

THE E-TENDERING SYSTEM
TERMS AND CONDITIONS OF USE AND PARTICIPATION

The Government provides this e-Tendering System ("e-TS") and related services subject to compliance by you (including a Registered User) ("you") with the following terms and conditions (the "Participation T&C"). Please read them carefully. The use of the e-TS shall be governed by these Participation T&C. By accessing the e-TS Website, you signify your unconditional acceptance of these Participation T&C. The Government is entitled to revise any Participation T&C at any time without giving prior notice to any person. You are responsible for reviewing the Participation T&C posted on e-TS Website for any revisions whenever you get access to the website. The Chinese translation of this document is for reference only. In the event of any conflict or inconsistency between the English text and the Chinese translation of this document, the English text shall prevail.

1. Definitions

1.1 In these Participation T&C, the following words and expressions have the following meanings, unless otherwise defined or the context otherwise requires:

"Alternative Authentication Method" or "AAM"	means the use of a Personal Identification Number for the submission of a Tender via the e-TS in lieu of the use of a digital certificate;
"any Uploaded Contents"	means any information, contents or materials that the Registered User (or anyone having used the Registered User's email address and password for log-in to the e-TS) make available on or upload onto the e-TS Website or the e-TS, including without limitation the Tender and all related documents or materials.
"Authorised Person"	means in relation to a digital certificate of any of the types as mentioned in the definition of "digital certificate" below, the person identified therein as the "authorised user" or "authorised delegate";
"digital certificate"	means a recognized certificate within the meaning of the Electronic Transactions Ordinance (Cap. 553) which includes: (a) an e-Cert (Organisational) certificate issued by the Hongkong Post; (b) an Organisational ID-Cert Class 5 issued by the Digi-Sign Certification Services Limited; or (c) an Organisational ID-Cert Class 2 issued by the Digi-Sign

	Certification Services Limited;
"e-Tendering System" or "e-TS" or "System"	means the electronic tendering system as described in Clause 2 of these Participation T&C;
"e-Tendering System Website" or "e-TS Website"	means the website(s) specified for downloading tender related documents and submission of tenders which can be accessed through the relevant link(s) posted in the tender notice(s) of the Procuring Department(s);
"Non-works Tenders"	has the meaning prescribed in Clause 2.2 of these Participation T&C;
"Government"	means the Government of the Hong Kong Special Administrative Region of the People's Republic of China;
"Hong Kong"	means the Hong Kong Special Administrative Region of the People's Republic of China;
"Intellectual Property Rights"	means patents, trade marks, service marks, trade names, design rights, copyright, domain names, database rights, rights in know-how, new inventions, designs or processes, and other intellectual property rights whether now known or created in future (of whatever nature and wherever arising) and in each case whether registered or unregistered, and including applications for the grant of any such rights;
"List"	means the list of suppliers maintained by the Procuring Departments;
"Personal Identification Number" or "PIN"	means a unique 8-character code generated by the e-TS and sent to the email account designated by the Registered User;
"Procuring Departments"	means the Government bureau(x) and department(s) which use the e-TS for handling tendering process of selected projects;
"PDPO"	means the Personal Data (Privacy) Ordinance (Cap. 486);
"Registered User"	means a person who has registered an account on the e-TS for using the e-TS and its services and who is obliged to comply with these Participation T&C as a condition for using the e-TS and its services;
"System Administrator"	means the person identified as such on the e-TS Website which is responsible for administering the System;
"Tender" or "tender"	means any offer for the supply of goods, provision of services to the Government, and/or generation of revenue for and on behalf of the Government in response to an invitation to tender;
"Third Party Materials"	means any works or materials (as used for or incorporated in any Uploaded Contents) of which the Intellectual Property Rights

	belong to a third party;
“Virus”	means a subversive computer programme or piece of code that may corrupt or erase computer data files and/or change the normal behaviour of a computer; and
“Website Contents”	means any information, contents or materials on the e-TS or e-TS Website (excluding any Uploaded Contents) including but not limited to tender documents (and any subsequent addenda and supplementary information), text, graphics, logos, buttons, icons, images, sound, audio clips, software, data, information, compilations of data or information and other materials.

