Software, whichever is later (or until such date as the Government may agree).
- (h) The Contractor shall be responsible for providing storage facilities for the Trade-in Items until the Acceptance Note for the corresponding batch of New Hardware and New Software is issued or until such date as the Government may agree.
- (i) If the Contractor fails to collect the Trade-in Items by the time specified in Clause 24(d) above, the Government Representative shall be at liberty either to charge the Contractor the expenses incurred by the Government for the removal and disposal of such Trade-in Items or to resell at the Government's absolute discretion such Trade-in Items without prior notice to the Contractor. In the case of re-sale, the price realised on such resale shall belong to the Government and in addition, the Government shall recover from the Contractor all costs incurred by the Government in the sale and the price difference between the Trade-in price and the actual sale price.
- (j) The Trade-in Items are offered on an as-is basis and the Government does not guarantee the condition (in whatsoever form), serviceability, functionality, merchantability and fitness for any purpose of these items. Without prejudice to the generality of the foregoing, the Existing Kiosks have a computer workstation with Intel core or higher Processor, with 4GB memory and 500GB hard disk or above, and a thermal printer. These Existing Kiosks may or may not be functional. Operating systems and software items for the Existing Kiosks will not be included as Trade-in Items.
- (k) The Contractor shall ensure that all data in any Trade-in Item has been permanently removed as soon as it collects the same from the Government. It shall use an erasure method to be approved by the Government and certify to the Government in writing that all data stored in all Trade-in Items collected has been completely erased. The Contractor shall be liable to indemnify the Government on the terms set out in Clause 18.2 of the General Conditions of Contract arising from any data remaining in any of the Trade-in Items.
- (l) All hard disks in the Trade-in Items shall be degaussed within the LD premises. The Contractor shall facilitate LD to perform any necessary inspection on the degaussing exercise.
- (m) In execution of the Contract and in any subsequent transfer of any of the Trade-in Items to any third parties or in exporting any of the Trade-in Items by the Contractor, the

Contractor shall comply with the relevant environmental legislation/regulations, in particular those relating to the import and/or export of waste and chemical waste management. The Contractor shall ensure that the Trade-in Items will be refurbished for reuse as far as practicable and that those materials that cannot be refurbished will be dismantled to recover the parts or materials contained for reuse or recycling.

- (n) For those Trade-in Items that cannot be refurbished and will be disposed of or exported for disposal, and those materials or components dismantled from the Trade-in Items that are not technically recyclable, the Contractor shall ensure that they will be treated or handled in a way that complies with the relevant environmental legislation including the Waste Disposal Ordinance (Chapter 354 of the Laws of Hong Kong) and the Product Eco-responsibility Ordinance (Chapter 603 of the Laws of Hong Kong).
- (o) A "Certificate of Destruction" (including the number of hard disks with individual serial numbers) must be provided by the Contractor to confirm the demagnetisation, physical destruction and disposal in a way that safeguards the confidentiality of Government information and is friendly to the environment. The Contractor shall be responsible for any loss or damage caused by the possession or use of information remaining in any part of the degaussed hard disk.
- (p) The Contractor shall prepare and submit a plan for erasing hard disk data to LD for approval prior to commencing the hard disk degaussing.
- (q) In relation to the Trade-in Items that are governed by the Product Eco-responsibility Ordinance (Chapter 603 of the Laws of Hong Kong), the Waste Disposal Ordinance (Chapter 354 of the Laws of Hong Kong) and their subsidiary regulations (e.g. regulated electrical equipment under the Product Eco-responsibility Ordinance, and chemical wastes under the Waste Disposal Ordinance) the Contractor shall comply with the relevant statutory requirements (e.g. waste disposal licence required for disposal, permit required for export, and other requirements for collection, storage, packaging and labelling of e-waste and chemical waste) in execution of the contract and in any subsequent transfer of any of the Trade-in Items to any third parties or in exporting any of the Trade-in Items by the Contractor.