1.2 Except where the context otherwise requires, words importing the singular shall include the plural and vice versa; words importing a gender shall include all other genders; references to any person shall include any individual, firm, body corporate or unincorporate (wherever established or incorporated).

2. The e-Tendering System

2.1 The e-TS is an electronic platform for handling the tendering process of Procuring Departments. The e-TS enables Registered Users to (a) download tender documents, and any subsequent addenda and supplementary information; and (b) submit tender proposals electronically.

2.2 Procuring Departments will use the e-TS for procurement of goods, general services and revenue contracts which fall under the ambit of Central Tender Board ("Non-works Tenders").

2.3 In order to become Registered Users:-

- (a) suppliers which are not on the List must complete the registration procedures according to Clause 4.1 of these Participation T&C; and
- (b) suppliers which are included in the List must complete the registration procedures according to Clause 4.2 of these Participation T&C.

3. Qualifications to becoming a Registered User

3.1 Any sole proprietor, partnership, company or statutory corporation which is already included in the List, may register on the e-TS to become a Registered User. The sole proprietor and all partners of a partnership must be aged 18 or above in order to be qualified to register on the e-TS.

4. Registration and Login Procedures

4.1 A supplier who is not included in the List may provide the following details to the Procuring Department(s) via the e-TS for inclusion in the List:

- (a) Business Registration Certification number (if applicable);
- (b) email address;
- (c) address of registered office/place of business; and
- (d) details of its contact person and contact information.

The Procuring Department(s) concerned will process the request accordingly.

4.2 A supplier on the List must complete the following steps to register an account on the e-TS for each Procuring Department:

- (a) **Inputting the email address of the supplier** - The supplier must input its email address recorded in the List.
- (b) **Email address verification** - PIN(s) will be sent to the email address of the supplier. The supplier must enter the PIN(s) into the System in order to proceed to the next step.
- (c) **Setting a password** - The supplier must set a password for log-in.

4.3 After successful registration of an account with a Procuring Department on the e-TS, a Registered User may log in to his account on the e-TS with his email address and password through the link(s) provided in the tender notice published on that Procuring Department's website.

4.4 The account email address and password are personal to the Registered User, and he shall not transfer or assign, whether for value or otherwise, the same to another person. The Registered User shall assume full responsibility for keeping his account email address and password confidential and secure from any unauthorised use. Any disclosure of the Registered User's account email addresses and passwords to any third parties, including but not limited to the persons employed, used or engaged by the Registered User, shall be on a strictly need-to-know basis, and the Registered User shall impose on the said persons employed, used or engaged an obligation to the Registered User to refrain from disclosing the account email addresses and passwords to a third party. The Registered User shall immediately notify the System Administrator of any unauthorised use of the Registered User's account email addresses and passwords or any other breach of security.

4.5 Every Registered User shall log-off from the e-TS at the end of each session. The Government shall not be liable for any losses, damage, costs and expenses arising from his failure to do so.

4.6 Every Registered User hereby consents that any person acting for the Director or Secretary of any of the Procuring Departments, or any person acting for the System Administrator, may (but is not obliged to), whilst he maintains an account on the e-TS, send electronic messages from time to time to the telephone numbers or email addresses that the Registered User has provided from time to time to the Procuring Departments. Such electronic messages may include without limitation information in relation to the e-TS and/or its services, or any other information considered appropriate. If any Registered User no longer wishes to receive any such electronic messages, he shall immediately terminate his account with the e-TS pursuant to Clause 7.3 below. The term "electronic message" shall have the meaning given to it in the Unsolicited Electronic Messages Ordinance (Cap. 593). Notwithstanding the foregoing, the Registered User hereby agrees and acknowledges that any electronic messages which may be sent to them in the aforementioned manner do not constitute "commercial electronic message" within the meaning of the Unsolicited Electronic Messages Ordinance (Cap. 593).

5. Proof of Due Authorisation in the Case of Submission of Tender Using an Personal Identification Number

5.1 The function of using the PIN for submission of a Tender via the e-TS has to be activated using an activation PIN to be sent to the Registered User via email to his email address.

5.2 Upon successful activation of the AAM function, the Registered User may then use the PIN for submission of a Tender via the e-TS. Please note that the PIN for submission of a Tender will be sent to the Registered User's registered email address after he has made the request on the e-TS screen in the course of submitting the Tender using AAM function. The PIN sent to the Registered User is specific for that particular invitation to tender only and cannot be reused for subsequent invitation(s) to tender. After the PIN is sent to the Registered User's registered email account, the Registered User will need to input the PIN on the screen as and when requested for completing the Tender submission procedures via the e-TS.

5.3 It shall be deemed that the Registered User has given each of the person(s), who has access to the Registered User's registered email account, the authority to submit all Tenders through the use of PIN via the e-TS. However, notwithstanding this deeming provision, the Government will still ask for a board resolution or a certified extract thereof or other satisfactory documentary evidence as part of the Tender on each occasion to prove due authorisation of the submission of the Tender by the Registered User.

6. Proof of Due Authorisation in the case of Submission of Tender Using a Digital Certificate

6.1 For submission of a Tender using a digital certificate, a tenderer shall use a digital certificate which is issued in its name. Where a Tender is submitted via the e-TS through the use of a digital certificate with the name of the Authorised Person also appearing in that digital certificate, it shall be deemed that the tenderer (regardless of the applicable business entity) has authorised that Authorised Person to submit such Tender for and on behalf of the tenderer. However, notwithstanding this deeming provision, the Government reserves the right to ask for a board resolution or a certified extract thereof or other applicable documentary evidence as part of the Tender to prove due authorisation.

7. Continuing Acceptance of the Participation T&C and Termination

7.1 The Government is entitled to revise these Participation T&C from time to time after these Participation T&C are first posted to the e-TS Website. The Government is also entitled to revise, modify, omit, suspend, cancel or discontinue any or all channels and/or services available at the e-TS and/or any information, contents or materials available at the e-TS Website at any time in its absolute discretion without giving any reason or prior notice or liability to any person.

7.2 Continued registration by a Registered User with the e-TS shall constitute his acceptance of the Participation T&C as from time to time revised by the Government. If at any time any Registered User does not accept any revisions to these Participation T&C, he shall terminate his account on the e-TS pursuant to Clause 7.3 below.

7.3 A Registered User may terminate his account on the e-TS by giving written notice to such effect ("Termination Notice") to the concerned Procuring Department(s). He shall state his e-TS account email address and his contact number in the Termination Notice. Termination shall take effect upon the expiry of 30 days after the concerned Procuring Department(s) has/have received the Termination Notice.

7.4 Upon termination, the Registered User will cease to have access to the e-TS or any information submitted by him on the e-TS in relation to the concerned Procuring Department.

8. Tender Documents, Tender Addenda, Supplementary Information and Submission of Tender

8.1 Only a Registered User can log onto his account on the e-TS in order to download any tender documents and/or submit tender.

8.2 A Procuring Department may at any time issue tender addenda and/or supplementary information

prior to the tender closing date. Only a Registered User can log onto his account on the e-TS in order to download any tender addenda and/or supplementary information.

8.3 Only a Registered User can log onto his account on the e-TS in order to submit a tender. A Registered User shall complete all the processes and steps required for tender submission. A tender is regarded as having been successfully submitted once a Registered User receives an acknowledgement from the e-TS.

8.4 A Registered User shall be responsible for checking the tender notice of the Procuring Department on a regular basis for any tender addenda and/or supplementary information issued and for ensuring that his tender submissions fully comply with and take into account all the tender addenda and/or supplementary information. The Government shall not be liable for any losses, damage, costs and expenses arising from his failure to do so.

9. User Conduct and Obligations

9.1 You shall comply with these Participation T&C at all times when using the e-TS.

9.2 To register as a Registered User on the e-TS, you shall:

- (a) provide true, complete and accurate information as required by the Procuring Department(s) and the e-TS; and
- (b) (if there are any subsequent changes to any such information submitted at the e-TS) promptly provide the updated information to the Procuring Department(s).

9.3 You shall not use the e-TS to defame, abuse, harass, stalk, threaten or otherwise violate the legal rights (such as rights of privacy and publicity) of others.

9.4 You shall not make any inappropriate, defamatory, obscene, or unlawful contents or materials available on the e-TS.

9.5 In using the e-TS and its services, you shall not:

- (a) impersonate any person or falsely state or otherwise misrepresent a relevant Registered User's affiliation with another person;
- (b) upload, post, or otherwise transmit any unsolicited or unauthorised or indecent advertising, promotional materials, "junk mail", spam and the like;
- (c) upload, post, or otherwise transmit any material that contains software Viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any

computer software or hardware or telecommunications equipment;

- (d) disrupt the normal flow of dialogue, cause a screen to "scroll" faster than other Registered Users are able to type, or otherwise act in a manner that negatively affects other Registered Users' ability to engage in the reasonable use of the e-TS;
- (e) interfere with or disrupt the services of the e-TS or servers or networks connected to the e-TS, or breach any requirements, procedures, policies or regulations of the Government regarding networks connected to the e-TS; or
- (f) violate any applicable laws.

10. Linked Third-Party Websites

10.1 The e-TS may provide or assist in providing links to third-party websites. Provision of, or assistance in providing, any links to any third-party websites does not give rise to any statement, representation or warranty, express or implied, that the Government agrees with, approves, recommends or endorses the contents of any such third-party websites. The provision of any links to third-party websites shall not constitute any form of co-operation or affiliation between the Government and any such third parties or third-party websites. The Government shall not be liable for any loss, destruction or damage (including without limitation any consequential loss, destruction or damage) howsoever arising from or otherwise in connection with any use, misuse, inability to use, or reliance on any such links to any third-party websites, or any use, misuse, inability to use, or reliance on any information, contents or materials of any such third-party websites. You should refer to the terms and conditions of such third-party websites (if any) when using any links thereto and/or any information, contents or materials thereof.

11. Consequences of Non-Compliance

11.1 If a Registered User fails to comply with any of the Participation T&C or if the Government believes that his actions or omissions are inappropriate or illegal, the Government shall be entitled to terminate or suspend his registration as a Registered User with the e-TS, if any. Upon such termination or suspension, the Registered User will immediately cease to have access to the e-TS and its services.

12. Use of Information and Personal Data Privacy

12.1 All personal data of any individual provided to the Government by a person registering as a Registered User will be kept, used and/or disclosed by the Government for the purposes and to such classes of transferees as further specified in the Personal Information Collection Statement below ("PICS").

12.2 Any information, including personal data of any individual, provided by a person registering as a Registered User will be kept by the Government in accordance with the PDPO. Refusal to supply the information requested may result in the Government not being able to process the registration.

12.3 By agreeing to these Participation T&C, you confirm that you have obtained consent from each individual whose personal data has been supplied to the Government in their registration as Registered Users, for the use, transfer and disclosure by the Government for the purposes mentioned in the PICS.

13. Intellectual Property Rights

13.1 All Website Contents (including all software used on the e-TS Website and the e-TS) are protected by Intellectual Property Rights. You will not acquire any Intellectual Property Rights subsisting therein by accessing, registering on or using the e-TS Website or the e-TS.

13.2 A Registered User may only use the Website Contents (including all software used on the e-TS Website and the e-TS) for the purposes of preparing or submitting tenders for Non-works Tenders. Any other use including without limitation the reproduction, modification, distribution, transmission, republication, display or performance of any of the Website Contents is strictly prohibited.

13.3 A Registered User warrants that:

- (a) his use of the Website Contents, e-TS Website or e-TS (for purposes including without limitation the uploading of any Uploaded Contents) shall not infringe any Intellectual Property Rights or any other rights of any person;
- (b) the offering of goods and/or services in the Tender shall not infringe any Intellectual Property Rights or any other rights of any person;
- (c) subject to Clause 13.3(d), any Uploaded Contents shall be or shall consist original works created, developed or made by the Registered User; and
- (d) if any Uploaded Contents include any Third Party Materials, he shall have obtained from the relevant third party Intellectual Property Rights owner the grant of all necessary clearances and licences for the Registered User and for the Government, its authorised users, assigns and successors-in-title to use the Third Party Materials.

13.4 A Registered User hereby grants for the benefits of the Government, its authorised users, assigns and successors-in-title an irrevocable, non-exclusive, worldwide, perpetual, sub-licensable transferable and royalty-free licence to use (including doing any acts restricted by copyright set out in sections 22 to 29 of the Copyright Ordinance (Cap. 528)), modify, copy, or create derivative works from any Uploaded Contents (including any Third Party Materials) unless express contrary provisions are clearly stated in the tender documents or any subsequent addenda or supplementary information as issued or provided by the Procuring Departments.

14. Disclaimer

14.1 No statement, representation or warranty, express or implied, is given by the Government as to the accuracy or completeness of any information published on the e-TS and its services' stability and fitness for use for any purpose or in any particular circumstances. The Government shall not be liable for:

- (a) any errors, omissions, misstatements or misrepresentations (express or implied) of or in any information from time to time displayed in the e-TS, or for any interruption or breakdown or unavailability or delay of the services of the e-TS;
- (b) violation of the Registered User's Intellectual Property Rights by any third party in relation to any Uploaded Contents; or
- (c) any claim, legal proceedings, 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 expenditure (capital or recurrent) which any users (including the Registered User) may suffer or sustain due to any of the foregoing.

14.2 The Government does not warrant or represent that the e-TS or any data or information transmitted from the Government to any users (including the Registered User) through the e-TS is free of Viruses. You are advised to perform Virus scanning before using the e-TS or any of the abovementioned data or information.

14.3 The Government does not warrant the reliability of the internet network through which any data or information is transmitted to and from the Government. The Government shall not be liable for any losses, fees, costs, expenses, liabilities, destruction, delay, failure or damage howsoever arising out of or in relation to any use of the e-TS, including but not limited to any transmission of data or information from any users (including the Registered User) to the Government or vice versa over the internet (whether or not caused by a breakdown or failure of communication facilities or internet network).

14.4 The use of the e-TS is at the sole risk of the users (including the Registered Users). The e-TS and its services are provided on an "as is" and on an "as available" basis. The Government expressly disclaims all warranties of any kind, whether express or implied, including but not limited to the implied warranties of merchantability, fitness for a particular purpose and non-infringement.

14.5 The Government makes no warranty that the e-TS or its services will meet the requirements or expectation of any users (including the Registered Users), that the e-TS and its services will be uninterrupted, timely, secure, or error free; nor does the Government make any warranty as to the results that may be obtained from the use of the e-TS and its services or as to the accuracy or reliability

of any information obtained from the e-TS or its services.

14.6 The Government shall not be responsible or held liable for any delayed, untimely, slow or unsuccessful download or upload of any documents or materials from or to the e-TS Website or otherwise through the e-TS.

14.7 The Government, its employees, contractors or agents shall not be liable for any direct, indirect, incidental, special, consequential or exemplary damages, resulting from the use or the inability to use the e-TS and its services including without limitation lost profits, lost sales or business expenditures, investments, or commitments in connection with any business, loss of any goodwill.

14.8 The Government reserves the right to revise, omit, suspend, discontinue, or modify any services or functions of the e-TS at any time in its absolute discretion without giving any reason or prior notice to any person.

15. Indemnity

15.1 By using the e-TS and its services, you agree to defend, indemnify, hold harmless and keep each of the Government, its authorised users (including the employees and agents of the Government), assigns and successors-in-title (each an "Indemnified Party") fully and effectively indemnified from and against:

- (a) all liabilities and indebtedness (including liabilities to pay damages or compensation), losses, damage, costs, charges and expenses incurred or suffered by an Indemnified Party of whatsoever nature; and
- (b) all and any demands, claims, actions, arbitrations, proceedings, threatened, brought or instituted by any person against an Indemnified Party or by an Indemnified Party against any person (regardless of whether or not they have been settled or compromised) (collectively, "Claims" and each a "Claim") and everything stated in Clause 15.1(a) above incurred or suffered by an Indemnified Party in all and any such Claims, which arise directly or indirectly as a result of or in connection with, or which relate in any way to, all or any of the following:
 - (i) any use of the e-TS Website, e-TS or the Website Contents by you (or anyone having used the Registered User's email address and password for log-in to the e-TS);
 - (ii) any breach by you (or anyone having used the Registered User's email address and password for log-in to the e-TS) of any of the Participation T&C;
 - (iii) any Claim or allegation of infringement of Intellectual Property Rights or any other rights of any person in relation to any Uploaded Contents; or
 - (iv) any reproduction, modification, distribution, transmission or making available copies of any

or all the Website Contents by you (or anyone having used the Registered User's email address and password for log-in to the e-TS).

15.2 This Clause 15 survives any termination or suspension of the e-TS and any termination or suspension of your account on the e-TS (howsoever occasioned) and shall continue in full force and effect notwithstanding such termination or suspension.

16. Miscellaneous

16.1 These Participation T&C shall be governed by and interpreted in accordance with the laws of Hong Kong. You agree to submit to the exclusive jurisdiction of the courts of Hong Kong in relation to any matters or dispute arising out of or in connection with or in relation to these Participation T&C.

16.2 The failure of the Government to exercise or enforce any right or provision of these Participation T&C shall not constitute a waiver of such right or provision. If any of these Participation T&C is found by a court of a competent jurisdiction to be illegal, invalid or unenforceable, the other provisions of these Participation T&C shall remain in full force and effect.

Personal Information Collection Statement

Purposes of collection

1. This Personal Information Collection Statement relates to personal data supplied by you when registering an account on the e-TS. The provision of personal data is voluntary, though true, complete and accurate personal information must be provided so as to enable us to process your registration on the e-TS. If you do not provide sufficient information, you may not be able to use the e-TS.
2. Any personal data provided to the Government may be used for any of the following purposes:
 - (a) the operation and administration of the e-TS or the provision of services through the e-TS; or
 - (b) enforcement of the Government's rights and obligations under these Participation T&C; or
 - (c) complying with any legal, governmental or regulatory requirement including any disclosure or notification requirements; or
 - (d) for any other purposes as may be required, authorized or permitted by law.

Transfer and disclosure of personal data

3. Unless with your consent, any personal data provided to the Government will only be transferred and disclosed, for any purposes indicated in paragraph 2 above, to:

- (a) relevant bureau and departments of the Government, including but not limited to the Financial Services and the Treasury Bureau and the procuring departments, as well as their employees, consultants, contractors and agents operating in or outside Hong Kong; and
- (b) agencies which are authorized to receive information relating to law enforcement and prosecution

Access and correction of your personal data

4. In accordance with the Personal Data (Privacy) Ordinance (Cap. 486), an individual to whom personal data belongs has the rights to request access to and correction of the individual's personal data. The right of access includes the right to obtain a copy of the individual's personal data provided to the Government. Any enquiries concerning personal data provided to the Government, including making data access and correction request, should be addressed to:

Financial Services and the Treasury Bureau
SMSO(SD)
24/F, Central Government Offices, 2 Tim Mei Avenue, Tamar, Hong Kong
Tel : (852) 2810 2818
Fax : (852) 2869 4519
Email : info@ets.gov.hk

For any request for access to personal data provided to the Government, please complete the latest Data Access Request Form as specified by the Privacy Commissioner for Personal Data.